

BRAZEN: bright, hard, and bold

Script for ADR-ELL joint panel on sexual harassment

Script at <http://cba.unomaha.edu/faculty/mohara/web/ALSBbrazen.htm>**ABSTRACT: Joint ADR and E&LL Panel**

Moderator: Michael J. O'Hara, University of Nebraska at Omaha

Presenter: Lucy Katz, Fairfield University

Presenter: David Paas, Hillsdale College

The panel presentation will have four parts. We will lead off with quick reviews of the law relating to sexual harassment and alternative dispute resolution. Second, actors will portray a sexual harassment scenario in an academic context as well as attempts at mediation. Third, the contestants will then submit the dispute to binding arbitration of the baseball variety. Finally, the ALSB members in attendance will act as the arbitrator and render their judgment. This innovative panel is a joint presentation of ALSB's Employment and Labor Law Section and ALSB's Alternative Dispute Resolution Section.

NOTE: "Baseball arbitration" restricts the arbitrator's authority to craft a remedy. The two parties simultaneously make each other a written, final offer. Either party may end the process by saying "Yes" to the other party's written, final offer. This rarely happens. The two parties then present arguments to the arbitrator on why their final offer should be selected and the other rejected. The arbitrator's authority is limited to selecting one of the two final offers. The arbitrator lacks the authority to split the difference.

The joint program outline will be:

- 1.) 10 minutes: employment law relevant to dispute
- 2.) 10 minutes: arbitration law relevant to dispute and resolution;
- 3.) 20 minutes: scenes of the parties
harassment
report of harassment
attempted resolution via negotiation
mediation
- 4.) 5 minutes: oral argument for Chris Power's final offer (by David Paas)
(written final offer to all in attendance)
- 5.) 5 minutes: oral argument for Kerry Brazen's final offer (by Lucy Katz)
(written final offer to all in attendance)
- 6.) 15 minutes: "arbitrator panel" deliberation
small groups (e.g., by table) of ALSB members; vote on final offers;
- 7.) 10 minutes: to tabulate votes of by table
(i.e., report results by whole room as well as by table);
- 8.) 15 minutes: debriefing discussion with questions from the floor.

**BRAZEN AND POWER HAVE AGREED TO
POST-DISPUTE BINDING ARBITRATION.
THE ARBITRATOR'S FINDINGS OF FACT AND ORDERS
ARE AS FOLLOWS.**

KERRY BRAZEN'S FINAL OFFER

Over that last academic year, Professor Chris Power and student Kerry Brazen shared a multifaceted relationship. They both enjoyed and nurtured their relationship.

Their relationship included academic, employment, and social dimensions. Because of these multiple relationships, every week they spent many rewarding hours in each other's company. Through no fault of anyone, the social dimension naturally grew in importance and obviously invited a heightened level of familiarity.

Both parties regret that each spoke and acted upon that heightened level of familiarity in ways that the recipient was tempted to and did misinterpret as inappropriate. Both parties regret having prompted these reasonable, but incorrect, interpretations of their own words and deeds. Both parties extend heart-felt apologies for what ever discomfort the other may have experienced. Both parties express confidence in the other's honesty and honor.

CHRIS POWER'S FINAL OFFER

Professor Chris Power was the instructor of record for student Kerry Brazen in the undergraduate business law course. Brazen earned a course grade of B+. Brazen, upon being informed of the B+ grade expressed grave disappointment, asked for extra credit work, and when that was not allowed, solicited Professor Power to trade sex with student Brazen in exchange for a course grade of "A".

After Professor Power reported Brazen's solicitation to department Chair Clayfeet, Brazen repeated the solicitation. Power then initiated expulsion proceedings against Brazen in the University's Academic Freedom and Tenure Committee. Brazen retaliated with a false and malicious suit against Power for sexual harassment in the UAF&TC. Brazen actively sought out contacts with the print media so as to obtain repetitive publication of Brazen's false claims and for the purpose of harming Power's reputation both in the university community and the general community.

