

## U.S. Trade Secret Law and the Defend Trade Secrets Act

A trade secret consists of valuable commercial information that is subject to reasonable efforts to keep such information secret.<sup>1</sup> The exact definition of a trade secret differs under federal and state law.<sup>2</sup> Whether certain material qualifies as a protectable trade secret is a question of fact determinable by a jury.<sup>3</sup>

### State Law

Trade secret law has primarily been governed under state law.<sup>4</sup> Under state law, individuals and corporations can receive protection from misappropriation and seek civil damages.<sup>5</sup> As of May 2016, 48 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have enacted some form of the Uniform Trade Secrets Act (“UTSA”).<sup>6</sup> Each state has made minor changes to the UTSA prior to enacting it, but all provide the following: definitions for key terms such as “trade secret” and “misappropriation,” and various types of injunctive and monetary relief for trade secret misappropriation in a civil action.<sup>7</sup> Further, states like California and Texas have provisions that include criminal prosecution for the theft of trade secrets.<sup>8</sup>

Although state law changes from the UTSA are relatively minor, it is worth noting that these variations may lead state courts to apply differing procedural and substantive standards.<sup>9</sup> Depending on which of the 48 states a trade secret case is in, these state law differences can affect the following:

which party has the burden of establishing that a trade secret is not readily ascertainable, whether the owner has any rights against a party that innocently acquires a trade secret, the scope of information protectable as a trade secret, and what measures are necessary to satisfy the requirement that the owner employ “reasonable measures” to maintain the secrecy of the information.<sup>10</sup>

Trade secret protection in the remaining two states, New York and Massachusetts, is based on the Restatement of Torts or the Restatement (Third) of Unfair Competition.<sup>11</sup> There are a couple

---

<sup>1</sup> Brian T. Yeh, *Protection of Trade Secrets: Overview of Current Law and Legislation*, Cong. Research Serv. (Apr. 2016), <https://fas.org/sgp/crs/secretary/R43714.pdf>.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.*

<sup>6</sup> Eric W. Hagen, *The New Federalization of Trade Secret Law- What You Should Know About the DTSA*, MCDERMOTT WILL & EMERY (May 2016), <https://www.mwe.com/en/thought-leadership/publications/2016/05/new-federalization-of-trade-secret-law>; Ronald T. Coleman, Jr. et al., *Trade Secrets- The Basic Principles and Issues*, A.B.A. LITIG. (Nov. 2014), [http://www.americanbar.org/content/dam/aba/publications/litigation\\_committees/intellectual/trade-secrets-the-basic-principles-and-issues.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/litigation_committees/intellectual/trade-secrets-the-basic-principles-and-issues.authcheckdam.pdf).

<sup>7</sup> Yeh, *supra* note 1 at 6.

<sup>8</sup> Yeh, *supra* note 1 at 6 n.40.

<sup>9</sup> Yeh, *supra* note 1 at 6.

<sup>10</sup> *Id.*

<sup>11</sup> Coleman, Jr. et al, *supra* note 6.

significant differences between the trade secret laws of these two common law states and the UTSA.<sup>12</sup> First, the definition of a trade secret differs.<sup>13</sup> Under UTSA §1(4), a trade secret is:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>14</sup>

Unlike the UTSA, New York and Massachusetts use the multifactor balancing test from the Restatement of Torts to determine whether certain types of material qualify as a protectable trade secret.<sup>15</sup> The factors taken into consideration are as follows:

(1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the business] and [its] competitors; (5) the amount of effort or money expended by [the business] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.<sup>16</sup>

The most well-known distinction between the UTSA and the trade secret laws of these two states is the “continuous use” requirement.<sup>17</sup> Under the UTSA, a trade secret includes protected information that is not currently in use.<sup>18</sup> However, under the New York and Massachusetts trade secret laws, protected information needs to be “used in one’s business.”<sup>19</sup> Hence, in order for protected information to qualify as a trade secret in either of these states, the guarded information needs to currently be in use.<sup>20</sup>

Second, unlike the UTSA, New York and Massachusetts trade secret laws contain limited fee-shifting provisions.<sup>21</sup> Third, these common law states are much more hesitant to apply the

---

<sup>12</sup> Gregory S. Bombard, *Three Key Distinctions Between the Uniform Trade Secrets Act and the Common Law*, 17 A.B.A. COMMERCIAL & BUS. LITIG. 23 (2016), [http://www.duanemorris.com/articles/static/bombard\\_abacommbuslit\\_winter2016.pdf](http://www.duanemorris.com/articles/static/bombard_abacommbuslit_winter2016.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> UTSA §1 (4) (1985).

<sup>15</sup> Bombard, *supra* note 6 at 23-24.

<sup>16</sup> *Ashland Mgmt, Inc. v. Janien*, 624 N.E.2d 1007, 1013 (N.Y. 1993) (alterations in original) (quoting Restatement of Torts §757 cmt. b).

<sup>17</sup> Bombard, *supra* note 6 at 24.

<sup>18</sup> *Id.*

<sup>19</sup> See *J.T. Healy & Son v. James A. Murphy & Son*, 260 N.E.2d 723, 730 (Mass. 1970); *Ashland Mgmt, Inc.*, 624 N.E. 2d at 1013.

<sup>20</sup> Bombard, *supra* note 6 at 24.

<sup>21</sup> *Id.* at 25.

inevitable disclosure doctrine.<sup>22</sup> The UTSA allows a trade secret owner to seek an injunction against “[a]ctual or threatened misappropriation.”<sup>23</sup> Some courts have interpreted this to allow a court to grant an injunction where the former employee’s disclosure of the trade secrets to a new employer is inevitable.<sup>24</sup> However, New York and Massachusetts courts seem to be inconsistent with regards to applying the inevitable disclosure doctrine to trade secret cases.<sup>25</sup>

### **Federal Law: Economic Espionage Act**

The Economic Espionage Act (“EEA”) was enacted in 1996 by Congress due to increasing concerns about international and domestic trade secret theft against U.S. businesses.<sup>26</sup> Under the EEA, the U.S. government can prosecute offenders under two criminal statutes: 18 U.S.C. §1831 (for trade secret theft intended to benefit a foreign government, instrumentality, or agent),<sup>27</sup> and 18 U.S.C. §1832 (for trade secret theft intended to provide an economic benefit to someone other than the trade secret owner).<sup>28</sup> The EEA’s definition of “trade secret” is similar to the definition in the UTSA, but much broader because it encompasses more types of protected information.<sup>29</sup>

To be prosecuted under §1831, an individual must have known or intended for the misappropriation to benefit a foreign government, instrumentality, or agent.<sup>30</sup> Further, the individual must have “knowingly” misappropriated the trade secret.<sup>31</sup> The “benefit” conferred to the foreign government includes economic benefits as well as “reputational, strategic, or tactical benefit[s].”<sup>32</sup> Unlike §1831 (“economic espionage”), §1832 (“theft of trade secrets”) is a general trade secrets law. §1832 punishes anyone who “knowingly” misappropriates a trade secret

[w]ith intent to convert a trade secret, that is related to or included in a product that is produced for or placed in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret . . . .<sup>33</sup>

§1832 does not require the misappropriation to benefit, or be intended to benefit, a foreign government.<sup>34</sup> Rather, it requires that the offense benefit someone other than the trade secret

---

<sup>22</sup> *Id.* at 26.

