



The Art of the Steal: The Houston Astros and Bill Belichick

Sign Stealing in Sports as a Way to
Understand Trade Secret Misappropriation

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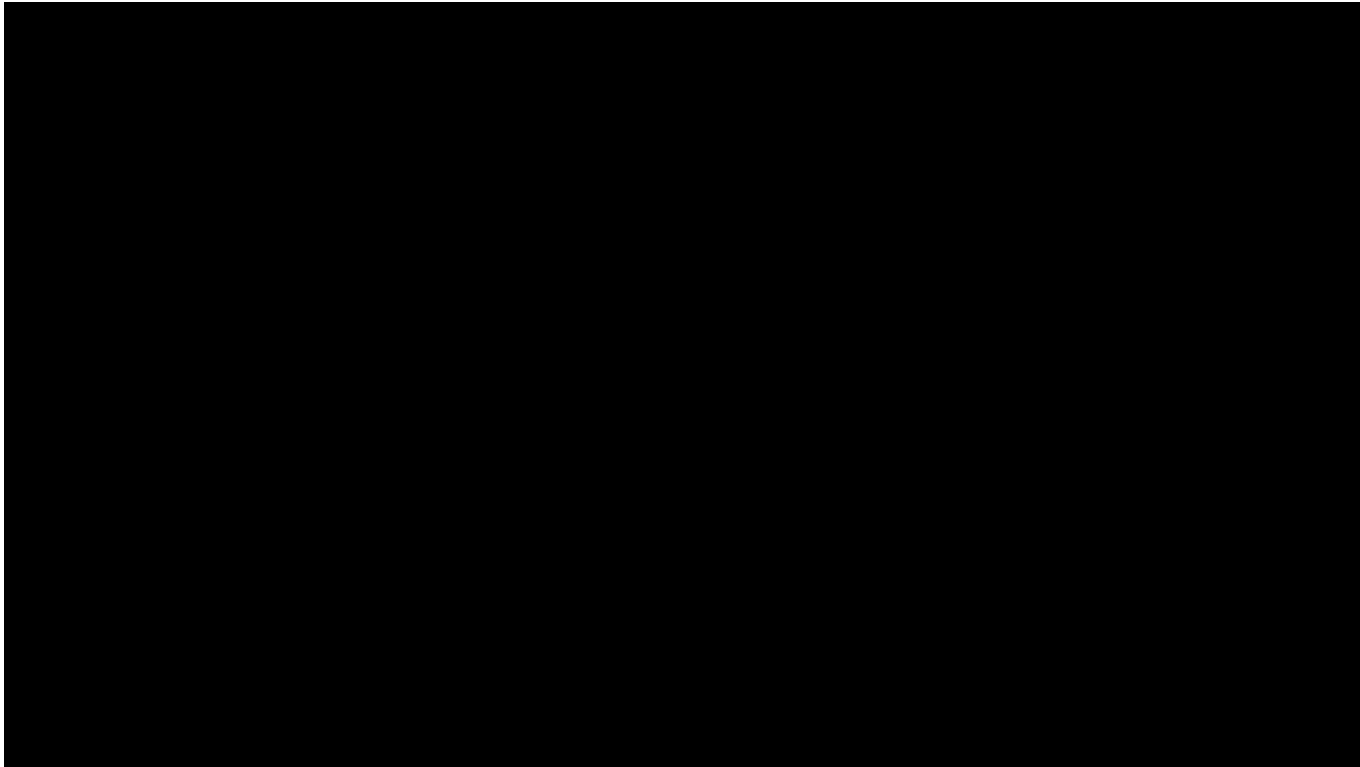
Houston Astros 2017 World Series Champions



Baseball Pitch Signs and the Alleged Steal

- Pitches in MLB range from 65 MPH to 100 MPH
- At 100 MPH, batter has 100 ms to observe and decide to swing
- Video camera installed in center field fence
- Staff would observe the camera feed in a hallway to their dugout
- When a change-up or off-speed pitch was called, the staff would bang on a garbage can, signaling to the batter the intended pitch

Allegations that Astros Stole Pitching Signs



Information

- That is the subject of reasonable efforts to keep confidential, and
- That derives economic value from being kept confidential

- Defend Trade Secrets Act, 18
USC § 1836, *et seq* (DTSA); See also [Cal. Civ.
Code § 3426.1\(d\)\(1\)](#)

Derives Economic Value From Being Kept Confidential

Knowledge of pitches beforehand can alter the balance between pitcher and hitter

Astros pitcher in 2017, Mike Fiers, noted that this slight advantage for hitters can negatively impact the career of young pitchers

Trade Secrets

Must, in fact, be confidential and cannot be:

- Generally known

- » “Information that is generally known or understood within an industry, even if not known to the public at large, does not qualify as a **trade secret**.” *Von Holdt v. A-1 Tool Corp.*, No. 04 C 04123, 2013 US Dist LEXIS 636, at *23 (ND Ill Jan. 3, 2013).