Brazen is hereby expelled from the university. Brazen's expulsion shall be permanently entered onto Brazen's official transcript. Because Brazen's offensive behavior occurred following Power's submission of final course grades, Brazen's business law course grade will not be changed from "B+".

Brazen is hereby dismissed from university employment.

Brazen hereby confesses judgement in all civil suits that may be subsequently initiated either by Professor Power or by the University to recover money damages from Brazen based upon in whole or in part on Brazen's acts listed above.

UNIVERSITY'S ACADEMIC FREEDOM POLICY**SECTION ONE: Academic Responsibility.**

Membership in the academic community imposes certain obligations. These obligations include the following duties of academic responsibility:

- (a) To respect:
 - (1) the dignity of others;
 - (2) the right of others to express differing opinions;
 - (3) the right of others to be free from fear, from violence, and from personal abuse; and
 - (4) the right of the University community to be free from actions that impede its normal functioning.
- (b) To enroll, teach, and evaluate the work of students without regard to considerations such as age, sex, race, color, national origin, or religious or political beliefs.
- (c) To establish and maintain a classroom or laboratory atmosphere that encourages free inquiry and the free expression of ideas by students.
- (d) To present the subject matter of courses as announced to the students and approved by authorities responsible for the curriculum.
- (e) To study current developments and maintain competence in the areas of assigned courses; to examine, continually and critically, the subject matter of such courses, as well as teaching techniques and proposals for improving higher education.
- (f) To:
 - (1) fulfill the assigned time schedule of all classes, including quizzes, laboratories, tests, and other meetings, unless absence is caused by an emergency or approved University business. Changes in the scheduled times shall be authorized by the Dean, director, or department chair, with the agreement of the enrolled students and in the interest of an academic objective;
 - (2) be available at frequent, regular, and scheduled times for student consultation; and
 - (3) inform students concerning the requirements, standards, objectives, and evaluation procedures at the beginning of each course.
- (g) To participate upon request in the activities of the University in the areas of student advising and public service, and as appropriate, in the activities of the department, the college, the campus, and the University.
- (h) To make every effort to indicate that members of the professional staff are not spokesmen for the University except when authorized so to act.
- (i) To create and protect an atmosphere of intellectual honesty in the academic community.

SECTION TWO. Academic Freedom.

The University serves the people of the State and the common good through learning, teaching, extension work, research, scholarship, and public service. Fulfillment of these functions requires the preservation of intellectual freedoms of teaching, expression, research, and debate. The right to search for truth, to support a position the searcher believes is the truth, and to disagree with others whose intellect reaches a different conclusion is the fiber of America's greatness. It is, likewise, the strength of a great University, and its preservation is vital.

A teacher or researcher is entitled to freedom in research, and publication of the results of research, limited only by the precepts of scholarship and faithful performance of academic obligations. Members of the professional staff are entitled to freedom in the classroom in discussing their subjects.

Members of the professional staff are entitled to exercise their right to speak and act as citizens of the United States and of the State of Nebraska. Members of the professional staff shall not suffer sanctions or be discriminated against with respect to the duration of association with the University, pay or other emoluments of their office, appointment, position, or their working conditions because of their enjoyment, or exercise, of their right of academic freedom, or in any case where such action would constitute a violation of federal or state civil rights laws or regulations. Staff members who violate laws prescribed by civil authorities may incur penalties attached to such laws. The University should not impose sanctions to duplicate the function of these laws. Where the University's interest as an academic community is clearly involved, the authority of the University may be asserted. The Board reaffirms belief in, pledges support of, and directs all segments of the University community to sustain and follow the foregoing principles of academic freedom.

ACT ONE: Harassment

Chris Power and Kerry Brazen meet for a scheduled appointment in Chris Power's office to discuss Kerry Brazen's grade in Chris Power's undergraduate law class. In addition to being a student, Kerry is a student-worker in the law department. Chris sits behind a desk with a large textbook and some loose papers, opposite side of desk has a chair. Chris is reading. Kerry strides in without knocking.