<sup>23</sup> UTSA §2(a) (1985). *See* *Bombard*, *supra* note 6 at 25.

<sup>24</sup> *Bombard*, *supra* note 6 at 26. *See* *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262 (7<sup>th</sup> Cir. 1995).

<sup>25</sup> *Bombard*, *supra* note 6 at 26.

<sup>26</sup> *Yeh*, *supra* note 1 at 7.

<sup>27</sup> 18 U.S.C. §1831 (2006).

<sup>28</sup> 18 U.S.C. §1832 (2006).

<sup>29</sup> *Yeh*, *supra* note 1 at 7. *See* 18 U.S.C. §1839(3) (2006).

<sup>30</sup> 18 U.S.C. §1831(a).

<sup>31</sup> *Id.*

<sup>32</sup> H.R. Rep. No. 104-799, at 11 (1996). *See* *Yeh*, *supra* note 1 at 8.

<sup>33</sup> 18 U.S.C. §1832(a).

<sup>34</sup> *Yeh*, *supra* note 1 at 8.

owner.<sup>35</sup> Additionally, §1832 unlike §1831, specifically requires the misappropriation to confer an economic benefit to someone other than the trade secret owner.<sup>36</sup>

There are several limitations to the EEA.<sup>37</sup> First, it is more difficult to prosecute a case under §1831 as opposed to §1832 because of the burden in proving that the theft was intended to benefit a foreign government.<sup>38</sup> Under §1831, tracing the trade secret theft back to a foreign government, agent, or instrumentality is not enough.<sup>39</sup> The prosecution needs to acquire sufficient evidence to prove the nexus element.<sup>40</sup> This can be difficult because of the nature and availability of foreign evidence.<sup>41</sup> Second, measuring the economic effect of the trade secret misappropriation can be difficult due to a number of factors.<sup>42</sup> For instance, a company might not know of its trade secret theft until years later.<sup>43</sup> A company might refrain from reporting security breaches in fear of harming the company's stock prices or damaging the company's reputation.<sup>44</sup> Hence, measuring economic loss due to trade secret theft can be difficult.

### **Federal Law: The Defend Trade Secrets Act of 2016**

The Defend Trade Secrets Act ("DTSA") was passed by Congress on April 27, 2016 and signed into law on May 11, 2016.<sup>45</sup> The DTSA broadened the scope of the EEA by creating a private civil cause of action for trade secret misappropriation in federal courts.<sup>46</sup> The DTSA allows aggrieved trade secret owners to bring a federal trade secret cause of action and to seek federal civil remedies.<sup>47</sup> This is an important distinction from the UTSA and EEA because previously, aggrieved parties were unable to bring federal civil trade secret actions.<sup>48</sup>

An aggrieved party may bring an action under the DTSA if the trade secret is "related to a product or service used in, or intended for use in, interstate or foreign commerce."<sup>49</sup> The definition of "trade secret" under the DTSA is the existing definition for "trade secret" under the EEA.<sup>50</sup> The DTSA amended §1839, the EEA's definition section, to include uniform definitions for "misappropriation" and "improper means."<sup>51</sup>

Under the DTSA, an aggrieved party can seek remedies that previously were only available under state trade secret laws. The DTSA allows a party to seek injunctive relief, actual

---

<sup>35</sup> Yeh, *supra* note 1 at 8.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 13.

<sup>38</sup> *Id.* at 9. *See Id.* at 9 n.54.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 13-14.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 14.

<sup>45</sup> *The Defend Trade Secrets Act: What Employers Should Know Now*, SEYFARTH SHAW LLP (2016), <http://www.seyfarth.com/uploads/siteFiles/practices/163502DefendTradeSecretsActGuideM1.pdf>.

<sup>46</sup> Yeh, *supra* note 1 at 22.

<sup>47</sup> *The Defend Trade Secrets Act: What Employers Should Know Now*, *supra* note 44 at 2.

<sup>48</sup> *Id.* at 4.

<sup>49</sup> 18 U.S.C.S. §1836 (LEXIS through Pub. L. No. 114-329).

<sup>50</sup> 18 U.S.C.S. §1839(3) (LEXIS through Pub. L. No. 114-329).

<sup>51</sup> Yeh, *supra* note 1 at 22. *See* 18 U.S.C.S. §1839 (LEXIS through Pub. L. No. 114-329).

damages, restitution, exemplary (punitive) damages, attorney's fees, and an ex parte civil seizure.<sup>52</sup> The ex parte seizure order is a unique provision that is not found in the UTSA.<sup>53</sup> It is a preventative tool that allows courts to "issue an order providing for the seizure of property necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action."<sup>54</sup> The ex parte seizure order allows courts to seize property without having the aggrieved party provide notice to the other party in advance.<sup>55</sup> After issuing the ex parte seizure order, the court will hold a seizure hearing.<sup>56</sup> The party who obtained the seizure order has the burden of proving the facts supporting the order.<sup>57</sup> The ex parte seizure order can only be used by courts in "extraordinary circumstances."<sup>58</sup>

The DTSA also includes protection for whistleblower employees.<sup>59</sup> This whistleblower immunity is not found in the UTSA.<sup>60</sup> §1833(b)(1) provides immunity from criminal and civil liability to whistleblowers who disclose a trade secret to a federal, state, or local government official "solely for the purpose of reporting or investigating a suspected violation of law" or in a complaint or lawsuit filing made under seal.<sup>61</sup> The DTSA also provides immunity to individuals who disclose the trade secret in an anti-retaliation lawsuit.<sup>62</sup> The DTSA requires employers to provide notice of the whistleblower immunity in all non-disclosure agreements entered into by employees.<sup>63</sup>

In addition to the provisions for damages, the DTSA contains notable provisions that are similar to those found in the UTSA.<sup>64</sup> First, the definition of "trade secret" under the DTSA and UTSA are similar.<sup>65</sup> Even more, the definition of "misappropriation" under the DTSA is identical to the definition in the UTSA.<sup>66</sup> Second, actual or threatened misappropriation may also be enjoined under the DTSA.<sup>67</sup> Third, the statute of limitations under the DTSA and under the UTSA is 3 years.<sup>68</sup> Finally, because the DTSA does not preempt state trade secret laws, an aggrieved party can assert an action under both the DTSA and respective state trade secret law.<sup>69</sup>

---

<sup>52</sup> *The Defend Trade Secrets Act: What Employers Should Know Now*, *supra* note 44 at 2. See 18 U.S.C.S. §1836(b)(3) (LEXIS through Pub. L. No. 114-329).

