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Formula Unjust: What Formula One Can Learn from the American Justice System to Improve Stewarding

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Formula Unjust: What Formula One Can Learn from the American Justice System to Improve Stewarding

BY APRATIM VIDYARTHI*

ABSTRACT

Formula One (F1), the highest form of motorsport, is one of the fastest-growing sports in the United States, attracting millions of viewers and billions of dollars in investment and prize money. But recent events in F1 have raised questions about the fairness of the sport. This Article contends that the current system of officiating creates unfair outcomes, because officials have overwhelming discretion to make pivotal decisions that significantly impact the outcome of races, and because penalties are applied inconsistently and cannot be appealed. Given the increased professionalization of F1 and the high financial stakes involved, these problems need to be remedied. This Article takes cues from the U.S. justice system to propose three solutions: limits to the executive discretion of Officials, a standardization of penalties, and a formalized appellate system for penalties.

* J.D. University of Pennsylvania Law School 2022. This piece would not have been possible without Professor Mitchell Berman's guidance and his enthusiastic and brilliant teaching of Jurisprudence of Sport at Penn Law. Special thanks also to my mother, who spurred my interest in cars, and to Sir Lewis Hamilton, who should have won the 2021 World Driver's Championship. Finally, thanks to the staff of the Hastings Communications and Entertainment Law Journal, who made this piece stronger than a F1 car's monocoque. All views and errors in this piece are my own and not that of my employer.

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I. INTRODUCTION

On their face, the justice system and Formula One (F1) are poles apart. In F1, pivotal decisions are made in fractions of seconds; in the justice system, decisions are measured and take months, if not years. In F1, teams compete for glory; in the justice system, parties compete for liberty and truth. And in F1, stewards referee races without time to rely on precedent or debate justice; in the justice system, judges and juries are measured, deliberative, and thoughtful. But both systems have similarities, too: in both, billions of dollars are on the line, the safety of participants is at stake, and most importantly, both deal with essential questions of fairness.¹ Recent events in F1 have raised questions about the fairness of the sport. This Article argues that the current system of stewarding² leads to unfair outcomes. It also creates an uneven playing field because race officials have overwhelming discretion to make critical decisions that are consequential to the outcome of the race, and because they apply penalties inconsistently, without the possibility of appeal.

The issue of fairness has never been more pertinent than in the 2021 F1 World Championship (“2021 Championship”). For only the second time in seventy-four seasons, the two championship contenders—defending Champion and arguably the greatest of all time, Lewis Hamilton (driving for Mercedes), and young upstart Max Verstappen (driving for Red Bull Racing)—entered the final race equal on points, with the race becoming winner-take-all.³ Until that point, the season had already seen plenty of controversy: three major crashes between the title contenders,⁴ disqualifications against Mercedes and Hamilton,⁵ rule changes,⁶

1. Both systems also have great reality show counterparts: the justice system has *Judge Judy* whereas F1 has Netflix’s *Drive to Survive*. See generally *Judge Judy* (Big Ticket Television 2021); *Drive to Survive* (Box to Box Films 2019).

2. F1 stewards are the equivalent to referees in any other sport. They enforce rules and make decisions about penalties, amongst other things. See *F1 Glossary*, F1, <https://www.formula1.com/en/championship/inside-f1/glossary.html> (last visited Mar. 27, 2022).

3. Andrew Benson, *Lewis Hamilton Wins Thrilling Saudi Arabian Grand Prix After Max Verstappen Collision*, BBC SPORT (Dec. 5, 2021), <https://www.bbc.com/sport/formula1/59542213>.

4. See, e.g., Nate Saunders, *Max Verstappen, Lewis Hamilton Can Have Points Deducted for ‘Unsportsmanlike’ Crash*, ESPN (Dec. 9, 2021), https://www.espn.com/f1/story/_/id/32828344/max-verstappen-lewis-hamilton-points-deducted-unsportsmanlike-crash (discussing the history of crashes between Hamilton and Verstappen within the season and officials’ warnings to the rivals that a deliberate crash in the season finale would lead to penalties).

5. Nate Saunders, *Lewis Hamilton Disqualified from Sao Paulo GP Qualifying for Illegal Rear Wing*, ESPN (Nov. 13, 2021), https://www.espn.com/f1/story/_/id/32620084/lewis-hamilton-disqualified-sao-paulo-gp-qualifying-illegal-rear-wing.

6. See, e.g., Andrew Benson, *Formula 1: Red Bull’s Christian Horner Says Pit Stop Rule Change ‘Disappointing’*, BBC SPORT (June 25, 2021), <https://www.bbc.com/sport/formula1/57615628> (discussing F1’s rule change that slowed pit stops to increase the safety of mechanics).

inconsistent in-race stewarding decisions,⁷ and myriad challenges to the stewards' decisions,⁸ creating a tense and frosty relationship between the rivals.⁹

Going into the final race of the Championship at Abu Dhabi, Hamilton took the lead and maintained it for the first fifty-seven laps.¹⁰ On the fifty-third lap, a crash caused the race stewards to wave yellow flags, requiring all cars to slow down and follow a safety car without overtaking until the stewards deemed it safe to resume racing.¹¹ The safety car operates to effectively bunch all cars in order, thus removing any time gaps or advantages gained during normal racing. Safety cars also enable “cheap” pit stops. Because cars are no longer racing, drivers can come into the pits for a fresh set of tires without worrying that their opponents are pressing an advantage or building a lead. But overtaking is not permitted during safety laps—meaning if the driver in the lead pits and comes out in second place, they have lost a position, since they cannot overtake the frontrunner to regain the lead. However, although overtaking to regain grid position is not allowed, the rules also require that for a safety lap to end and for normal racing to resume, all lapped cars¹² must be allowed to “unlap” themselves such that the order of the cars on track reflects the position of the cars in the race.¹³

7. Phillip Horton, *F1 Driver Discontent Over Slow, Inconsistent Rulings Clouds Otherwise Sensational Season*, AUTOWEEK (Nov. 27, 2021), <https://www.autoweek.com/racing/formula-1/a38365713/f1-driver-discontent-inconsistent-rulings/>.

8. See, e.g., Laurence Edmondson, *Max Verstappen: F1 Stewards Treat Me Unfairly*, ESPN (Dec. 9, 2021), https://www.espn.com/f1/story/_id/32828829/max-verstappen-f1-stewards-treat-unfairly (discussing Verstappen's complaints that he had been unfairly penalized and that stewards' rulings were inconsistent).

9. See, e.g., Haydn Cobb, *Verstappen Slams Hamilton for “Disrespectful” F1 Win Celebrations*, MOTORSPORT (July 18, 2021, 11:07 AM), <https://www.motorsport.com/f1/news/verstappen-hamilton-unsportsmanlike-celebrations-silverstone/6633307/> (describing the relationship between Verstappen and Hamilton during the middle of the season).

10. See generally *2021 Abu Dhabi Grand Prix*, FANDOM: FORMULA 1 WIKI, https://f1.fandom.com/wiki/2021_Abu_Dhabi_Grand_Prix (last visited Jan. 4, 2022) (describing the events in the race).

11. *Id.*

12. For example: Cosmo, Elaine, George, and Jerry are in a race. Cosmo is in first place (denoted as P1), and Jerry is in second (P2). Cosmo has done an entire lap more than George has, passing George (third position, P3) after completing that extra lap. Thus, Cosmo is ahead of George by more than one lap. Jerry is in second, following Cosmo, but he hasn't overtaken George a second time. Thus, on track, Cosmo is first, George follows, and Jerry is following George. But in the race, Cosmo is P1 (having lapped George), Jerry is P2 (not having lapped George), and George is P3 (and is getting upset). Elaine is eating a Big Salad in P4.

13. FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE, 2021 FORMULA ONE SPORTING REGULATIONS art. 48.12, at 50 (Dec. 8, 2021), https://www.fia.com/sites/default/files/2021_formula_1_sporting_regulations_-_iss_13_-_2021-12-08.pdf [hereinafter 2021 F1 SPORTING REGULATIONS]. Note that this Article uses the 2021 regulations rather than the 2022 regulations because most of the penalty rules are unchanged, and because the 2021 regulations are more directly applicable to the events of the 2021 season.

In the Cosmo, Elaine, George, and Jerry example, assume Cosmo is P1, Jerry is P2, George is P3, and Elaine is P4. But the track position is Cosmo, George, Elaine, and then Jerry. Rule 48.12 would

In the race, Hamilton had no choice but to remain on track and not change his well-worn and slower tires. Entering the pits to replace his tires may have meant that he reentered the track behind Verstappen, costing him first place and thus the championship.¹⁴ On the other hand, because the race was winner-take-all, Verstappen chose to pit since he was in second place with nothing to lose. Coming out on fresher, faster tires, Verstappen reentered the race in second place, but with three lapped cars in between himself and Hamilton, while the safety car was still on track. Mercedes' reading of the rules was that, with fewer than three laps remaining, it would take the remaining duration of the race for all lapped cars to unlap themselves, rejoin at the back of the pack, and permit normal racing to resume. Thus, a textual reading of the rules combined with precedent indicated that the race would end behind the safety car. But the Race Director controversially used his permitted discretion—in contrast to precedent and the explicit rules¹⁵—to resume racing before all lapped cars unlapped themselves, allowing only the cars standing between Hamilton and Verstappen to unlap themselves and move ahead of Hamilton.¹⁶ This half-measure permitted Verstappen to race Hamilton in a dramatic and manufactured last-lap shootout on lap fifty-eight. With fresh tires, Verstappen easily overtook Hamilton for the victory, winning his first championship in the final half of the final lap of the final race.¹⁷

require George and Elaine to overtake Cosmo (and thus unlap themselves), complete an entire lap, and arrive behind Jerry. The track position would then match the race position: Cosmo (P1), Jerry (P2), George (P3), and Elaine (P4).

14. For a detailed explanation of this incident, *see generally* 2021 Abu Dhabi Grand Prix, *supra* note 10.

15. *See infra* note 77 and accompanying discussion.

16. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 15.3, at 12.

17. Mercedes protested the race results after the checkered flag, arguing that Articles 48.12 (requiring that lapped cars unlap themselves) and 48.8 (protocols for safety cars returning to the pits) had been breached, and asking for the order of the drivers at the time of the safety car to be the final classification of the race. *Stewards Dismiss Mercedes' Abu Dhabi Grand Prix Protests, As Team Lodge Intention to Appeal*, F1 (Dec. 12, 2021), <https://www.formula1.com/en/latest/article.breaking-stewards-dismiss-mercedes-abu-dhabi-grand-prix-protests-as-team.Q8StGwXFdORYII32Jggoz.html>.

The stewards dismissed this challenge, noting that “Article 15.3 allows the Race Director to control the use of the safety car, which in our determination includes its deployment and withdrawal. . . although Article 48.12 may not have been applied fully. . . .” THE STEWARDS, DECISION - MERCEDES PROTEST ART. 48.12 (Dec. 12, 2021, 11:03 PM), <https://www.fia.com/sites/default/files/decision-document/2021%20Abu%20Dhabi%20Grand%20Prix%20-%20Decision%20-%20Mercedes%20Protest%20Art.%2048.12.pdf> (emphasis added). The stewards also dismissed the Article 48.8 challenge. THE STEWARDS, DECISION - MERCEDES PROTEST ART. 48.8, (Dec. 12, 2021, 10:15 PM), <https://www.fia.com/sites/default/files/decision-document/2021%20Abu%20Dhabi%20Grand%20Prix%20-%20Decision%20-%20Mercedes%20Protest%20Art.%2048.8.pdf>. Mercedes decided not to appeal the decisions, finding that a dialogue with the FIA to improve race protocols was better for the integrity of the sport. Nate Saunders, *Mercedes Will Not Appeal Abu Dhabi Grand Prix Result*, ESPN (Dec. 16, 2021), https://www.espn.com/f1/story/_/id/32880621/mercedes-not-appeal-abu-dhabi-grand-prix-result.

This author's understanding is that the Race Director's decision was improper because it did not follow precedent in prior races. The underlying excellence measured in F1 is the speed of the drivers and

This Article does not dissect this final race, the countless what-ifs, and the resulting distress for fans of either driver. Rather, given the growing popularity of F1 in the U.S. and globally, this Article assesses how F1's stewardship system can take cues from the U.S. justice system to achieve fairer outcomes.¹⁸ Part I of this Article provides a pit-stop like brief overview of F1 and its stewardship system.¹⁹ Part II describes three major problems arising from stewarding: the overwhelming discretion awarded to the Race Director; a lack of consistency in officiating; and the lack of instant replay. Part III looks to the justice system to see how to improve stewarding, arguing for a limit to the executive discretion of the Race Director, a standardization of penalties, and a formalized and expanded in-race penalty appeals system.

II. FORMULA WHAT?

F1 is an international open-wheel single-seater racing league. Put simply, the cars have one unroofed seat—the driver's—and the wheels are uncovered, making the cars lighter and faster than almost all other road vehicles.²⁰ It is the highest class of racing permitted by the Fédération Internationale de l'Automobile (FIA), the world's motorsport governing body. Widely considered the pinnacle of motorsport,²¹ F1 races feature wheel-to-wheel racing at speeds of more than 200 miles per hour,²² with

the technical and strategic excellence of the teams. Mercedes correctly predicted that precedent would be followed and thus strategized around it, whereas Red Bull gambled in the hopes that precedent would not be followed. The decision awarded the gamble, but only because it was unexpected and allowed the Race Director to override the stated rules and prior precedent.

18. Of course, comparisons to other legal systems may be more appropriate. But because of the dearth of literature around F1 and the jurisprudence of sports, in addition to this author's familiarity with the U.S. legal system (as a lawyer, not as a defendant—yet), this Article focuses on a comparison to the American justice system. Future work could expand to the birthplaces of F1, England and France. *See generally The History of F1 Racing*, MONTREAL GRAND PRIX (Apr. 15, 2018), <https://montrealgrandprix.com/news/the-history-of-f1-racing/>.

19. For a longer explanation, I'd have to ask you how much time you have.

20. The current minimum weight of an F1 car is 798 kilograms (1,756 pounds). Lucy Rimmer, *How Much Does an F1 Car Weigh in 2022 and What's Included in the Limit*, AUTOSPORT (Apr. 27, 2022, 11:02 PM), <https://www.autosport.com/f1/news/how-much-does-an-f1-car-weigh/10246442/>. Aside from a Smart car, most cars weigh above 2,600 pounds, with the average road car weighing almost 4,200 pounds. *See, e.g.,* Lizzie Nealon, *Average Car Weight*, BANKRATE (Oct. 20, 2021), <https://www.bankrate.com/insurance/car/average-car-weight/>; Top Gear, *Supercar vs. Motorbike vs. F1 Car: Top Gear Festival Sydney*, YOUTUBE (Sept. 7, 2014), <https://www.youtube.com/watch?v=ygT4bGJkerk> (noting that even in comparison to other racing cars that are lighter and more powerful than road cars, F1 cars simply outdo them).

21. *See, e.g., Top Gear UK: Series 10, Episode 7* (BBC UK broadcast Nov. 25, 2007) (featuring presenter Richard Hammond driving the 2005 championship-winning Renault F1 car and facing the physical difficulties of dealing with the complexities, speed, and acceleration of an F1 car); *see* Top Gear, *Richard Drives a F1 Car Round Silverstone*, YOUTUBE (Nov. 7, 2008), <https://www.youtube.com/watch?v=EGUZJYV-sHo> for a publicly available clip.

