

# Calif. Court Should Toss Pitcher's Lawsuit Against Astros

By **Ugo Colella** (March 2, 2020)

In 1985, I was an 18-year-old freshman pitcher for No. 1 ranked Stanford University, and we were facing the sixth-ranked Miami Hurricanes in the first round of the 1985 College World Series. I was a starting pitcher, but for this game, I came in as relief in the middle innings when our team was losing badly. I was nervous, sweaty; I wasn't much relief in relief. I gave up three earned runs in one-third of an inning and was pulled out of the game before the inning was over.



Ugo Colella

We lost 17-3 and were knocked out of the College World Series in the third round. There is no question that my performance against Miami was dismal — or as my loving mother put it after watching the game on ESPN, “very embarrassing.” But did pitching poorly in that one-third inning end my pitching career? Of course not.

That’s why the case of Michael Bolsinger, a former pitcher for the Toronto Blue Jays,[1] is so bizarre. In a recently filed lawsuit in Los Angeles Superior Court, he claims that his major league baseball career ended because of one outing on Aug. 4, 2017, against the Houston Astros, who, at the time, was engaged in an inappropriate electronic sign-stealing scheme — a scandal that has rocked the baseball world. Bolsinger threw 29 pitches (only 13 strikes), walked three and ultimately gave up four earned runs in one-third of an inning. The Blue Jays lost 16-7.

In his lawsuit, Bolsinger takes no responsibility for his terrible performance. Instead, he seizes on the sign-stealing scandal and blames the Astros not only for that performance, but also for ending his career in major league baseball. To bolster his case in the court of public opinion, Bolsinger recently penned an op-ed for the Washington Post, claiming that the Astros “robbed [him] of the opportunity to determine [his] own future on the mound.”[2] (I suppose Miami did the same thing to me!)

Bolsinger seeks unspecified past and future general and special damages. He also wants restitution by way of forcing the Astros to give up its 2017 World Series bonuses — totaling approximately \$31 million — for the purpose of setting up a charity “focused on bettering the lives of children with an emphasis on charities in Los Angeles as well as a fund for elderly retired professional baseball players in need of financial assistance.”

Putting aside the perplexing use of a Los Angeles venue (Bolsinger and the Astros are in Texas), Bolsinger’s questionable standing to seek restitution on behalf of the city of Los Angeles, and his curious failure to sue the Toronto Blue Jays, Bolsinger’s lawsuit is nothing more than a legally meritless publicity stunt.

Let’s first look at Bolsinger’s less-than-stellar record in professional baseball before the August 2017 game against the Astros. Bolsinger started his career in 2010 with the Arizona Diamondbacks, when he was drafted in the 15th round (451st overall pick) as a starting pitcher.

He spent the next four years in the minor leagues, with occasional appearances in the major leagues. In the fall of 2014, he was traded to the Los Angeles Dodgers and spent 2015 going back and forth between the minors and the majors. In 2016, he suffered an oblique

injury, causing him to rehab in the minor leagues. He had a 1-4 record and a whopping 6.83 earned-run average.

In July 2016, the Dodgers traded Bolsinger to the Toronto Blue Jays. The Blue Jays kept Bolsinger in the minors for the remainder of the 2016 season. In 2017, Bolsinger once again went back and forth between the minors and majors as a starting pitcher. According to Bolsinger, in 2017, he was “[f]ocus[ed] on getting back to the big leagues,” and therefore “embraced the label of journeyman.”<sup>[3]</sup> Of course, that meant that Bolsinger had to abandon any hope of being a starting pitcher in the major leagues. He would, instead, “transition[]” to being a relief pitcher.