<sup>53</sup> *The Defend Trade Secrets Act: What Employers Should Know Now*, *supra* note 44 at 3.

<sup>54</sup> 18 U.S.C.S. §1836(b)(2)(A)(i) (LEXIS through Pub. L. No. 114-329).

<sup>55</sup> *The Defend Trade Secrets Act: What Employers Should Know Now*, *supra* note 44 at 3.

<sup>56</sup> 18 U.S.C.S. §1836(b)(2)(F)(i)-(ii) (LEXIS through Pub. L. No. 114-329).

<sup>57</sup> *Id.*

<sup>58</sup> 18 U.S.C.S. §1836(b)(2)(A)(i).

<sup>59</sup> 18 U.S.C.S. §1833 (LEXIS through Pub. L. No. 114-329).

<sup>60</sup> *The Defend Trade Secrets Act: What Employers Should Know Now*, *supra* note 44 at 4.

<sup>61</sup> 18 U.S.C.S. §1833(b)(1).

<sup>62</sup> 18 U.S.C.S. §1833(b)(2).

<sup>63</sup> 18 U.S.C.S. §1833(b)(3). *The Defend Trade Secrets Act: What Employers Should Know Now*, *supra* note 44 at 4.

<sup>64</sup> *The Defend Trade Secrets Act: What Employers Should Know Now*, *supra* note 44 at 5-6.

<sup>65</sup> *Id.* at 5.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 6.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*; Yeh, *supra* note 1 at 27.

## **The SHANA-PLAN: a DTSA Tragedy in Three Acts**

### **INTRODUCTION:**

**LUKE ANDERSON:** Good evening everybody. We're glad you could join us for what we hope will be an evening of humor, catharsis, and legal intrigue.

Everyone was shocked by the outcome of Super Bowl 51. Our beloved local team, the hapless Atlanta Falcons, struggled valiantly, but couldn't escape the shadows of past futilities, and ultimately succumbed to the accursed New England Patriots in overtime. You know this.

But what you might not know is that the Federal Defend Trade Secrets Act played a huge role in the tragic outcome of Super Bowl 51. So while you may think you understand what happened on that fateful day, you're about to hear the rest of the story.

### **ACT I: THE SET-UP**

#### **ACT I, SCENE I:**

**Late Summer of 2016 at the Falcon's training camp.** *KYLE SHANAHAN, ARTHUR BLANK, DAN QUINN, and the FALCONS ATTORNEYS discuss the "SHANA-PLAN" trade secret software, and how the Falcons have taken steps to protect it as a trade secret.*

**DQ:** Mr. BLANK, thanks for agreeing to meet with us today to discuss this exciting new development for the Atlanta Falcons football team. Our offensive coordinator, KS, has really taken the lead on this project, so I'll let him take it from here.

**KS:** Thanks, Coach Quinn. Mr. BLANK, as you know, my first season as the Falcons offensive coordinator didn't go as I had hoped. While there were some positive notes, on the whole our offensive planning and execution needed a lot of work, and after reviewing the game film, I decided that play selection was a key area for improvement.

**AB:** I'll say there was. There were some times last year when you seemed as confused as the store manager of my Lindbergh Plaza Home Depot store was, when some of Bernie's whale sharks accidentally got shipped to him instead of the Georgia Aquarium. Heh, heh, heh.

**KS:** Right. So I went to see our stats folks, and together we put together a data set with thousands of randomized game situations, and for each of them I chose the play to run. Using this baseline data, we developed a computer program that communicates the play of my choice directly to my headset. I figured this system would help me speed things up, but when we tried it out in pre-season

scrimmages things didn't seem any different. But then a couple of days later I was watching some Seinfeld re-runs, and it was the episode where George Costanza becomes a success by completely ignoring his instincts. Do you know the one I'm talking about?

AB: Yes, and thank you for finally bringing it up. For a minute there I thought you were going to keep talking "geek" for the rest of the afternoon. I love Seinfeld. You're talking about the episode when George decides that for any given situation, the best plan is to do whatever is the opposite of his gut reaction?

KS: Exactly! We just took the same approach with our new computer program. It still identifies the play that I would have called for a given situation. But instead of that play, the program instead identifies and recommends the exact opposite play! And it worked like a charm!

DQ: [Excited, jumps in]. And not only that, Mr. Blank, but this general strategy works in a number of other areas. For example, we've had a ton of success by adding a subroutine that will recommend the exact opposite of any player personnel decision that Mike Dimitroff would have chosen.

KS: We call it . . . the "SHANA-PLAN"

AB: [Catching on] Wow! So you're telling me that this SHANA-PLAN can take bad decisions and turn them into good ones? So, despite the fact that some folks on our staff have really made some terrible football decisions on a consistent basis, you're now telling me this will be an organizational strength going forward?

KS: [Realizing the ramifications] Well . . . I hadn't really thought of it that way, Mr. Blank, but I suppose . . .

AB: Relax, I'm sold. That's why I brought my attorneys. Coach Quinn told me that you guys had some secret strategy information to share. Anytime I hear the word "Secret," I think "Trade Secret." And my attorneys get twitchy. [Turns to ATTORNEYS]. So, what do we need to do to protect the SHANA-PLAN?

SHEILA

GARBER: Well, Mr. Blank . . .

KIM

DAVIS: I'm sorry . . . I have to ask first: Coach QUINN, is there any way we can get a copy of this down at legal? We'd love to figure out how it works, and . . . [*trails off* . . . ]

SG: [*Stares hard at KIM DAVIS for count of five*]

KD: [*Looking at ARTHUR BLANK and SHEILA GARBER, then understands the danger*] Archive it! We'd love to archive it. You know, for the archives. Good to have an archived copy in the archives. Heretofore.