KERRY: (*carefree*)
You called.

CHRIS: Oh! . . . you're so late I thought you had forgotten our appointment.

KERRY: I was in the library and lost track of time.
I was sheperdizing cases for Chair Clayfeet,
(*sarcasm*)
a truly fulfilling job.

CHRIS: I called you to discuss your grade in my law class,
unfortunately, you just missed earning an "A" in my class.
Overall, you earned an 89.49%,
and as you know, I round up from 89.50%.
Sorry.

KERRY: Oh no!
I needed that "A" to boost my GPA for grad school.
Is there any extra credit course work that I can do?
How about extra research assistance for you?
Everyone in my family has gone to grad school.

CHRIS: Your course work
and your employment with the department are two separate issues.
The class is over and I couldn't offer just you
the option of extra credit course work since.
I'm sorry.
But focus on the positive.
A "B+" is a very good grade for a difficult course.
You should be proud of your achievement.

KERRY: (*desperate*)
I'm not getting through to you!
I must get an "A"!
What do I have to do?!

- CHRIS: I'm sorry you're so disappointed with your grade,
 but
 I'm not surprised. You set such high standards for yourself.
 Remember,
 I'll be writing a positive letter of recommendation
 based on
 your work for the department and your course work.
- KERRY: Oh, right. What good is a letter saying "second best"?
 I need an "A" and I am willing to do whatever it takes to get an "A".
 The family honor is at stake.
- CHRIS: Your grade is "B+".
 That's final. Let's move on.
 Let's talk about your work with the department.
 You attempt and you complete more work
 than the other student-workers, and
 you always get your work done on time.
 However,
 you do not always give the necessary attention to detail.
- KERRY: (*growing antagonism*)
 This is going to be a "*good*" letter of recommendation?!
- CHRIS: It will be an honest recommendation.
 Shortcomings will be noted,
 but
 my praises will be plentiful because plentiful praise is warranted.
- KERRY: That's not enough.
 I need an "A" and
 I need a recommendation describing serious research assistance
 done well.
- CHRIS: (*firm and serious look*)
 It will have to do.
 There will be no *extra credit* law work.
- KERRY: (*thoughtful stare away from Chris*)
 No extra credit *law* work?
- CHRIS: That's correct.

KERRY: (*Kerry breaks eye contact.*
After a moment Chris focuses on papers on the desk.)
Oh.
I see.
You have in mind a different kind of *extra credit* work for the "A".

CHRIS: (*inattentive, slightly confused, still focused on papers*)
What?

KERRY: (*with resolve but not trepidation*)
Yes, I can do that kind of extra credit work.
With pleasure.
(*lascivious smile and seeks hard eye contact with Chris*)

CHRIS: (*confused*)
You can do what?

KERRY: (*grinning*)
Sex for an "A".
Ah, to be an intern.
Sorry I'm not wearing a throng. Today, anyway.
But, I'm sure we'll fix your kinks while fixing my grade.

CHRIS: (*quickly and startled*)
What!

KERRY: Oh,
and don't forget to mention my the serious research assignment
in your excellent letter of recommendation.
(*pause*)
Would Clintonesque dictation be your first order?

CHRIS: (*angry*)
What are you talking about?
I never suggested trading sex for a grade!

KERRY: (*with confidence and certitude*)
A deal is a deal.
No backing out now.
I am sure my *performance* will be worthy of an "A".
(*Kerry reaches across desk to touch Chris' hand*
Chris abruptly pulls hand back and looks aghast, frozen in place)
Oh, I will exceed your expectations.
Because I want to really *earn* that "A".

CHRIS: (*voice in a strangled shout*)
How dare you proposition me for a grade!

KERRY: (*with attitude and zest*)
Don't be a prude.
You get off on your exercise of your power and discretion.
Why else would you call me into your lair
and then try to crush my sprit?
It's what turns you on.
You're a teacher and I'm a *very willing* student.
So, . . . what's your objection?