22. Anna Duxbury & Joe Holding, *How Fast Is an F1 Car? Top Speeds of F1, Indycar, MotoGP and More*, AUTOSPORT (May 30, 2022, 12:00 AM), <https://www.autosport.com/f1/news/how-fast-is-an-f1-car-top-speeds-of-f1-indycar-motgp-and-more-4980734/4980734/>.

drivers facing more than 5 Gs of force while driving.²³ Inevitably, this requires incredible groundbreaking rocket science-levels of engineering from teams²⁴ and immense fighter jet pilot-levels of physical skill and training from drivers.²⁵ The high speed, wheel-to-wheel racing, and extreme precision required can lead to high-speed collisions,²⁶ running the risk of significant injury or death on track.²⁷

Each year, F1 hosts a championship consisting of more than twenty races in a variety of locations across five continents. Races are either on racetracks or on street courses with the roads modified to satisfy safety guidelines. Each participating team, led by a team principle,²⁸ fields two drivers in two separate cars on a given race weekend.²⁹ Race weekends, hosted from Friday through Sunday, consist of (1) up to three practice sessions wherein teams and drivers test their cars, setups, strategies, and knowledge of the track; (2) a qualifying session where drivers attempt to set the fastest lap, which helps determine the order of the starting grid; and (3) the race, which grants points towards winning the championship.³⁰ The higher the finishing position, the more points that are awarded.³¹ Currently,

23. *Video: Analysing 2017's Massive Rises in G-Force*, F1 (Mar. 31, 2017), <https://www.formula1.com/en/latest/article.video-analysing-2017s-massive-rises-in-g-force.vX8IhGjqmsaCoyy2uKKOi.html>.

24. *See generally* ADRIAN NEWAY, *HOW TO BUILD A CAR* (2017) (describing the advanced aerodynamics and engineering required to engineer a modern F1 car). The advanced engineering of F1 cars tests the bounds of physics, chemistry, materials science, engineering, with the complexity of the cars rivaling fighter jets and spacecraft. Sebastian Anthony, *Formula 1: A Technical Deep Dive into Building the World's Fastest Cars*, ARSTECHNICA (Apr. 4, 2017, 5:26 AM), <https://arstechnica.com/cars/2017/04/formula-1-technology/>.

25. Joe Holding, *F1 Driver Training: What's Their Workout Regime, Diet, Cardio & More*, MOTORSPORT (Mar. 22, 2021, 5:29 AM), <https://us.motorsport.com/f1/news/f1-driver-training-workout-regime-diet-cardio/5847576/>.

26. *See, e.g.*, Laurence Edmondson, *The Collisions That Defined Some of F1's Iconic Rivalries*, ESPN (July 21, 2021), https://www.espn.com/f1/story/_/id/31855567/the-track-collisions-defined-some-f1-iconic-rivalries (listing consequential crashes in F1 history).

27. *See, e.g.*, *Grosjean Posts Image of Injured Hands After Having Dressings Removed for the Final Time*, F1 (Jan. 11, 2021), <https://www.formula1.com/en/latest/article.romain-grosjean-reveals-he-no-longer-needs-dressings-on-hands-injured-in.hpSn89NMOMeM8evFbLQMu.html> (discussing former F1 driver Romain Grosjean's burns on his hands after a fiery crash in the 2020 Bahrain Grand Prix). But incidents go beyond causing injuries, and no driver is exempt from death—including former champions. The most recent death occurred from an on-track incident in 2014. *See generally* *List of Formula One fatalities*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_Formula_One_fatalities (last visited Mar. 28, 2022).

28. The team principle is the equivalent of a coach in the National Basketball Association (NBA) or in other team sports, and is responsible for managing the drivers, the staff, and critical big-picture decisions. Richard Asher, *F1 Team Principals: Who Are They and What Do They Do*, MOTORSPORT (Aug. 9, 2022, 12:16 PM), <https://us.motorsport.com/f1/news/f1-team-principals-who-are-they-and-what-do-they-do/10351168/>.

29. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art 6.2, at 4.

30. *See, e.g., id.* art. 6.4, at 4 (describing the points system); *id.* arts. 31-38, at 32-43 (describing the race weekend); *F1 Schedule 2022*, F1, <https://www.formula1.com/en/racing/2022.html> (last visited Oct. 21, 2022) (providing an example of the race calendar and race weekend).

31. *Id.* art. 6.4, at 4-5.

there are ten teams fielding two cars each,³² with the first ten finishing positions awarded points at the completion of each race.³³

At the end of the season, the team with the most points combined between both drivers across all races wins the World Constructor's Championship. Similarly, the individual driver with the most points across all races in the season wins the World Driver's Championship.³⁴ The total prize money for winning the Constructor's Championship varies, but is generally more than \$20 million. In addition to the Constructor's Championship, a total of more than \$900 million is distributed across the teams on the grid each year based on the total number of points won by the team at the end of the year, meaning that every point won makes a huge financial difference.³⁵ Of course, given the global nature of F1 and its reputation as the pinnacle of motorsport, drivers compete for more than prize money: they race for the coveted title of World Driver's Champion and the acclaim, glory, and greatness that follows.

Both championships are governed by individuals from the FIA. Additionally, individual races are officiated (more commonly known as stewarding) by the FIA and the National Sporting Authority (ASN) affiliated with the country where the race is hosted.³⁶ Each individual race is officiated by one Race Director, one permanent starter, four stewards (three of which are appointed by the FIA and one by the ASN), and a clerk appointed by the ASN.³⁷ The duties and level of authority differ drastically between the different roles. For example, the Race Director retains overriding authority in key constitutive rules,³⁸ such as controlling and stoppage of the race, stopping any cars that violate the sporting code, managing the starting procedure, and directing the use of the safety car.³⁹ In contrast, stewards make decisions about regulative rules, such as determining which penalties apply when rules are infringed, and overruling judges of fact.⁴⁰ Thus, stewards are akin to the on-the-ground officiators or referees in the National

32. *F1 Teams 2022*, F1, <https://www.formula1.com/en/teams.html> (last visited Aug. 26, 2022).

33. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 6.4, at 4-5.

34. *Id.* art. 6.1, at 4.

35. Sroban Ghosh, *Formula 1 Prize Money 2022*, SILLYSEASON (Sept. 5, 2022), <https://sillyseason.com/money/formula-1-prize-money-118349/>.

36. 2021 F1 SPORTING REGULATIONS, *supra* note 13, at 1.

37. *Id.* arts. 15.1-2, at 12.

38. A constitutive rule does "not merely regulate [but] create[s] or define[s] new forms of behavior," whereas a regulative rule "regulate[s] antecedently or independently existing forms of behavior." JOHN R. SEARLE, *SPEECH ACTS: AN ESSAY IN THE PHILOSOPHY OF LANGUAGE* 33 (Cambridge Univ. Press 1969). For a deeper discussion, see MITCHELL N. BERMAN & RICHARD D. FRIEDMAN, *THE JURISPRUDENCE OF SPORT* 111-12 (2021).

39. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 15.3, at 12.

40. *Id.* art. 15.7, at 12, art. 18.1, at 13.

Basketball Association (NBA),⁴¹ whereas the Race Director plays a big-picture role like the League Office in the NBA.⁴² Together, these officials (collectively, the “Officials”) oversee an entire race weekend.