SG: [Sighs] Apologies, Mr. Blank. What I was going to say was that, as you know, the law generally sets forth two requirements for an owner's information to be considered a "Trade Secret." First, the information owner must take reasonable measures to keep such information secret. Second, the information must derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

KD: Keeping that definition in mind, we need to ask Coach QUINN and Coach SHANAHAN whether any information regarding the "SHANA-PLAN" has been disclosed outside of the Falcons organization?

KS & DQ: No, nobody.

KD: Well, that's good for starters. Now, how about people within the Falcons organization? Which of them have had access to the SHANA-PLAN?

KS: Just me, Coach QUINN, and the stats people who helped design the program.

KD: Good. Given the nature of their work, the stats folks are already very familiar with our organization's trade secrecy policies and procedures, which are clearly set forth in their employee handbooks. They also understand that they are contractually bound to follow those provisions as a condition of their employment. Anyone besides the stats folks?

KS: Nope, that's it.

DQ: [silence, looks uncomfortable]

SG: Coach QUINN, do you know if anyone else was given access to the SHANA-PLAN?

DQ: [Clearly upset and worried]. Okay! I'm sorry Coach SHANAHAN, Mr. BLANK. There are two others.

KS: What?!? Who?

DQ: Well, I gave a copy to MATT RYAN. I figured since he was the quarterback, he needed to get a feel for how the SHANA-PLAN worked, and how the plays were going to flow.

KS: How was he going to do that?

DQ: He used it to Madden NFL 16 at night after practice. The stats guys set up a cable link to feed game information from MATT's gaming console to the SHANA-PLAN. The SHANA-PLAN then fed the plays to MATT's headset.

AB: What was the result?

DQ: It worked like a charm! It worked so well, in fact, that I decided to build up his confidence some by letting him play some games against the best Madden 2016 player that the Atlanta Falcons have ever had.

KS: Oh, no! Not . . .

DQ: Yep. RODDY WHITE.

SG: So, RODDY WHITE also has a copy of the SHANA-PLAN?

DQ: Yes. To play each other, both RODDY and MATT had to have the SHANA-PLAN plugged into their gaming consoles. RODDY would set his version to recommend the original “Shanahan” plays. MATT would set his version to recommend the exact opposite.

SG: What were the results?

DQ: Before the SHANA-PLAN, RODDY had beaten MATT in 627 straight Madden NFL matches. I know because RODDY posted the tally in the locker room. I mean, RODDY was a heart attack at that game. He could beat my 12-year-old son, and playing Madden Football is literally the only. thing. that. he. does. In fact, I’ve only known one person that could beat RODDY WHITE at Madden Football. But, after they started using the SHANA-PLAN, MATT never lost to RODDY again.

SG: Who was the one person who could beat RODDY?

DQ: Well, Deion Sanders of course. Nobody beats “Prime Time.”

KS: How can you two talk about “Prime Time”?! It’s not “Prime Time”! It’s “Disaster Time”!

AB: Calm yourself, KYLE. Let’s go step-by-step. First thing: has RODDY turned in his copy of the SHANA-PLAN?

DQ, KS,  
SG, KD: *(Together)* No.

AB: Well, I still don’t see the problem. MATT is certainly not going to give anything up. And I know we let RODDY go in the offseason, but he’s a terrific guy-I mean, like family.

DQ: Mr. Blank, it was the SHANA-PLAN that recommended that we release RODDY. He was furious. He hates the SHANA-PLAN. And he’s the only person, outside of this organization, that has a copy.

AB: Well . . . but . . . okay, so could we. . . [*trails off finally, and sighs*]. Well, this is not good. Do we have any idea where RODDY WHITE is?



## ACT I, SCENE II

**January of 2017, at a Casino in Las Vegas.** *RODDY WHITE is gambling in Las Vegas. New England Patriots coach BILL BELICHICK shows up, and tricks RODDY WHITE into divulging a copy of the SHANA-PLAN.*

[*RODDY WHITE AND A DEALER SITS AT A BLACKJACK TABLE WITH A DEALER*]

RW: Okay, here we go. Anything but a face card. Anything but royalty! [*Looks at dealer*] Hit me!

DLR: King of Diamonds, sir. House wins.

RW: Aww, man! Speak of the Devil!

BB: [*who has been walking up to the table while this all has been happening*] And he shall appear! [*sits down and offers his hand*] Why, RODDY WHITE! One of the all-time greats. How are you?

RW: [*shakes hand, incredulous, can't really believe this is happening*] BILL BELICHICK?

BB: In the flesh! [*leans close, conspiratorially*] What gave it away?

RW: The hoodie?

BB: Right, the hoodie! THANK GOODNESS! I was afraid it might have been the HORNS! HA HA HA! [*to the dealer*] Let's put \$10 million on this hand.

DLR: [*completely unsurprised*] Of course, Mr. BELICHICK.

RW: [*shocked at BELICHICK's bet*] I'll bet . . . a thousand.

DLR: Certainly sir. [*Deals cards*]

DLR: Mr. WHITE?

RW: Hit me.

DLR: And . . . King of Diamonds, again. House takes. Tough luck, sir.

RW: [*Despondent*] Unbelievable.

DLR: Mr. BELICHICK?

BB: Hit me. And again. And again. Hit me again. Once more. Once more, And again. Once again. And . . . double down and hit me.

DLR: Blackjack! Well done, sir. Here are your winnings.

BB: Thank you, DEALER. Here's a coupla thousand for you. Do you mind excusing us for a bit?

DLR: My pleasure sir.

BB: [*to RODDY WHITE*]. RODDY, I've gotta say I hated to see the Falcons cut you in the offseason. I always enjoy competing against the best. Would've loved to have seen you out there next month in the Super Bowl, even if you were on the other side. You deserved it.

RW: [*a bit stunned*] You just won twenty million dollars!

BB: [*smiling paternalistically*] Of course I did, RODDY. I'm a winner. It's what I do. I like to win. I like to help other people win. In fact . . . that's why I'm here. Because I'd like to help you win.

RW: But how? I'm out. [*sadly*] No more football. No more touchdowns. No more wins.

BB: There are other kinds of victories, RODDY.

RW: Like what?

BB: Well, I've always found revenge to be the most satisfying victory of all. Revenge against your enemies, RODDY. Crushing them. Seeing them driven before you. Hearing the lamentations of their women.

RW: What?

BB: Revenge against SHANAHAN, RODDY. For sabotaging your career. For holding you back during your final season. For cutting you.

RW: But . . . I still love the Falcons. I still love Matt, and Julio, and Arthur and all the guys . . . how can I hurt SHANAHAN without hurting them too?