CHRIS: Get out!
Get out of my office right now!

KERRY: Or what?
You'll ruin my life with that "B+ "?

CHRIS: (*sputtering*)
I am going to report your obscene behavior!
This is wholly unacceptable.
It's . . . it's . . .

KERRY: (*dripping with condescension*)
sexual harassment?
Pahleezze!
(*long pause Chris glaring and Kerry bemused*)
And just who would believe that an attractive student like me
would come on to a dull professor like you?
(*cheerfully*)
Oh well,
The offer still stands because I am a generous and forgiving person.
I'm also a very busy student.
What with earning *excellent* work references from Chair Clayfeet and
servicing so many dull professors.
It's a joy maintaining my *straight* "A" GPA.
Now there's a misnomer if ever there was one.
(*Kerry Brazen exits smiling broadly and
waving to Chris Power,
speaking loudly at the door*)
Thanks for all the help Professor.
I look forward to *earning* that "A".

END ACT ONE.

ACT TWO: Reporting the harassment

Later that same day, Chris Power is in department Chair Pat Clayfeet's office to report Kerry Brazen's behavior.

CHRIS: *(entering while knocking)*
Pat, I need your help!
I've just had the most disturbing conversation with Kerry Brazen!

PAT: *(reading and inattentive to Chris, not focusing until Kerry's name)*
Kerry, what a fine person. I will miss Kerry after graduation.

CHRIS: Pat!
Kerry just propositioned me for a grade!

PAT: Chris, that is a very serious charge.
(slight pause, confused)
I thought you already turned in your grades.
Didn't Kerry earn a "B+"?

CHRIS: Yes, but it was a close call.
Kerry just missed rounding up to an "A".
Kerry kept insisting that anything other than an "A" is a failure.
(words spilling out rapidly)
Kerry kept asking for extra credit work
and
I kept refusing.
Then,
out of the blue, Kerry offered to trade sex for an "A"!
I was speechless but
Kerry rattled on about how I asked for it.

PAT: *(alarmed)*
You asked for it?

CHRIS: No!
You are not listening!
Oh, this is horrible.
What should I do?

PAT: Why did Kerry say you wanted sex?

CHRIS: Will you get off that?
I didn't ask for sex.
Kerry did!

PAT: Chris, this is a serious charge,
as department Chair I must treat all such charges seriously,
to make reasonable inquiries, and
to determine what, if anything, should be done.

CHRIS: You are considering doing nothing?!

PAT: Now, you're not listening.
Clearly, I must weigh the significance
(becomes very dispassionate and analytical in tone)
of you, the complainant, saying that
the aggressor believes you initiated the sexual tone to the relationship.
This is particularly important
since as a faculty member you're held to a higher standard and
can't engage in sexual relationships with students.
Of course,
students have more freedom.
(assuming an avuncular tone)
Fair or not, that is the rule; and you know it.

CHRIS: *(distraught)*
So you think I did it?

PAT: I don't have enough information
to make up my mind at this time.

CHRIS: Oh my God!
You think I started it.

PAT: *(friendly)*
I don't wish to be unduly personal,
but there are some additional questions I wish you would answer.

CHRIS: *(dejected)*
Fine.

PAT: *(analytical tone)*
You've been divorced now for what? A year?
But,

you've never mentioned
a new person in your love life.
Are you currently attached?

CHRIS: (*annoyed*)
No,
and what does that have to do with anything?

PAT: (*tenderly*)
Well,
you might have been sending off signals of your availability.
Unconsciously, of course.
And, that might have lead to Kerry's confusion.

CHRIS: (*angry*)
Kerry's not *confused*.
Kerry propositioned me for a grade.
I want to initiate disciplinary proceedings.