Pertinent to the controversy at the end of the 2021 Championship, Officials’ responsibilities include when to call a safety car,⁴³ whether to apply penalties to drivers on track or after the end of a race,⁴⁴ and whether to overrule judges of fact.⁴⁵ Concretely, stewards can decide to issue penalties to drivers who breach track limits (going beyond the borders of the track), illegally overtake (for example, by going beyond the borders of the track), cause collisions, fail to slow down for yellow flags (which mandate slowing down), or who otherwise do not follow the rules.⁴⁶ Stewards can also issue penalties when cars do not satisfy the technical regulations, such as having enough fuel or weighing less than the minimum required weight for a car.⁴⁷ Taken together, this gives Officials a wide berth of discretion to determine what constitutes behavior that must be penalized, when and what penalties are applied, and how to manage the conduct of the race. This discretion is in direct contrast with the otherwise precision-oriented nature of the sport and raises questions of fairness that were exacerbated by how the 2021 Championship ended.

III. STEWARDING IS A BLACK BOX

The ethos of F1 is to push the boundaries: cars push the boundaries of physics and driver physicality; engineers push the boundaries of the technical regulations; and drivers push the boundaries of the rules. This means that races are fast-paced, with incidents and overtakes happening in milliseconds. Officials are thus expected to make quick decisions about whether drivers receive penalties for pushing the rules and must do so after looking at reams of data, both visual and technical.⁴⁸ This pace of decision

41. See generally NAT’L BASKETBALL ASS’N, 2019-20 OFFICIAL RULES r. 2, at 10-14, <https://ia801906.us.archive.org/24/items/nbarules201920/2019-2020-NBA-Rule-Book.pdf> (last visited Mar. 28, 2022) [hereinafter 2019-20 NBA RULEBOOK].

42. Though the League Office’s portfolio of rules is not completely defined in the rulebook, the League Office handles problems with officials; tracks fines and unsportsmanlike conduct; reviews players’ rule infringements; and decides postponement or cancellation of a game. See generally *id.*; see also *id.* r. 12, at 38-48, r. 3, at 15-17, Comments on the Rules, § II(D), at 64.

43. See generally 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 48, at 49-51.

44. See generally *id.* art. 47, at 47-48.

45. *Id.* art. 15.7, at 12.

46. *Id.* art. 27, at 29.

47. *Id.* art. 29.2, at 32.

48. For example, Officials often look at video footage and telemetry data from the cars indicating whether the driver was braking or accelerating in order to determine whether one driver drove another off the track. See, e.g., Dieter Rencken & Keith Collantine, *Stewards Made Verstappen Call Without His Forward-Facing Video of Hamilton Incident*, RACEFANS (Nov. 14, 2021, 10:37 PM), <https://www.racefans.net/2021/11/14/stewards-made-verstappen-call-without-his-forward-facing-camera-video-of-hamilton-incident/> (discussing the Officials’ lack of use of all video data when failing

making, combined with the inflow of telemetry data and visual evidence, means Officials are likely to make mistakes that might determine the outcome of a race or championship. First, the potential for the biggest mistakes comes from the Race Director's strong discretion with respect to approving or imposing penalties⁴⁹ and regulating the race (e.g., when the safety car re-enters the pits).⁵⁰ Second, the underlying rationale and applicable standards for decisions made by the Race Director *and* stewards are unpublished and inaccessible, creating difficulty in interpreting the rules and creating consistent precedent. And finally, most such penalties cannot be appealed.⁵¹ Taken together, these strictures permit unfixable mistakes and create an impenetrable black box that creates confusion and inconsistency around officiating, which undermines the underlying test of human excellence at the heart of the sport, and questions whether outcomes are fair to participants and fans.

A. RACE DIRECTOR'S OVERWHELMING DISCRETION

Officials can have "weak" or "strong" discretion.⁵² Weak discretion exists where officials use their evaluative judgment to apply a standard,⁵³ like when stewards make penalty decisions.⁵⁴ This discretion is governed by the standards set forth in the Sporting Regulations, placing some limits on the level of discretion. In contrast, strong discretion is where Officials are not bound by any standards set by the rules.⁵⁵ The Race Director is afforded two forms of strong discretion: discretion to make decisions within the boundaries of rules; and discretion not to apply or follow the rules entirely. The first category of strong discretion is less worrisome because the rules themselves are boundaries, even though the rules lack standards. Decisions in this category include permitting the use of the Drag Reduction System (DRS)⁵⁶ in changing weather conditions,⁵⁷ requiring medical examinations of drivers,⁵⁸ and requiring a driver to give back a position if the Race Director

to make a penalty determination); Jack Benyon, *The Data That Cleared Up a Confounding F1 Title Rival Clash*, THE RACE (Dec. 26, 2021), <https://the-race.com/formula-1/video-what-verstappen-and-hamilton-data-reveals-about-saudi-arabian-grand-prix-collision/> (analyzing a penalized crash using telemetry).

49. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 27.3, at 29.

50. *Id.* art. 51.10(a), at 54.

51. *Id.* art. 47.3, at 47-48.

52. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 31-33 (Harv. Univ. Press 1977).

53. *Id.* at 32-33.

54. *See infra* Part II.B.

55. DWORKIN, *supra* note 52, at 32.

56. DRS increases a car's speed and facilitates overtaking. It can only be used if a driver is within one second of another car. Joe Miles, *Winning Formula: What Is DRS, What Does It Stand for, and When Did F1 Introduce It? All You Need to Know About Drag Reduction System*, SUN (Aug. 25, 2022, 10:56 AM), <https://www.thesun.co.uk/sport/6704754/f1-drs-drag-reduction-system-explained-verstappen/>.

57. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 21.5, at 16-17.

58. *Id.* art. 22.15, at 21.

deems the infringing driver left the track unreasonably.⁵⁹ The second category of strong discretion is more problematic because the decision *not* to apply the rules can create unfairness or the perception of unfairness. Decisions in this category include determining when the safety car enters the pits (such as in the 2021 Abu Dhabi Grand Prix, *supra*),⁶⁰ permitting exceptions to the general safety provisions,⁶¹ and referring on-track incidents to the stewards to determine whether penalties should be applied.⁶²

This strong discretion is problematic for many reasons, but three are important in the context of recent events. First, given that communications between team principals and the Race Director were broadcast to the public, when the Race Director uses their strong discretion—and is swayed by an argument from one team principal over another—it perpetuates an image of unfairness that calls into question the integrity of the sport. As of the 2022 season, the FIA no longer permits the broadcast of such communications publicly, but team principals are still permitted to communicate with the Race Director in the background, which ultimately raises the same issue.⁶³ Second, the events of lap fifty-eight of the 2021 Abu Dhabi Grand Prix demonstrate that the Race Director’s discretion to override safety car rules interferes with the underlying contest between drivers. This gives the Race Director determinative input into the outcome of the race without guardrails. Finally, such strong discretion without guidelines creates problems for appeals,⁶⁴ since there is no standard by which to judge whether discretion was abused. Taken together, this harms the underlying test of the contest, the drivers’ just deserts, and the image of fairness to fans.

B. LACK OF CONSISTENCY IN STEWARDING

The rules governing driver conduct on-track, and team conduct off-track, are more standard-like than rule-like.⁶⁵ For example, drivers are expected to “make every reasonable effort to use the track at all times and may not leave the track without a justifiable reason.”⁶⁶ Stewards are responsible for first judging whether an off-track excursion is justifiable, and the Race Director may then direct a driver to return any advantage gained by

59. *Id.* art. 27.3, at 29.

60. *Id.* art. 15.3(e), at 12.

61. *See, e.g., id.* art. 22.12, at 20.

62. *Id.* art. 47.1, at 47.

63. Luis Vasconcelos, *New Rules on F1 Radio Communication*, AUTOACTION (Feb. 18, 2022), <https://autoaction.com.au/2022/02/18/new-rules-on-f1-radio-communication>.

64. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 17.3, at 13, art. 47.3, at 48. Broadly, Article 17.3 provides that appeals are permissible in some circumstances. Article 47.3 specifically notes that disqualification from results and suspension from future events, unlike other penalties, are appealable.