Bolsinger’s new journey (his words) as a reliever in the majors started on July 3, 2017. Bolsinger’s lawyers say that his first five outings as a reliever went well and were cause for optimism. However, according to Sports Illustrated, Bolsinger’s ERA coming into the Aug. 4 game was an abysmal 5.49; he had given up 44 hits (including eight home runs) and 24 walks in 41 innings.<sup>[4]</sup>

Anyway, Bolsinger says that the Aug. 4 game would have turned out differently (presumably better for him) but for the sign stealing. The facts are otherwise, however. The electronic sign-stealing scam involved a camera in center field that would live feed the catcher’s signs to players or team personnel watching the feed in a hallway close to the dugout.

According to Bolsinger’s lawsuit, those players/personnel would then relay the sign to the batter by banging on a trash can if the pitch was judged to be off speed. If there was no bang, that meant a fastball was coming. Bolsinger’s lawyers don’t define what qualifies as an off-speed pitch but appear to lump all nonfastballs into one category — a factually erroneous assumption as every baseball player and fan knows (more on that below).

As funny as it may sound, Bolsinger’s entire case actually rests on a trash-can-bang theory. He says that the Aug. 4 game involved more bangs (54) than in any other Astros home game that season and that there were 12 bangs on Bolsinger’s 29 pitches.

The supposed data used to back up this claim comes from a disgruntled Astros fan who went to the trouble of conducting a trash-can-bang analysis of each one of the Astros’s 2017 home games.<sup>[5]</sup> The methodology? The fan — a graphic designer and web developer — watched each home game where video was available and “listen[ed]” for “any banging noise.”

Let’s assume that this data, and the crude methodology that produced it, would be admissible in court. Let’s also assume, as Bolsinger does, that the Astros hitters could actually distinguish between a dugout-initiated trash-can-bang and silence — in other words, that the sign-stealing scam worked perfectly on Aug. 4. Even if we indulge these wild and probably unproveable assumptions, Bolsinger’s claims are still far-fetched because the (dubious) data upon which he relies completely undermines his claims.

First, on several occasions, there were no trash-can bangs even though Bolsinger threw an off-speed pitch.

Second, there were several trash-can bangs when Bolsinger threw a fastball.

Third, Bolsinger gave up a three-run home run on a 2-0 no-trash-can-bang “cutter.” In terms of velocity, a cutter, a.k.a., a cut fastball, is in between an off-speed pitch and a

fastball. The data treats a no-bang cutter the same as a no-bang two-seam fastball or a four-seam fastball, which is plainly wrong from a pitching and hitting standpoint.

And fourth, Bolsinger's three walks certainly cannot be blamed on sign stealing because those pitches presumably weren't even hittable. Indeed, of the 12 pitches that received bangs, six were balls.

In the end, Bolsinger's poor performance on Aug. 4, 2017, appears to have nothing to do with the sign-stealing scam. Prior to that game, Bolsinger had been a mediocre starting pitcher who started his new journey as a reliever just one month earlier. Despite the trash-can-banging scam, Bolsinger walked three batters, threw more balls than strikes and gave up a three-run home run on a pitch that was not likely telegraphed to the batter.

In fact, Bolsinger had trouble finding the plate before that three-run shot, throwing six balls and one strike in his first seven pitches. A 2-0 count is a great hitter's count and, with Bolsinger having trouble finding the plate and running the risk of loading the bases, most major league hitters would assume that a fastball would be next. And so it was.

But Bolsinger's case takes an even bigger leap than just blaming one bad performance on sign stealing. He claims that that one game, those 29 pitches, and the trash-can banging ruined his entire major league baseball career. That "disastrous inning," say his lawyers, "could and did prove to be the death knell to [Bolsinger's] career in the MLB." This claim cannot succeed.

Stripped of its rhetoric and the overlay of the sign-stealing scandal, Bolsinger's claim is as follows: If the Astros had not stolen signs on that fateful day in August 2017, Bolsinger would not have given up four runs, the Blue Jays would not have released him, and/or his new journey as a relief pitcher would have continued in Toronto (or perhaps elsewhere).