PAT: (*ignoring Chris' anger*)
In addition to the issue of Kerry's confusion
(*clear disgust shown by Chris and ignored by Pat*)
there is the issue of - - how can I put this most gently - -
your relative attractiveness as compared with Kerry.

CHRIS: What does that mean?!

PAT: (*gently*)
Chris, I'm your friend.
It's merely an issue of believability.
Why would a good-looking student like Kerry seek *you* out?

CHRIS: This is a nightmare.

PAT: (*Pat studies Chris for a long moment*)
Chris, I'm sure you're right,
you're not ugly, and
Kerry's not confused.
Most likely, Kerry was just very clumsy in asking you out on a date,
and
since it came immediately after grades were reported,
and
since Kerry was disappointed with the B+,
you assumed you were being propositioned.

I know
you never would abuse your position as a faculty member.
I'm sure Kerry's clumsy approach was misinterpreted.

CHRIS: *(long pause, silent, head shaking, and downcast)*
sigh.

PAT: I'll handle this report with all due discretion.
If you wish to pursue it further,
I'll support you in your endeavors as I support all of my faculty.

(Kerry visible at door, listening, knocking, and not entering.)

END ACT TWO

ACT THREE: Negotiation

PAT: Kerry!
Come in, come in.
We were just talking about you.

KERRY: I have your sheperdizing.

PAT: Thank you.
(scans several pages)
Well done, as usual.
(looks fondly at Kerry)
Kerry, please . . . join us.
As I said,
we were just talking about you.
Chris came to me this afternoon
because Chris found your behavior earlier today to be very disturbing.
Does that surprise you?

KERRY: *(feigns surprise)*
What could I have done to disappoint Professor Power?

CHRIS: Oh, give me a break!
What an act.

PAT: Kerry, Chris has brought to me a serious charge.
Chris says you offered to trade sex for an "A".
Is that true?

KERRY: No! Of course not!

PAT: This puts me in a difficult position.
I need to know the facts.
I would like the two of you to sit down together
and try to come as close as possible
to a verbatim record of your conversation.
Would you be willing to do that?

KERRY: Sure. Sounds like a good idea to me.

CHRIS: Pat, this is ridiculous!

PAT: Chris, do you have a reasonable apprehension of personal danger?
If so,
then I'll respect you if you decline.
If not,
then I would appreciate your help in this way.

CHRIS: *(resigned)*
OK.

PAT: Thank you.
So that you two may have some neutral ground,
I'll let you use my office.
(standing to leave)
If you need me I'll be in the snack room.

KERRY: *(to Pat)*
Thank you for the opportunity to nip this in the bud.
(as soon as Pat is gone)
Looks like I was I right when I said
no one would believe you.
(both sit silent. then Kerry grows a lascivious grin)
Does the risk of being found turn you on? It turns me on.
We could use Pat's office for a quickie
(dismissive)
now that you have gotten your duty out of the way by reporting me.

CHRIS: Fuck you!

KERRY: Now you got the idea!.
(moving towards Chris)

Why not admit you are attracted to me and
show some support for the department's best student?

CHRIS: (*continuously keeping distance from Kerry*)
You are an embarrassment to this department.

KERRY: (*supremely confident*)
There is more than one way to skin a cat.
I prefer pleasure to pain, but everyone has a kink or two.
If I can't persuade you with pleasure,
let's try pain.
Change my grade or
I will sue *you* for sexual harassment.

CHRIS: (*aggressive with disbelief*)

KERRY: You don't get it, do you?
Pat didn't believe you, and no one else will.
They'll all think you came on to me,
then you got scared,
and turned the story around with a preemptive counterattack.
(*smugly*)
Yep, that's just the type of slick move
to be expected from a leech like you.

CHRIS: You've lost all touch with reality.
I'm leaving.

KERRY: Don't be too hasty.
My offer won't get better if you're rude.

CHRIS: Rude! Me?
My God, you've got gall!
(*standing to leave*)

KERRY: Walk out that door
and I will also insist that
you sign a very positive letter of recommendation.
A letter I will write, of course.