65. *See, e.g.,* Russell Korobkin, *Behavioral Analysis and Legal Form: Rules vs. Standards Revisited*, 79 OR. L. REV. 23 (2000) (explaining the distinction between rules and standards).

66. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 27.3, at 29.

leaving the track, for example by letting a competitor overtake them.⁶⁷ This standard-based rule means that Officials must inject some element of subjectivity into their decisions for on-track penalties. Since neither the F1 Regulations nor the FIA International Sporting Code (the FIA Code) guide what penalties apply to various infractions, such subjectivity is needed because decisions about what penalty to issue are ultimately left to the stewards' discretion.⁶⁸ However, this subjectivity inevitably leads to inconsistency, which may create bias or unfairness in penalty decisions. Combined with the inability to appeal penalties and the frequency with which such racing incidents take place on track,⁶⁹ such unfairness may have consequential impacts that benefit one driver over another. And while appeals may compound subjectivity by using vague standards, an iterative appeals process that also tracks precedent would help provide clarity in the face of such vagueness and may mitigate errors.

The inconsistency stemming from stewards' subjectivity also boasts practical consequences. Drivers are operating their cars at high speeds and require clear guidelines regarding what is permissible on-track. For example, if a driver doesn't know whether their competitor will be permitted to push them off-track, they may give less room to the competitor in a tight turn because the driver thinks that they cannot "legally" be pushed off track, causing a collision. Especially at high speeds, drivers need some element of predictability—both for the safety of all drivers, and so that the drivers can strategize fairly.⁷⁰ Without consistent standards, drivers who play it safe by not pushing other drivers off-track lose out, while drivers who "get their

67. *Id.* For a visual example, on lap one of the Abu Dhabi Grand Prix, Hamilton left the track, but Officials decided that he was justified in doing so because Verstappen forced him off. Thus, the advantage Hamilton gained from cutting the corner neutralized the advantage Verstappen gained from pushing Hamilton off. See, e.g., Bethan Clargo, *How Max Verstappen Won the Controversial Abu Dhabi Grand Prix*, ESPN (Dec. 12, 2021), https://www.espn.com/f1/story/_/id/32851709/how-max-verstappen-won-controversial-abu-dhabi-grand-prix.

68. See FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE, 2021 FIA INTERNATIONAL SPORTING CODE, art 12.4.4, at 54 (2021), <https://www.fia.com/regulation/category/123> [hereinafter 2021 FIA CODE] (choose "International Sporting Code" under "Category View" dropdown menu; then choose "2021 Int'l Sporting Code (FR-EN)"; then click downloaded PDF) ("Any one of the above penalties can only be inflicted after consideration of the evidence available. . . .").

69. Of course, many sports have unappealable penalties, such as soccer's yellow and red cards. Such penalties, however, are either infrequent (e.g., yellow/red cards in soccer), or have a small magnitude of impact (e.g., team fouls in basketball after a team has exhausted its appeals). The frequency of on-track incidents, combined with the significance of the impact—a lost position, a crash, or lost time—means that an unfairly or inconsistently applied penalty is frequently going to be consequential to the outcome of the race.

70. See, e.g., Keith Collantine, "Random" Rules Let F1's American Fans Down Says Alonso After Track Limits Row, RACEFANS (Oct. 24, 2021, 10:30 PM), <https://www.racefans.net/2021/10/24/random-rules-let-f1s-american-fans-down-says-alonso-after-track-limits-row/> (noting the inconsistencies at the 2021 U.S. Grand Prix, where two-time World Champion Fernando Alonso was penalized for a racing move that his opponent was not penalized for, affecting Alonso's race outcome).

elbows out” and push others off track may not get a penalty—incentivizing “safer” drivers to drive more aggressively, at the risk of a collision.

The effects of inconsistent decision-making are not limited to individual drivers: teams are also impacted. Since tire strategy,⁷¹ pit stop strategy,⁷² and other strategic decisions (e.g., whether to prepare for rain or a red flag) are calculated with incredible precision and assessed by the pit wall and race strategists,⁷³ an inconsistent decision-making process undermines the underlying accuracy that is a fundamental part of F1 racing.

In effect, the fuzziness of the standards applied by stewards through inconsistent decision-making creates an uneven playing field contrary to the basic excellences that F1 aims to display. The clearest example of this uneven playing field is the 2021 Abu Dhabi Grand Prix. As noted, Mercedes were not planning on pitting Hamilton’s car after the safety car came out on lap fifty-three, because the rules indicated that it would take until the end of the race for the track to be cleared and for the safety car to re-enter the pits.⁷⁴ Thus, the team—under the expectation that the rules would be followed that the safety car would permit all lapped cars to unlap themselves⁷⁵—made a strategic calculation to keep Hamilton in first place, operating under the assumption that the track position would remain the same until the race ended under the safety car.⁷⁶ However, the safety car was pitted before all lapped cars could unlap, giving an advantage to Verstappen and Red Bull, who pitted their car in the hopes that the safety car would re-enter the pits sooner. In effect, the decision to pit the safety car early hurt the team with the more accurate and well-thought-out strategy. Consequently, the Race Director’s decision—inconsistent with precedent made by the same Race

71. Tire strategy refers to deciding which tires to put on a car. In F1, teams choose from tires made of soft rubber, which are faster but last for less time, requiring a pit stop sooner, or tires made of hard rubber, which are slower but last longer. Different tire choices lead to different race paces and thus different race outcomes. *Insider’s Guide: What Are F1’s Tyre Rules?*, MOTORSPORT (Feb. 28, 2022, 5:35 AM), <https://us.motorsport.com/f1/news/insiders-guide-what-are-f1s-tyre-rules/6885459/>.

72. Pit stop strategy refers to when a team decides to bring their cars in for a tire change. Teams are required to pit their cars at least once. Teams choose when to pit their cars based on the condition of the tires, the speed of competitors, changing weather conditions, and track position. *Insider’s Guide: How F1 Race Strategy Works*, MOTORSPORT (Jan. 31, 2022, 10:52 AM), <https://us.motorsport.com/f1/news/how-f1-race-strategy-works/6791894/>.

73. See, e.g., Beyond the Grid, *Listen: The Secrets of Race Strategy with Alfa Romeo’s Ruth Buscombe*, F1 (Sept. 29, 2021), <https://www.formula1.com/en/latest/article.listen-the-secrets-of-race-strategy-with-alfa-romeos-ruth-buscombe.4pIe3ek4nug1z08soNPnrH.html> (describing the calculations that race strategists make when determining different race variables).

74. See generally *2021 Abu Dhabi Grand Prix*, *supra* note 10 and accompanying discussion.

75. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 48.12, at 50.

76. Claire Cottingham, *Lewis Hamilton Absent in Press Conference as Max Verstappen Reacts to Mercedes Protest*, EXPRESS (Dec. 13, 2021, 7:16 AM), <https://www.express.co.uk/sport/f1-autosport/1535098/Lewis-Hamilton-skips-press-conference-Max-Verstappen-reacts-Mercedes-protest>.

Director⁷⁷—cost Hamilton and Mercedes the win, the championship, and a small fortune in prize winnings.

The underlying cause of this inconsistency may be the sport's failure to keep records of past decisions, effectively making it impossible to determine what is precedential. Although this may be difficult in sports where thousands of games are played each season (each with tens, if not hundreds of fouls and penalties), such as the NBA or Major League Baseball (MLB), F1 only hosts around twenty races each year, and each race generates a small handful of penalties, which can be easily tracked. Tracking such penalties may mitigate unfair inconsistencies and may also hold Officials accountable for makeup calls where Officials either adjust their epistemic or behavioral standard when trying to correct for previously missed calls, thereby compounding the determinative role of the Officials in the outcome of the race.⁷⁸

C. INCONSISTENTLY APPLIED PENALTIES AND THE LACK OF APPEALS

Article 17.3 of the 2021 F1 Sporting Regulations notes that “[a]ppeals may not be made against decision[s]” regarding in-race time penalties, penalties for infringements during practice sessions, penalties for infringements during race starts and race resumptions, and drops of grid positions due to overuse of spare parts, engines, and gearboxes.⁷⁹ This creates a variety of issues.