BB: It's a razor's edge, RODDY. That's my dream. That's my nightmare. To be a snail, crawling along the edge of a straight razor . . .

RW: WHAT?

BB: Have you ever seen my first Super Bowl ring, Roddy? It's very special to me. [*holds it up and begins swinging it back and forth in front of RODDY WHITE's face*].

RW: [*dazed*]. It's beautiful.

BB: So is revenge, RODDY. Revenge is a beautiful victory. Tell me. How is that no-talent hack KYLE SHANAHAN running the best offense in the NFL? How is he winning? What is his secret.

RW: No . . . I can't.

BB: Yes, you can RODDY! You can win your own Super Bowl! A Super Bowl of revenge! We can do it together! Tell me!

RW: [*pulling out a ZIP drive and handing it to BELICHICK*]. This is how. He calls it the SHANA-PLAN.

BB: I see . . . [*contemptuously*] The "SHANA-PLAN." What a vain, silly little man.

RW: It's his secret. It makes them unbeatable.

BB: Yesssssss. But not anymore, RODDY. Not anymore. Because you've won. WE'VE won, RODDY! Together! [*leaves, laughing diabolically*]

DLR: [*returning to the table*] Mr. WHITE, are you okay?

RW: [*snaps out of it*] What? [*realizes what he's done*]. Oh. Oh, no. What have I done? [*pulls out phone and dials*]. Hello? Mr. Blank? It's RODDY. Something terrible has happened . . . I'm so sorry!

**ACT II: EVIL STRIKES, BUT THE DTSA GIVES HOPE**

**ACT II, SCENE I**

**January of 2017--ARTHUR BLANK'S OFFICE.** *ARTHUR BLANK gets the phone call from RODDY WHITE. ARTHUR BLANK hangs up, and immediately calls DAN QUINN and asks him to come up with KYLE SHANAHAN and the two FALCON LAWYERS to discuss what has happened, and what can be done.*

AB:           *[On the phone].* Okay . . . *[pause]* . . . Okay. . . . *[pause]* . . . Thank you RODDY. . . . *[pause]* . . . No, I mean that. I really appreciate your letting us know. . . . *[pause]* . . . No, I understand, he's pretty clever. . . . *[pause]* . . . Well, I don't know if I'd say he was the Dev- . . . *[pause]* . . . well, that IS true . . . *[pause]* . . . yeah, that's true too . . . *[pause]* . . . Anyway, at least now we know, and so we can do something about it. So let me go get to work on that, okay? . . . *[pause]* . . . Okay. Good-bye, RODDY. And don't you worry—we'll fix this. *[hangs up, and then dials a new number]* Yes, hello DAN? It's ARTHUR BLANK. . . . *[pause]* . . . Yeah, you need to get up here right away. And bring SHANAHAN and the lawyers, because I just heard from RODDY WHITE *[hangs up]*.

*[Enter DAN QUINN, KYLE SHANAHAN, SG, and KD]*

KS:           Mr. BLANK, is it true? Did you really . . .

AB:           Yes. Now please, let's all just sit down and do whatever we can to help the lawyers get us out of this mess.

*[Everyone sits]*

AB:           Okay. I just got off the phone with RODDY WHITE. He's in Vegas. He ran into BILL BELICHICK earlier this evening at the blackjack tables. I'm still not sure what took place, but RODDY was very upset. And whatever happened, he was very clear about one thing—BILL BELICHICK . . . has the SHANA-PLAN.

*[Collective gasps of dismay]*

DQ:           *[Knowingly]* Hypnosis?

AB:           Yes. With the original Super Bowl ring. Like the other times.

DQ:           I figured. He's been doing that for years. He used it on Richard Sherman while I was in Seattle. But the real heartbreaker was Johnny Manziel at Cleveland. You should have seen that kid when he was a junior at Texas A&M. Working with kids at the local orphanage. Building houses for Habitat for Humanity. Volunteering with the Humane Society. Then one meeting with BELICHICK and the kid turns into a train wreck and runs himself out of the league. The man must be stopped!

- AB: So let's stop him. What can we do, from a legal standpoint? It's my understanding that our SHANA-PLAN is a trade secret. Are we still solid on this?
- SG: Yes, sir. We've checked back and can confirm that everyone at the stats department who developed and worked with the SHANA-PLAN signed an agreement to follow the Atlanta Falcons trade secrecy policies and procedures. These policies and procedures are clearly set forth in the employee handbook that all Falcons employees, including players, receive on their first day. These are updated on a yearly basis. And the best news of all is that according to the stats folks, MATT and RODDY were required to sign an agreement to likewise follow those procedures. Given this, as well as some other more technical details regarding how the SHANA-PLAN is utilized and stored, we feel comfortable that it meets the definition of a trade secret.
- AB: That's fantastic. So what's the next step? Do we sue them in state court? If so, where? I want the state with the toughest trade secret laws; not the weakest!
- KD: Well, that used to be a problem, but at this point we think our best option is to sue in federal court, under the Defend Trade Secrets Act of 2016.
- AB: Oh, right! I'd heard they passed that.
- KD: Yes, it was signed into law in May of 2016. It was designed to create a uniform standard for trade secret misappropriation by expanding the then-existing Economic Espionage Act to provide a federal remedy for trade secret misappropriation.
- SG: Prior to this, civil trade secret claims were governed only by state law, with most states following some version of the Uniform Trade Secrets Act. Its passage signifies the recognition of the high value of trade secrets, and the national interest in establishing uniform procedures for protecting them under the law.
- KD: Under the DTSA, a party can now sue in federal court for trade secret misappropriation, and seek actual damages, restitution, injunctive relief, *ex parte* seizure, exemplary damages, and attorney's fees under the DTSA.
- AB: Excellent. So, what's the first step? We need to move quickly-the Super Bowl is only weeks away, and we have to make sure Bill Belichick and the Patriots aren't able to use the SHANA-PLAN against us!
- SG: That's one of the best things. The DTSA includes an *ex parte* seizure provision that allows courts to seize misappropriated trade secrets. And furthermore, if the Court agrees with our request, we won't even be required to provide notice to BILL BELICHICK and the Patriots - we'll just show up with Marshals, grab any computers running the SHANA-PLAN, and get it all out of there.
- AB: But what if the Court doesn't agree that seizure is warranted?

KD: The seizure request is only part of the DTSA action that we plan to file. The DTSA provides for injunctive relief, so we will also seek a temporary restraining order to prevent the Patriots from using the SHANA-PLAN in the immediate future. And at the same time, we'll also ask the Court to enter a permanent injunction to prevent BILL BELICHICK, the Patriots, and any of their associates from engaging in the unauthorized use of the SHANA-PLAN. And finally, we'll seek damages, restitution, and attorney's fees to help compensate you and the Atlanta Falcons for the expense and inconvenience of dealing with BILL BELICHICK's sinister machinations.