Chris Power storms out as Kerry Brazen chuckles.

END ACT THREE

ACT FOUR: Mediation

Chris Power, Kerry Brazen, and Pat Clayfeet are in Clayfeet's office. Clayfeet is the newly appointed university Ombudsman whose first dispute is that between Chris and Kerry.

PAT: Welcome.
 As you know I am the university's new ombudsman.

KERRY: Congratulations!

PAT: I'm here to help
 members of the university community find ways to resolve conflict
 while they each hold true to their principles.

CHRIS: That might be hard to do
 since Kerry's only principle is never tell the truth.

PAT: I know you both feel strongly that
 you have been wronged in a deep and personal way.
 Given your level of antagonism
 I am glad you two were at least able to agree on a time to meet.
 I hope we can find much more to agree upon today.

CHRIS: Yeah, right.
 I'll agree to a written apology *by Kerry*
 followed by Kerry's complete withdrawal from the university.
 And, since Kerry is such a liar
 I'll insist that the apology be notarized!
 I think that is being very
 (Chris glares at Kerry who returns a "Who, me?" smile)
 generous and forgiving
 given my pending petition for Kerry's expulsion.

KERRY: Always the hot head.
 Can't you even try to help Clayfeet help us?
 Chris, I trust you enough to accept an oral apology.

PAT: I'm pleased to hear you both focus on informal solutions.
 You two can craft more satisfying outcomes
 if we're not hidebound by legalistic formalities.

KERRY: All I want is for this misunderstanding to come to a happy ending.

- PAT: Thank you, Kerry.
I promise to do my best.
- CHRIS: Is the love fest over yet?
Can we get on with this pointless exercise?
- PAT: Chris, I can understand that you feel badly.
The newspaper stories
must have made your life more difficult.
I hope you will be willing to work for closure at this meeting.
- KERRY: *(jumping in before Chris can answer)*
I know that I am.
- CHRIS: If this little liar would shut up for two seconds,
I might agree with you, Pat,
but only because you're my boss.
- PAT: In this context I'm not your boss.
Nor do I get to be your friend -- for either of you,
even though I hope I can rightfully claim that title.
(Kerry nods quickly and too much, Chris reluctantly nods)
Although you both signed waivers
for my conflict of interests,
I agreed to serve as your mediator only because both of you wanted me.
I hope I can justify your confidence in me.
Shall we resume our exploration?
(Kerry nods, Chris looks bored)
As I see it
at this juncture,
you've both claimed the other is the sexual aggressor,
and your counterclaims have been unflattering fodder
for the newspapers and the snack rooms on campus.
Also, I'm sure that neither of your families is enjoying this notoriety.
And, as long as you both continue to hammer on each other
this is a lose-lose situation.
Did I get that much right?
- CHRIS: *(weakly)*
Yes.
- KERRY: So well said.

PAT: You both started this meeting asking for an apology.
 Were you both serious
 in saying this matter could be settled with an apology?

KERRY: Definitely.

CHRIS: and Kerry's full withdrawal.

PAT: Chris, may I ask you a personal question?

CHRIS: Yes.

PAT: I want to know if you've considered
 what your life on campus would be like
 if you failed, if your petition to have Kerry Brazen expelled was rejected.
 If you lose, for whatever reason,
 how will that affect you?

CHRIS: I'm not going to lose!
 Kerry is liar and everyone will know it!

PAT: I'm asking you to set aside right and wrong,
 and just look at
 what happens if the unthinkable happens.
 Does it look good to you?

CHRIS: (*chastened*)
 No,
 of course not.

PAT: Would your well-earned reputation be ruined?
 Would you find some friends to fair weather friends?
 Would you lose much of the sense of belonging in and to this community?
 Would it hurt, deep down?
 (*Chris gives a cold stare and no answer*)
 (*Pat waits, looking at Chris, then Kerry, and back again*)
 I think that was a "yes".
 Kerry
 may I ask you the same question, in reverse?