- Reverse engineered (but not requiring too much work)

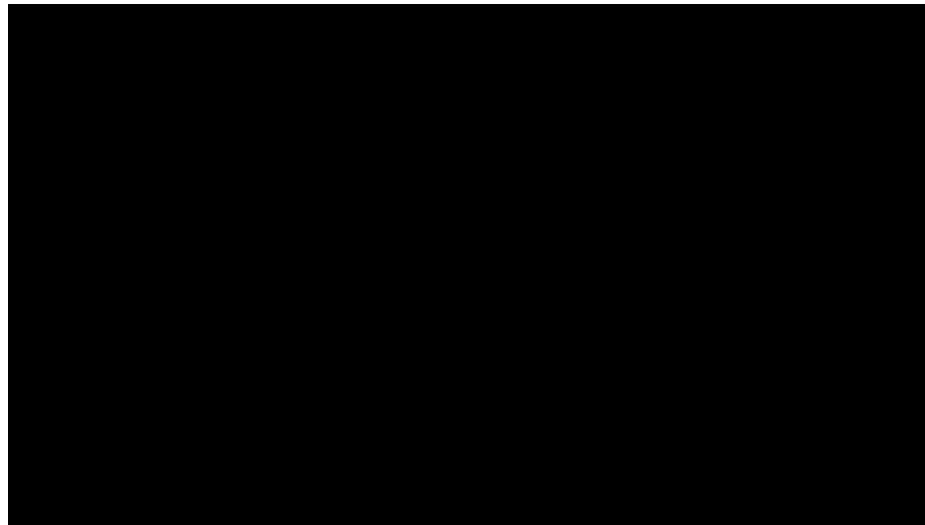
- » “Information that is derived from public sources but requires laborious accumulation, culling, and/or analysis of the public information can, however, still qualify as a trade secret.” *Stenstrom Petroleum Servs. Group, Inc. v. Mesch*, 874 N.E.2d 959, 975 (Ill. App. Ct. 2007).

- Presented Publicly

- » *Imperial Chem. Indus. v. Nat'l Distillers & Chem. Corp.*, 342 F2d 737, 742 (2d Cir 1965) (“A trade secret can exist in a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design and operation of which, in unique combination, affords a competitive advantage and is a protectable secret.”)

Reasonable Measures To Keep Confidential”

Baseball signs are meant to hide the intended pitch. Signaled from catcher to pitcher, or coach.



“Reasonable Measures”

- Measures must be “adequate under the circumstances.”
Bay Fasteners & Components, Inc. v. Factory Direct Logistics, Ltd. Liab. Co., No. 17-CV-03995, 2018 US Dist LEXIS 46155, at *10 (ND Ill Mar. 20, 2018);
 - » *Orthofix Inc. v. Hunter*, 55 F. Supp. 3d 1005, 1013 (N.D. Ohio 2014), rev'd on other grounds and remanded, 630 F. App'x 566 (6th Cir. 2015) (“when [defendant] left the company, [plaintiff] did not engage in meaningful efforts to seek the return of any trade secret information defendant might possess”);
 - » *FormFactor Inc. v. Micro-Probe Inc.*, No. 10-cv-3095 PJH, at *11 (N.D. Cal. June 7, 2012) (plaintiff allowed the defendant to store business information on personal devices and “did not request that defendant returned company data when leaving company”).

Are Pitching Signs Confidential?

- Can these be divined from textbooks or general education materials?
- Can signs be reverse engineered?
- Are they publicly displayed?

Were the Astro's Opponents' Signs Confidential?

“Farquhar said he and his catcher changed the signs to the more complex kind used when a runner is on second base — a situation where baserunners have long been able to legally relay signs, using their own eyes.”

- *The Astros stole signs electronically in 2017 — part of a much broader issue for Major League Baseball*, Rosenthal and Drellich, 2017

What Do The Experts Say?

Patrick H. Nov 12, 6:33pm 234 likes

Imo use better signs and vary them more frequently. It's like making your bank password 1234 and complaining someone hacked it.

👇 64 replies hidden

Kevin C. Nov 12, 8:34pm

Basically, a player on second is a part of the game. Cameras in the stands are not.

Other Signals In Sports – University Of Oregon



New England Patriots - Spygate

In 2007, the New York Jets accused New England of filming New York's signs during a game in New York

Revealed during investigation that there were allegations that the Patriots filmed the walkthroughs of the Los Angeles RAMs before in 2002 Super Bowl

Are either trade secret misappropriation?

2007 New England Patriots vs NY Jets

NFL prohibits filming of plays where video is accessible to coaches during the game

Signals are otherwise viewable to anyone who can see them

- Reasonable measures to protect confidentiality?
- Economic value?

2002 New England Patriots vs Los Angeles Rams

Super Bowl XXXVI : NE Patriots vs Los Angeles Rams, aka “The Greatest Show on Turf”

Patriots **20**, Rams **17**

- NE Patriot video crew wearing Patriots gear set up cameras in stadium
- Rams team came in and went through walkthrough
- Video crew stayed for 30 minutes, noticed interesting formations, which they shared with coaches
- Reasonable measures to protect confidentiality?
- Economic value?

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