First, the definition of what constitutes a violation is vague. It is unclear what standard Officials are applying when determining whether a penalty should be issued. Both the F1 Sporting Regulations and FIA Code define the guidelines for driving and penalties in a standard-like, subjective manner.⁸⁰ For example, the FIA Code requires drivers to remain on track unless there is “justifiable reason” to leave the track.⁸¹ Drivers cannot make maneuvers “to hinder other drivers, such as deliberate crowding of a car beyond the edge

77. See, e.g., Henry Valantine, *Masi Ruling Contradicts Previous Lapped Car Clarification*, PLANETF1 (Dec. 14, 2021, 11:45 PM), <https://www.planetf1.com/news/michael-masi-contradicts-lapped-car-clarification/> (noting the 2020 Eifel Grand Prix Race Director Michael Masi's statement, “There's a requirement in the sporting regulations to wave all the lapped cars past . . . [This] directly goes against what he opted to do in Abu Dhabi, whereby only the lapped runners positioned between Hamilton and Verstappen on track were allowed to un-lap themselves.”).

78. See generally BERMAN & FRIEDMAN, *supra* note 38, at 387-91 (internal citations omitted) and accompanying discussion.

79. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 17.3, at 13.

80. *Id.* art. 18.1, at 13; 2021 FIA CODE, *supra* note 68, art. 12, at 49-58; FÉDÉRATION INTERNATIONALE DE L'AUTOMOBILE, APPENDIX L TO THE INTERNATIONAL SPORTING CODE, ch. IV, art. 2(b), at 47 (Dec. 15, 2021), <https://www.fia.com/regulation/category/123> (choose “Appendix L International Sporting Code” under the “Category View” dropdown menu; then choose “Appendix L - International Drivers' licenses, medical examinations, driver's equipment and conduct – 2021”; then open downloaded PDF) [hereinafter CODE APPENDIX L].

81. CODE APPENDIX L, *supra* note 80.

of the track or any other abnormal change of direction.”⁸² Given the subjective nature of “justifiable,” “deliberate,” and “abnormal,” these provisions are not hardline rules, but are instead standards. Due to the underlying subjectivity of implementing standards, two similar incidents may be penalized in different ways. An appeals process would at least allow consistency where similar incidents are initially penalized differently. Further, permitting appeals allows new facts to be brought to Officials. This is especially pertinent in F1, where immense amounts of data are being generated each second, especially from car telemetry, but may not be seen, sent to, or analyzed by the Officials immediately. Presenting Officials with new data or facts may thus help create consistency by showing how an incident that may have *prima facie* looked different to a prior incident is in fact similar to the prior incident.

Second, the problem is more than just an issue of definition and subjectivity. Officials may determine whether to apply penalties to different drivers based on where they stand in the rankings. For example, a penalty applied to a championship contender (such as Hamilton or Verstappen in 2021) might determine the outcome of the championship, whereas a similar penalty applied to two drivers outside the ten points scoring positions would not.⁸³ In theory, whether a penalty is applied depends on the ratio of the cost of false positives to the cost of false negatives.⁸⁴ But if Officials assess the *cost* of false positives—a driver gets a penalty even though they did nothing wrong—and of false negatives—a driver escapes a penalty even though they violated the rules—based on the driver’s position, then the standard of proof being applied varies from driver to driver. These variations arise because the cost of a false positive or negative for a championship-contending driver may be the championship, whereas the cost of a false positive or negative to someone eliminated from contention may be meaningless. At its heart, this is unfair: different competitors are subject to different rules based on where they stand in the championship.

Under ideal circumstances, Officials impose a penalty only if the odds that the penalty was committed has been *ex ante* judged to be greater than or equal to the ratio of the cost of false positives to false negatives.⁸⁵ This is like

82. *Id.*

83. *See, e.g.,* Adam Cooper, *Why F1 Drivers Are Still Confused Over Racing Rules*, AUTOSPORT (Nov. 21, 2021, 1:04 AM), <https://www.autosport.com/f1/news/why-f1-drivers-are-still-confused-over-racing-rules/6805063/> (“Russell suggested that there was no penalty for Verstappen because in the end, it didn’t make any difference to the outcome – a stark contrast to the clash at Silverstone, for example, when the Mercedes driver was penalised.”). Russell’s contention is that Verstappen was not penalized because the penalty would not have changed the outcome of the race.

84. *See, e.g.,* BERMAN & FRIEDMAN, *supra* note 38, at 368 (describing the detailed calculus of when penalties are applied and that “under an ideal set of rules, an official would call a foul only if the odds that it was committed are greater than or equal to the ratio of the cost of [a false positive] to the cost of [a false negative].”).

85. *Id.*

the U.S. criminal justice system, which applies the beyond a reasonable doubt standard because it has judged the *theoretical* cost of a false positive (imprisoning an innocent person) much higher than the *theoretical* cost of a false negative (letting a guilty person go free).⁸⁶ Because the cost of a false positive is much higher than the cost of a false negative, judges and juries need to be extremely sure that someone is guilty before imprisoning them. But in a race, the standard of proof applied (i.e., the likelihood that a penalty applies) *inherently* varies from driver-to-driver because the cost of false positives and false negatives is being judged *ex post*.

Stewards often consider the impact of the penalty on the drivers when determining whether to penalize the drivers, rather than assessing the facts and judging whether those facts satisfy a fixed burden of proof.⁸⁷ For example, in the 2021 Championship, a wrongly-imposed five-second penalty (a false positive) on either Verstappen or Hamilton could have been pivotal and determined the championship; but a wrongly-imposed five-second penalty on a car in last place may have had no consequences.⁸⁸ Similarly, the cost of a false negative may vary: if the leading driver is forty seconds ahead of the driver in second place, the cost of a false negative is low, since the driver in second place has no chance of catching up even with a five-second penalty applied to the race leader. Thus, the assessment of the cost of false positives and negatives is inherently dependent on the driver's actual position in the race, meaning that the standard is contextually variable.

An appeals system that requires Officials to provide a rationale for their decisions could hold Officials accountable for the penalties they issue. Teams can appeal penalties, arguing that the application of the original penalty was not consistent with the *ex ante* standard of proof, regardless of what the in-race assessment of costs is. The *ex ante* system is fairer, and less dependent on Officials' cost assessments in fast-changing circumstances, which may make those assessments inherently inaccurate. Ultimately, an appeals system can prevent competitors from being treated differently based on their position in the race, thus protecting drivers from an inherently uneven and unfair playing field.⁸⁹

86. *Id.* at 369 (“[A]n inaccurate conviction—a false positive on the proposition that the defendant is guilty—is far worse than an inaccurate acquittal. . . . [A] finding of guilt is justified only if the odds of guilt are extremely high, a principle that is usually expressed in the United States by saying that the jury should not find the defendant guilty unless it is persuaded of his guilt *beyond a reasonable doubt*.”).

87. See Cooper, *supra* note 83.

88. Colloquially, cars perennially at the back of the grid are commonly known as “backmarkers.”

89. Note that this might also mitigate superstar treatment and alleviate questions of fairness. See, e.g., Luke Smith, *Verstappen: It's Unfair I'm Treated Differently to Other F1 Drivers*, MOTORSPORT (Dec. 9, 2021, 4:00 AM), <https://us.motorsport.com/f1/news/verstappen-saudi-penalties-show-im-treated-differently-to-other-drivers/6866895/> (statement of F1 Driver Max Verstappen regarding the application of penalties) (“[F]ighting at the front, people are a bit more critical.”).