AB: [*Standing*] That's what I'm talking about! This DTSA is a life-saver. I mean, who could have predicted that BILL BELICHICK would try to cheat . . . okay, scratch that. It was totally predictable that BILL BELICHICK would cheat. But at least with the DTSA, we've got a chance to get out in front of this before any real damage is done. [*exiting along with the rest*]. Okay, guys. Let's go get our SHANA-PLAN back. Call the Marshals!

**ACT III: HEARTBREAK, AND THEN SOME**

**ACT III, SCENE I:**

Super Bowl 51. The Falcons have built a big lead, but the Patriots are beginning to mount what will become the greatest comeback in Super Bowl history.

*[DAN QUINN and KYLE SHANAHAN are standing together, looking out over the field and coaching the ATLANTA FALCONS at the SUPER BOWL. Some other FALCONS football players are standing around]*

DQ: Wow.

KS: Wow.

DQ: Up 28-9, in the fourth quarter of Super Bowl 51!

KS: Never thought I'd see the day. And to be honest, I was really worried after BELICHICK got ahold of the SHANA-PLAN. But that DTSA is no joke!

DQ: You said it. That was almost as much fun as this is. Showing up with the Federal Marshals, rooting around the Patriots' headquarters building looking for computers with the SHANA-PLAN, seeing the look on BELICHICK's face . . . priceless.

ANNOUNCER: *[offstage, over PA system]*. And the field goal is GOOD! Three points for the Patriots.]

DQ: And then in Court, when the Judge entered the injunction against BELICHICK and the Patriots to prevent them from misusing the SHANA-PLAN, and she said that bit about how "all people of good heart needed to stick together in the face of "tyranny and base dealings."

KS: *[Starting to get worried]* Uh, Dan . . .

DQ: 28-12. Still in control. And when she held BELICHICK in contempt for refusing to take off his hoodie! That was hilarious!

KS: Right . . .

DQ: Good times. And most importantly, once we realized that BELICHICK was trying to steal the SHANA-PLAN, the DTSA allowed us to take immediate steps to prevent irreparable damage. Man, I love lawyers.

KS: Uh, Dan . . .

ANNOUNCER: *[offstage, over PA system]*. TOUCHDOWN! Tom Brady to Danny Amendola! And the two-point conversion is GOOD! The score is now Falcons 28, Patriots 20!

KS: DAN! LOOK AT THE SCORE!

DQ: WHAT? HOW? I don't get it. I mean, we were up 28-3 halfway through the third quarter. We were in complete control! Our lawyers were SO GOOD! How is it all slipping away?!?!?

KS: [*cracking*] It's BELICHICK! He's got the SHANA-PLAN!

DQ: Don't be absurd, KYLE. The US Marshalls helped us get all of the SHANA-PLAN copies.

KS: Do you honestly think BILL BELICHICK didn't make copies! He made copies, DAN!

DQ: But the Judge granted the injunction to prevent them from using the SHANA-PLAN.

KS: Do you honestly think that BILL BELICHICK cares for the rule of law! I'm telling you, DAN - he's using the SHANA-PLAN!

DQ: Then what do we do!?!?

KS: Hang on . . . let me think! I've got it! I'll just do the OPPOSITE of whatever the SHANA-PLAN tells me to do. It'll take them by surprise! Let's see . . . Second and eleven on the Patriots' 22-yard line. Easy field goal distance. SHANA-PLAN telling me to kick it now, and celebrate Atlanta's first Super Bowl victory . . . but that's just what BELICHICK wants me to do! So I need to do the opposite! It's the only way! . . . [*to FALCONS player*] Get in there and tell MATT RYAN to drop deep and look for a low-percentage passing route.

FALCONS PLAYER: [*Horried*] WHAT?

KS: You heard me! Get in there!

ANNOUNCER: [*offstage, over PA system*]. And MATT RYAN is sacked for a 12-yard loss!

KS: Crap! Okay. Third and thirteen on the Patriots 34. Still in field goal range. SHANA-PLAN is begging me to please for the love of Vince Lombardi just kick the field goal. . . . but BELICHICK KNOWS! I KNOW he knows! We can't fall into his trap! . . . [*to FALCONS player*] Get in there and tell MATT RYAN to run another slow-developing pass play. And the Patriots would expect us to set up a max protect scheme in this passing situation, so tell him to make sure Jake Matthews is isolated one-on-one against the Patriots' best pass rusher

FALCONS PLAYER: HAVE YOU LOST YOUR MIND?

KS: YOU DON'T UNDERSTAND! THE SHANA-PLAN IS OUR ENEMY NOW!  
BILL BELICHICK IS IN CONTROL! WE HAVE TO BE UNPREDICTABLE!  
GET IN THERE AND RUN THE PLAY!!

FALCONS PLAYER: [*runs off, sobbing*]: Oh, no oh no oh no!

ANNOUNCER: [*offstage, over PA system*]. Holding called against the Falcons' Jake Matthews.  
Ten yard penalty. It's now third and 34 from the New England 45 yard line, and  
the Falcons are well out of field goal range.

KS: [*Collapses*] NOOOOOOOOOO!

DQ: KYLE! KYLE! Are you okay?

KS: He . . . he knows, DAN! He's in my head now?

DQ: Who? Who's in your head, KYLE?

KS [*calming*] BELICHICK. BELICHICK is there, DAN! The SHANA-PLAN  
helped him get there. We're all there in my head now. And everything's going to  
be okay. It's okay now. BELICHICK is there. He's going to help me win, DAN.

DQ: Oh no. KYLE!

KS: . . .

DQ: He's catatonic! [*to Falcons player*]. Get him to the locker room . . . I've got to  
try to see if I can salvage this game . . .

ANNOUNCER: [*offstage, over PA system*]. TOUCHDOWN, Patriots . . . and the two point  
conversion is GOOD! The score is now tied at 28, and it looks we're headed to  
overtime!

AB: [*Entering, furious*] We're suing them, DAN! We're suing all of them. I don't  
care. We're suing RODDY! Anybody who knew about it, anybody who profited  
from it, anybody opens their eyes at me, we're SUING THEM!