The amount and type of evidence needed to prove the necessary element of causation is highly unlikely to materialize. Bolsinger will have to prove that in a hypothetical, noncheating world, his career as a reliever would have taken a different turn. The fact that Bolsinger has not yet provided any specifics of his alleged past and future damages (only generalized legal boilerplate) tells us that his claims are speculative at best.

Moreover, the law of causation is principally designed to impose rational limits on liability and rein in outlandish claims of cause and effect when the facts don't justify holding someone responsible for another's alleged economic loss. That is why claims premised on a pile of questionable assumptions — such as those put forth by Bolsinger — should not survive. Otherwise, the law becomes a blunt instrument for claims that may have little or no connection to the actions of an alleged wrongdoer.

We already see this dynamic at work. Fantasy baseball participants[6] and season ticket-holders[7] have sued the Astros (and others, including Major League Baseball) over sign stealing, claiming that the virtual and actual game of baseball was tainted and therefore damaged them. As deplorable as sign stealing is, no one has come forward with any credible evidence that the Astros's sign stealing ever made a lick of difference in any particular game against any particular pitcher or team.

In fact, a recent analysis from a data scientist concludes that the Astros gained nothing from its cheating.[8] Indeed, Bolsinger doesn't allege that, after Toronto released him, any specific major league team rejected him because of the Aug. 4 game against the Astros. The law demands that connection.

Equally, if Bolsinger's lawsuit were permitted to proceed, arguably every player who pitched against the Astros in 2017 could conjure up a claim against the team. And so can every major league team who played the Astros in 2017; they could claim that they should have won games that they lost. It's no exaggeration to say that Bolsinger's lawsuit would blow the lid that causation places on runaway and limitless liability. The law should not change or otherwise be modified just because it involves America's past time.

I would expect that, in the highly unlikely event a Los Angeles judge permits Bolsinger's case to proceed, the Astros's defense would be twofold: (1) Toronto released Bolsinger for reasons other than his Aug. 4 performance, and/or (2) Bolsinger's failure to make it back to the major leagues can't possibly be attributable to the Aug. 4 game. I suspect that Bolsinger was cut for a whole host of reasons and that his Aug. 4 performance was one data point (if any) among many that resulted in his release.

As to its second defense, the Astros will probably need some combination of fact and expert testimony explaining that Bolsinger's failure to re-sign in the majors is more a function of competition than a 29-pitch, one-third-of-an-inning performance.

Baseball, like every other sport, gives players every opportunity at redemption. I certainly had that opportunity after being pummeled by Miami, but I ended up in law school instead. Bolsinger had the same opportunity for redemption after the Blue Jays released him. Yet, more than two years after the August 2017 outing, Bolsinger appears to not have impressed any major league team, despite having some good fortune playing baseball in Japan. That is why, as bad as the sign-stealing scandal is, Bolsinger's 29 pitches and a trash can didn't end his career.

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[1] *Bolsinger v. Houston Astros, LLC et al.*, Case No. 20STCV05242 (Superior Court of the State of California).

[2] [https://www.washingtonpost.com/opinions/why-im-suing-the-houston-astros-over-their-cheating/2020/02/13/c15bef00-4e9f-11ea-bf44-f5043eb3918a\\_story.html](https://www.washingtonpost.com/opinions/why-im-suing-the-houston-astros-over-their-cheating/2020/02/13/c15bef00-4e9f-11ea-bf44-f5043eb3918a_story.html).

[3] *Id.*

[4] <https://www.si.com/mlb/2020/02/11/mike-bolsinger-astros-sign-stealing>.

[5] <https://www.signstealing.com>.

[6] *Olson v. Major League Baseball et al.* Case No. 1:20-cv-00632 (Southern District of New York).

[7] *Wallach v. Houston Astros, LLC et al.* Case No. 2020-10637 (District Court of Harris

County, Texas).

[8] <https://www.msn.com/en-us/Sports/mlb/column-did-astros-beat-the-dodgers-by-cheating-the-numbers-say-no/ar-BB10ugx7?ocid=se2>.