Even so, there are some advantages to unappealable penalties. First, creating an in-race appeals process is difficult to implement because, unlike in on-field sports like the NBA, MLB, and National Football League (NFL), a race does not pause, even if an appeal is requested. The longer the race continues before a final judgment is issued, the more complex the chain of causation.⁹⁰ For example, if Verstappen illegally overtakes Hamilton on lap ten, and builds a lead of fifteen seconds by the time a five-second penalty is imposed on him post-appeal, Verstappen still leads, because he already (illegally) overtook Hamilton. Yet if the five-second penalty were applied on lap ten, Verstappen would have been overtaken by Hamilton, and Hamilton could have built a comfortable lead. As such, any successfully implemented appeals process will require finesse and nuance.

Despite these disadvantages, the lack of transparency, the potential for Officials to apply different standards when it comes to different drivers, and the potential implications of incorrect decisions are strong reasons to consider creating penalty appealability. The pitfalls can easily be remedied with a fine-tuned solution, expanded upon in Part 0.

IV. DRIVING CHANGE BY TAKING CUES FROM THE JUSTICE SYSTEM

The stewards of F1 are considered an “independent judiciary.”⁹¹ Yet the discussion in Part 0 reveals that stewarding is missing critical elements of an independent judiciary. The Race Director’s overwhelming discretion lacks any guardrails or guidelines judges have; inconsistent stewarding is antithetical to a fair and uniform application of the rules; and a lack of appeals is unlike most judicial systems and prevents rectifying errors in officiating. While, as noted, F1 and the justice system are as similar as New York and Chicago-style “pizza,”⁹² both systems ostensibly aim to achieve fair, consistent, and somewhat transparent results. Accordingly, F1’s stewarding system should take cues from elements of the U.S. judicial system to: (1) create boundaries for Race Director discretion, (2) develop more thorough guidelines for implementing penalties and tracking penalty precedent to ensure consistency, and (3) permit in-race penalty appeals by using an instant replay-like system.

90. This is akin to the underlying rationale for baseball’s jeopardy rule, which permits umpires to “eliminate the results and consequences of the earlier call that they are reversing.” BERMAN & FRIEDMAN, *supra* note 38, at 422-23. However, in F1 the race is not paused during the deliberation of the call, making it impossible to eliminate such results.

91. Adam Cooper, *Masi Dismisses Alonso Criticism on F1 Stewarding Bias*, MOTORSPORT (Oct. 15, 2021), <https://us.motorsport.com/f1/news/masi-dismisses-alonso-criticism-on-f1-steward-bias/6686799/>.

92. This is because Chicago-style pizza is not “real” pizza. *The Daily Show with Jon Stewart: Tower Record* (Comedy Central television broadcast Nov. 13, 2013).

A. CURBING RACE DIRECTOR DISCRETION

As noted, Race Directors have pockets of unbounded (strong) discretion in making critical decisions that affect the outcome of a race or affect the safety of at-risk drivers.⁹³ These decisions have to do both with regulations around the safety car and the safety of the drivers,⁹⁴ and determining whether drivers have to return a place to a competitor or face a penalty.⁹⁵ Decisions around the safety car and safety of the drivers give the Race Director powers similar to those of the NBA's League Office, which, among other things, determines whether a game should proceed as scheduled or be cancelled due to "the condition of the playing court or arena, or a general or forecasted condition involving weather, travel, civil unrest, natural disaster, or other event."⁹⁶ Similarly, the Race Director has the power to determine whether a race is delayed,⁹⁷ respond to changing weather conditions,⁹⁸ and address incidents affecting safety.⁹⁹ But the Race Director also possesses broad discretionary power akin to the power that allows NBA *officials* to "make decisions on any point not specifically covered in the rules,"¹⁰⁰ since the Race Director is allowed to prolong or shorten the duration of the safety lap,¹⁰¹ close the pit lane,¹⁰² and determine the use of the DRS system,¹⁰³ all without having to consider enumerated factors in making such decisions. Taken together, the individual Race Director has immense discretionary power, which in other leagues like the NBA is spread across different offices and many people.

In addition, the ability to determine whether drivers face a penalty gives the Race Director powers like those of an NBA referee or official, who rule on whether to give fouls and penalize players.¹⁰⁴ For example, the Race Director has "[a]bsolute discretion" to ask that a driver give back the "whole of any advantage he gained by leaving the track,"¹⁰⁵ and has similar discretion to "report any on-track incident or suspected breach . . . to the stewards."¹⁰⁶ But while the NBA divides these powers into a League Office

93. *See supra* Part II.A.

94. Decisions concerning the safety of a driver can affect the outcome of a race through the use of a safety car. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 15.3(e), at 12, art. 21.5, at 16, art. 22.12, at 20, art. 22.15, at 21.

95. *Id.* art. 27.3, at 29, art. 47.1, at 47.

96. 2019-20 NBA RULEBOOK, *supra* note 41, Comments on the Rules, § II(D), at 64.

97. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 40.1, at 44-45.

98. *Id.* art. 21.5, at 16-17.

99. *Id.* art. 22.12, at 20.

100. 2019-20 NBA RULEBOOK, *supra* note 41, r. 2(III), at 11.

101. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 51.10, at 54.

102. *Id.* art. 28.14, at 31.

103. *Id.* art. 21.5, at 16-17.

104. 2019-20 NBA RULEBOOK, *supra* note 41, r. 2, at 10-14.

105. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 27.3, at 29.

106. *Id.* art. 47.1, at 47.

and multiple officials, in F1 the Race Director has the great power and great responsibility of both the League Office and officials bundled into one. This leads to issues of integrity where the Race Director abuses their discretion, interference with the contest where the discretion is wrongly applied, and problems for appeals since there is only one level of decision maker.

There are three ways to mitigate these harms. First, the FIA should curb discretion by amending the rules to set boundaries and create concrete definitions on what the Race Director's discretion permits. While Race Directors need some flexibility to meet the pressing demands of safety and in-race decisions that adhere to F1's strict timetable, amending the rules to put boundaries might help limit erroneous decisions. For example, the discretion for the Race Director to disable DRS "[i]n conditions of poor visibility" may be expounded upon by defining "poor visibility" and what it means for conditions to improve such that DRS may be re-enabled.¹⁰⁷ This will move the Race Director's discretion from strong to weak, setting a target standard to which they can affix their judgment. This change in discretion is also necessary because the Race Director is a single individual tasked with immense responsibilities—far more than those assigned to teams of officials in the NBA. This heavy responsibility on one person is likely to create more errors, simply because of the limited amount of manpower and collective deliberative capacity available to make these difficult decisions.

Second, the FIA must create an official post-race review process that teams, or the FIA itself, can initiate when a controversial, problematic, or erroneous decision has been made.¹⁰⁸ The effect of this is similar to an Administrative Procedure Act review in American administrative law, which investigates the decision-making process, the variables that went into it, and then provides recommendations for how to prevent such problematic decisions in the future.¹⁰⁹ This method of review should be a multistakeholder process that involves team principals, stewards, F1 management, and drivers, and should produce a publicly available report assessing the mistakes and ways to mitigate future harm. For example, the 2021 Belgian Grand Prix was entirely rained-out on race day and saw no competitive racing.¹¹⁰ Because of the conditions, the Race Director permitted

107. *Id.* art. 21.5(a), at 16.

108. The FIA recently decided to review the events of the 2021 Abu Dhabi Grand Prix, in a one-off review similar to the approach being proposed here. @fia, TWITTER (Jan. 13, 2022, 8:05 AM), <https://twitter.com/fia/status/1481658567421747205>. This Article proposes a standardized review process and the creation of procedural boundaries that can be invoked by the FIA.

109. See, e.g., Cary Coglianese & Christopher S. Yoo, *The Bounds of Executive Discretion in the Regulatory State*, 164 U. PA. L. REV. 1591, 1596 (2016) (describing this APA function in the context of executive power).