## ACT III, SCENE II

[ARTHUR BLANK and the Falcons return to federal court, seeking a finding that BILL BELICHICK and the Patriots are liable for damages to the Falcons for using the SHANA-PLAN to help them win the Super Bowl. But at trial it becomes apparent that the SHANA-PLAN would never have called the plays that KYLE SHANAHAN had called while they were in field goal distance, and so the court finds in favor of BILL BELICHICK and the PATRIOTS. And because RODDY WHITE was not made aware of the DTSA's immunity provisions, the Falcons also are not entitled to seek damages from him.]

BAILIFF: All rise, this court is now in session, District Judge Nicole Morris, presiding

Judge: [entering] Please be seated. We're here today in the matter of Plaintiff Atlanta Falcons vs. Defendants New England Patriots, BILL BELICHICK, and RODDY WHITE. Defendants Patriots and BELICHICK, and Defendant RODDY WHITE have filed separate motions to dismiss certain claims against them. Briefing is complete, and I've called this session to hear additional evidence before ruling on the motions. Counsel the parties, are you ready to proceed?

Attorneys: [Together] Yes, Your Honor.

Judge: Excellent. Now, let me see . . . having considered the briefs, the Court is prepared at this time to rule on the motion to dismiss filed by Defendant RODDY WHITE. Apparently MR. WHITE already has agreed to stipulate to the entry of an order that will permanently enjoin him from any future misuse of the SHANA-PLAN software. MR. WHITE, is that correct?

RW: [Standing] It is, YOUR HONOR.

Judge: Thank you, MR. WHITE. Having settled the issue of injunctive relief I will now turn to MR. WHITE's motion to dismiss Plaintiff's claims for money damages against him. According to MR. WHITE, Plaintiffs are not entitled to damages under the DTSA because they failed to provide notice of the DTSA's immunity provisions that were intended to protect individuals from criminal or civil liability for disclosing a trade secret if it is made in confidence to a government official or attorney, for the purpose of reporting a violation of the law. Having read the briefs, it is my understanding that Plaintiffs do not dispute that this is in fact a requirement under the DTSA. Counsel for Plaintiff, have I got that right?

SG: Yes, Your Honor, Plaintiffs do not dispute that this is a requirement under the DTSA.

Judge: Thank you. And while I've got you standing up, I'll just go ahead and ask, do you have additional evidence regarding whether notice was provided to MR. WHITE that goes beyond what is in the briefs?

SG: No, Your Honor. As we set forth in the briefs, MR. WHITE was provided sufficient notice of the immunity provisions because the terms under which he

was provided access to the SHANA-PLAN placed an affirmative duty on him to remain informed about changes to Falcons policies regarding trade secrets, which were later updated to provide notice of the immunity provisions of the DTSA.

Judge: But counsel, putting aside whether the general Falcons policy regarding trade secrets was updated, were any steps taken to affirmatively provide Mr. WHITE with direct notice of the immunity provisions of the DTSA?

SG: With respect, Your Honor, it is our position that direct notice was provided by the updates to the general Falcons policy, and the conditions under which the SHANA-PLAN was disclosed to MR. WHITE.

Judge: Thank you. Well, I think I've heard enough on this particular matter, and so I'm going to go ahead and rule on this matter right now. The Court finds that Plaintiff Atlanta Falcons did not provide Defendant RODDY WHITE with sufficient notice of the immunity provisions of the DTSA. Given this, Plaintiff is barred from seeking money damages from Mr. WHITE under the DTSA, and Mr. WHITE's motion to dismiss on these grounds is hereby GRANTED. MR. WHITE, you may be excused from the remainder of these proceedings.

RW: [*Standing*] Thank you, Your Honor. [*Walks out, but as he is leaving, pauses in front of the Plaintiff's table where KYLE SHANAHAN is seated, and does the "two-finger, I'm watching you eyepoint thing like DeNiro did to Ben Stiller in "Meet the Parents."*]

Judge: Turning now to the Motion to Dismiss that was filed by Defendants BELICHICK and the NEW ENGLAND Patriots, I understand that Defendants have argued that the allegations against them should be dismissed because the evidence conclusively demonstrates that they have not engaged in any unauthorized and inappropriate use of the SHANA-PLAN. Is that correct?

BB: [*Standing*] Yes, Your Honor.

Judge: MR. BELICHICK, I must say that I was surprised and a little impressed to see that in addition to being a successful football coach, you are also a licensed attorney.

BB: Thank you, Your Honor. I guess I've always felt that an understanding of the law was important to those who are interested in breaking . . . . the cycle of lawlessness that has so often plagued the human condition.

Judge: Well spoken, MR. BELICHICK. I'm happy to have you in my courtroom. Please be seated.

BB: Thank you, Your Honor [*Sits*].

Judge: As I understand it, now, Plaintiffs have offered expert testimony to support their allegations that MR. BELICHICK and the New England Patriots have misused

the SHANA-PLAN. Counsel for Plaintiffs, if you are ready let's go ahead and get him sworn in, and you can do your direct.

KD: Thank you, your honor. Plaintiffs would like to introduce the testimony of ESPN's own Monday Morning Quarterback, PETER KING.

Judge: Mr. King, please come forward. Do you hereby swear or affirm that the testimony you are about to provide will be the truth, the whole truth, and nothing but the truth?

PK: I do, Your Honor.

Judge: Please be seated. [To KD] You may proceed, counsel.

KD: Thank you, Your Honor. Mr. King, can you tell us a little bit about your expertise in these matters?

PK: Well, I've been an analyst with Sports Illustrated for almost 30 years. I write a popular weekly column on pro football called *Monday Morning Quarterback*. I have been a member of the Pro Football Hall of Fame Selection Board since 1992, and was named National Sportswriter of the year in 2010. In a nutshell, I guess you could say that the study of professional football has been my life's work.

KD: Anything else?

PK: Well, my avocation is computer programming, and in particular programs that involve statistical models for complex behaviors. In pursuing these studies I have become a recognized expert in the field of predictive football analytics, and related software platforms.

KD: Thank you. And what has your work in this case involved?

PK: Well, I have examined the SHANA-PLAN, by inputting the relevant game data from the final quarter of the Super Bowl match between the Atlanta Falcons and the New England Patriots.

KD: And what were your conclusions from this examination?

PK: That by understanding the predictions that the SHANA-PLAN, the New England Patriots were able to predict what plays the Falcons were going to run in the final minutes of the game, and this in turn enabled to effectively defend against those plays.

KD: So, to put things very simply, the use of the SHANA-PLAN allowed the New England Patriots to win the Super Bowl, right?

PK: That is correct.

KD: Thank you, Mr. Belichick. Your Honor, I have no further questions.

Judge: Thank you, counsel. MR. BELICHICK, do you have any questions for Plaintiff's expert, MR. KING?