KERRY: (*timid for the first time*)
 Sure.

PAT: Have you thought about what your life would be like if Chris is successful?
Will you be admitted to any other university after we expel you?
Certainly, graduate school is out of the question
if you can't finish your bachelor's degree.
And what about your employment prospects?
How many employers want to hire someone who seduces a boss
and drags their name through the local papers?
Does that look good to you?

KERRY: (*stiffening*)
No, probably not.
But, I'm more than willing to swap apologies right now.

CHRIS: (*angry*)
I'm not going to apologize!
I've done nothing wrong and I refuse to stand for any more of this abuse.
I'm leaving.
(*stands to leave*)

PAT: (*stands to block Chris' exit and gently touches Chris' shoulder*)
Chris, for me,
will you please wait a little longer to hear my suggested solution?
For an old friend,
one who is concerned about what is best for you and our community?
Please.
(*Chris sits*)
Thank you, both of you.
I know that this discussion is very trying for both of you.
I'd like you consider a process
that is less formal than Chris' request that the
university's Academic Freedom and Tenure Committee
expel Kerry.
Its outcome would just as binding,
but it wouldn't create precedence.
Also, this outcome could be confidential.

CHRIS: Could?

PAT: Yes, could be confidential.
If the outcome were confidential
then neither of you would have to publicly lose.
Chris, are you interested?

CHRIS: Yes.

PAT: Kerry, are you interested?

KERRY: Yeah.

PAT: Good.
We're making progress, then.
What I have in mind is binding arbitration by a panel of arbitrators.
Are you both still interested?
(both looking at the other, nods)
Good.
I envision an arbitration panel being made up of
the current members of the Academic Freedom and Tenure Committee.
I've taken the liberty of exploring this possibility
with the AFT Committee and they're quite willing, even eager,
to serve in this less formal manner.
They do insist though that Chris withdraw, with prejudice, the petition
and that
both of you waive your right to appeal on campus.
Are you both still interested?

(Kerry nods immediately. Chris thinks about it, looks at Pat, then nods yes.)

PAT: Excellent!
Lastly,
I recommend that you use the type of arbitration
known as "baseball arbitration."

CHRIS: *(suspicious)* Never heard of it.

PAT: Baseball arbitration
is good for bringing together parties that are very far apart.
Seems apropos.

CHRIS: How does it work?

PAT: Simply,
in baseball arbitration, each of you makes a written Final Offer.
The arbitrator must pick one or the other,
but can't modify the offers in any way.
Either you win or you lose.
Is that acceptable?
(Chris quickly nods yes, Kerry looks suspicious and is slow to nod yes)
Excellent!

PAT: At least one day prior to the arbitration each of you would give the other and the panel of arbitrators your Final Offer in writing. At any time prior to judgement, you may end the process by accepting the other's Final Offer. In addition to your written offer, you will be allowed to make a three-minute oral argument to the arbitration panel on why *your* Final Offer should be selected by the arbitration panel. Again, I've taken the liberty of drafting a memo describing such an agreement. Are you both interested in signing such an agreement?
(places sheet of paper on table between them)
(neither Chris nor Kerry moves to take it)
(Pat looks disappointed, then fixes his gaze on Chris)

CHRIS: I'm not sure.
You said this *could* be confidential.
Does this bind *me* to confidentiality?

PAT: It's up to you.
It could be confidential, but is not necessarily confidential. If you both sign this memo, the memo will be released to the press by the AFT Committee to explain the termination of its formal proceedings, and state that you chose to leave the public forum for a more confidential forum. No one is required to disclose the outcome, and no one is barred from disclosing the outcome.

CHRIS: OK.
One other question.
The oral arguments.
Must we do those ourselves or may we use counsel.

PAT: You may do the oral argument yourself or you may use counsel, your choice.

CHRIS: Let's do it.
(reaches for paper to sign, but Kerry grabs it first and signs)

END OF ACT FOUR