BB: [*standing and walking to the podium*] Yes your Honor.

Judge: Very well, you may proceed.

BB: [*Addressing the witness sternly, scornfully*] So, MR. KING, we are to understand that you are an expert in "computer based predictive football analytics," is that correct? Tell me, are you an assassin?

PK: [*a bit intimidated*] Well . . . . no, BILL. You've known me for years. I'm just a football nut with a head for statistics.

BB: You're neither. You're an errand-boy, sent by grocery clerks, to collect a bill.

PK: What?

KD: Objection, Your Honor!

BB: Your Honor, I withdraw, and for the purposes of this hearing Plaintiffs will not dispute that MR. KING is an expert in these matters.

Judge: Understood. You may proceed.

BB: Thank you. . . . MR. KING, you have testified that you examined the SHANA-PLAN by inputting the relevant game data from the final quarter of the Super Bowl match between the Atlanta Falcons and the New England Patriots, isn't that correct?

PK: Yes.

BB: And that given this data, the SHANA-PLAN returned the plays that KYLE SHANAHAN called during the fourth quarter of Super Bowl 51?

PK: Correct.

BB: And how many times did you run this scenario through the SHANA-PLAN?

PK: Excuse me?

BB: Well, did you just do this once, or did you perform the analysis multiple times.

PK: As I stated in my report, I ran multiple iterations in order to confirm the output of the SHANA-PLAN.

BB: And how many iterations did you ultimately run.

PK: Well . . . . [*delays, wants to find a way out*]

BB: [*to Judge*] Your Honor?

Judge: MR. KING, please answer Mr. Belichick's question.

PK: [*Quietly*] Two million times.

BB: I'm sorry, I didn't quite hear you. Did you just say that you ran this scenario through the SHANA-PLAN two million times?

PK: [*Despondent*] Yes.

BB: That must have taken some kind of computing power?

PK: Yes. We had to reach out to NASA?

BB: You had to get NASA's help to run all of these scenarios?

PK: And Google.

BB: So you went to some pretty great lengths to ensure the accuracy of your results, didn't you?

PK: Yes.

BB: And out of these two million runs, how many times did the SHANA-PLAN return the exact sequence of plays that the Falcons ran at the end of Super Bowl 51?

PK: Once.

BB: ONCE? Just once out of two million times?

PK: Correct.

BB: Well, what about the other one million, nine-hundred, ninety nine thousand, nine-hundred and ninety-nine times?

PK. The most common recommendation was to kick the field goal when the Falcons had the ball and it was second and eleven on the Patriots' 22-yard line. This recommendation was reached one million, five-hundred thousand times out of the two million total runs.

BB: What was the next most common outcome.

PK: To kick the field goal on the very next play, when it was third and thirteen on the Patriots 34. This was the second most common prediction, and was recommended four-hundred and ninety-five thousand times out of the two million total runs.

BB: So it would be correct to say that, after two million iterations of the final quarter of Super Bowl 51 were run through the SHANA-PLAN, the program recommended kicking a field goal on either second and eleven from the 22 or third and 13 from the 34, one million, nine-hundred and ninety-five thousand of those times?

PK: Yes, that is correct.

BB: What about the remaining five thousand?

PK: Well, the next most popular choice, which the SHANA-PLAN recommended in four thousand, nine-hundred of the remaining five thousand simulations, was for Arthur Blank to somehow convince Beyoncé to come down onto the field as a player-coach, and guide the Falcons to victory.

BB: Wow. Yeah, that would have been the nail in the coffin for us. [*shifting tone to that of one giddy fan to another*] And just as an aside, Pete, can we say enough about Beyoncé, or her Super Bowl performance?

PK: We really can't Bill. Such talent. Such style. Such grace!

BB: Her halftime performance just made winners of us all. Heh, even the Falcons, right guys?!?

[surprisingly, everyone in the courtroom nods and murmurs assent]

BB: Okay, Mr. KING just a few more questions. That leaves 100 instances that did not involve either a field goal on second or third down, or intervention by Beyoncé. We know that one of those 100 instances involved the actual play sequence that took place at the Super Bowl. What about the other 99?

PK: Well, for the remaining 99 simulations, the SHANA-PLAN calculated that the best option would have been for KYLE SHANAHAN to have somehow willed himself to spontaneously combust. Play calling duties would then have fallen to DAN QUINN, who presumably would have kicked a field goal.

BB: So let me get this straight, MR. KING. The SHANA-PLAN preferred the spontaneous human combustion of the offensive coordinator instead of the sequence of plays that the Falcons actually ran, by 100 to 1?

PK: That is . . . correct.

BB: So PETE, come on. Can you really say that there's any way the Patriots could have gained any advantage by knowing what the SHANA-PLAN recommended during the game, when it so clearly would NOT have recommended the plays that were actually chosen?

PK: No. There's no way.

BB: Thanks, PETE. No further questions.

JUDGE: Agreed. And quite frankly I've had enough as well. The Court hereby finds as a matter of fact that there is no way that the use of the SHANA-PLAN could have benefited the Patriots during the Super Bowl, because whatever recommendations it would have offered during the final quarter, they would not have matched what the Falcons ultimately did. As such, the mere fact of the Patriots' improbable comeback is not enough to establish that they made improper use of the Falcons trade secrets as embodied by the SHANA-PLAN. As such, while I will nevertheless agree to Plaintiff's request for a permanent injunction against any future misuse of the SHANA-PLAN, Plaintiff's Motion to Dismiss is hereby GRANTED with respect to any and all remaining issues. Both parties are to submit supplemental briefing regarding the scope of the injunction that I will issue by the end of the month. This hearing is adjourned.

*[Everyone leaves but BLANK, QUINN, the FALCONS ATTORNEYS, and BELICHICK (who buys himself at the other table, gathering his things)]*

DQ: Unbelievable. I can't believe we just lost AGAIN.

AB: And that's the least of our problems. KYLE SHANAHAN is leaving to be the head coach of the San Francisco 49ers, and he wants to take the SHANA-PLAN with him. So now we can look forward to a whole new round of litigation while we try to figure out who actually owns the SHANA-PLAN - him or us?

BB: *[exiting the courtroom but pausing for a second to interrupt]* ART, DANNY, I've always liked you two. So if you'll forgive me for interrupting, let me just say that you don't want the SHANA-PLAN. TRUST me. And as for the 49ers? Well, Heaven help them, because I can GUARANTEE you the Devil won't be doing them any favors! HA HA HA HA HA HA! *[Strolls off laughing maniacally]*

**The End**