110. Luke Smith, *Ten Things We Learned from the F1 Belgian Grand Prix*, MOTORSPORT (Aug. 30, 2021, 9:48 AM), <https://us.motorsport.com/f1/news/10-things-we-learned-from-the-belgian-grand-prix/6657331/>.

a two-lap procession behind the safety car, after which the race eventually was ended. But because at least two laps had been completed, that allowed the “race” to be counted for half-points—even though there had been no competitive racing.¹¹¹ Drivers considered this a “farce,” and fans were not compensated for watching two laps of “racing.”¹¹² A review process will help create proactive solutions in future instances where such a problem arises, and bolster trust with fans.

Third, it may be that a Race Director’s misconduct is so severe or so problematic that teams, drivers, fans, or other stakeholders lose trust in that Race Director, much in the same way that a judge’s severe misconduct might undermine the public’s faith in their ability to remain a neutral adjudicator.¹¹³ This may have been the case after the fallout from the 2021 Abu Dhabi Grand Prix.¹¹⁴ The FIA must institute an official mechanism that—with sufficient procedural safeguards—allows for aggrieved teams to call for the resignation or removal of the Race Director. The process could essentially be modelled after Title VI of the Ethics in Government Act of 1978,¹¹⁵ which requires an independent investigator—in that case, the Attorney General—to investigate offenses, if, for example, more than two thirds of teams and drivers move to investigate the Director. If there is an abuse of discretion, then the independent investigator—in F1’s case, an outside counsel or an individual from the International Court of Appeals (ICA)—can recommend an expanded investigation or the resignation of the Race Director to F1 management. If the Race Director is forced to resign, the procedure should then prohibit the FIA from hiring that Race Director in the future.

These solutions are meant to ensure accountability and transparency in areas where Race Directors make mistakes. As of now, neither the F1 Sporting Regulations nor the FIA Code provide a mechanism for removal at the behest of aggrieved competitors. And hopefully, such removal will not be frequently used. But having a procedure provides safeguards that may prevent future controversies from taking place, tarnishing the sport, and ultimately being decisive factors in championships.

111. Nate Saunders, *F1 Drivers Relieved, Confused and Angry in Equal Measure After Belgian Grand Prix Washout*, ESPN (Aug. 29, 2021), https://www.espn.com/f1/story/_id/32110046/f1-drivers-relieved-confused-angry-equal-measure-belgian-grand-prix-washout.

112. *Id.*

113. See, e.g., *Impeachments of Federal Judges*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/impeachments-federal-judges> (last visited Jan. 16, 2022).

114. Prior to the start of the 2022 season, the FIA president removed 2021 Race Director Michael Masi as Race Director for the 2022 season, though it is unclear what the process behind his removal was. Nate Saunders, *Michael Masi Removed as F1 Race Director After Abu Dhabi Investigation*, ESPN (Feb. 17, 2022), https://www.espn.com/f1/story/_id/33310763/michael-masi-removed-f1-race-director-abu-dhabi-investigation.

115. See generally Ethics in Government Act, § 601, 92 Stat. 1824, 1867-75 (1978) (current version at 28 U.S.C. §§ 591 et seq.).

B. CREATING GUIDELINES FOR PENALTIES AND TRACKING PRECEDENT

As noted, a significant issue with stewarding is lack of consistency. For example, the rule requiring that an overtaking car leave at least one car's width¹¹⁶ was inconsistently applied during the 2021 season.¹¹⁷ But, as noted, neither the F1 Regulations nor the FIA Code note what penalties apply to various infractions.¹¹⁸ The lack of standardization creates disparities in penalties, akin to disparities in sentencing prior to the passage of U.S. sentencing guidelines.¹¹⁹ While there is much criticism of over-penalization through the sentencing guidelines,¹²⁰ the U.S. sentencing guidelines at least provide a baseline for consistency, even if that baseline is poorly calibrated. At minimum, penalty guidelines in F1 will provide signposts to Officials that will ensure consistency, which in turn improves fairness. By formulating such penalty guidelines, F1 can move from the standards set in the F1 Sporting Regulations and FIA Code, towards a "standardified rule" that is generally a standard, but that adheres to benchmarks which narrows the discretion available to the official.¹²¹ This might move F1's penalty system towards that of the NBA, where fouls have standardized consequences—like free throws for personal fouls and technical fouls, possession from out-of-bounds for some personal fouls, or change of possession for some offensive fouls.¹²²

In addition to standardization of penalties, the FIA must also track what penalties are applied for what actions by creating a database of penalties. For example, if a driver pushes another driver off Copse corner in Silverstone,¹²³

116. The F1 Sporting Regulations require drivers to follow the FIA International Sporting Code. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 2.1, at 2. Appendix L of the International Sporting Code lays out the one car width rule. See CODE APPENDIX L, *supra* note 80, art. 2(a), at 47.

117. See, e.g., Scott Mitchell-Malm, *F1 Drivers Don't Know What's Worth a Penalty Anymore*, THE RACE (July 6, 2021), <https://the-race.com/formula-1/f1-drivers-dont-know-whats-worth-a-penalty-anymore/>.

118. See *supra* note 68 and accompanying discussion.

119. See, e.g., Nancy Gertner, *A Short History of American Sentencing: Too Little Law, Too Much Law, or Just Right*, 100 J. CRIM. L. & CRIMINOLOGY 691, 697 (2010).

120. See, e.g., Jed S. Rakoff, *Why Prosecutors Rule the Criminal Justice System—and What Can Be Done About It*, 111 NW. U. L. REV. 1429, 1431-33 (2017) (criticizing sentences and guidelines for being over punitive).

121. A "rulified standard" is a rule that can sometimes be pierced, when "enforcing the rule as a rule would produce unusually high costs; and . . . disregarding the rule's form on this occasion would incur low costs on the dimensions . . . that justified its rulification in the first place." Mitchell N. Berman, "Let 'em Play": *A Study in the Jurisprudence of Sport*, 99 GEO. L.J. 1325, 1362-63 (2011). Here, proposing to provide benchmarks for a standard is the inverse: a "standardified rule" rather than a "rulified standard," where the standard should be enforced according to those benchmarks, *preventing* the production of unusually high costs and ensuring that the standard incurs low costs.

122. This is not an exhaustive list. See generally 2019-20 NBA RULEBOOK, *supra* note 41, r. 12, at 38-48.

123. Silverstone is a motor racing circuit in the United Kingdom. See generally SILVERSTONE, <https://www.silverstone.co.uk/> (last visited Jan. 16, 2022).

causing a collision, that driver receives a ten-second time penalty.¹²⁴ While overtakes on Copse corner are supposedly infrequent,¹²⁵ Officials will have a frame of reference for the next time such an incident takes place, in a database that is easily accessible during the fast-paced nature of a race. Of course, racing incidents are often infrequent, and no two incidents are the exact same, and some amount of judgment and discretion is required when assessing driver intent and responsibility. But a focus on precedent will allow Officials to weigh less heavily the subjective interpretation of driver intent, which is hard to assess in a fast-paced, changing environment—and instead make penalty application a pluralistic form of application of the rules that looks at the text, conventions, values and norms, and precedent. Precedentialism might help drive fairness and consistency, add to the integrity of the sport, and simply make it easier to determine when a penalty and what penalty should be applied. Focus on precedent could also facilitate the in-race appeals process, as well as any permissible post-race appeals process. Relying on precedent also reduces pressure on stewards, given that similar penalties are effectively issue precluded.¹²⁶ And consistency might mitigate differential treatment between backmarkers,¹²⁷ midfielders, and championship contenders.

C. EXPANDING INSTANT REPLAY AND APPEALABILITY

As noted, most penalties enforced by Officials are not subject to appeal.¹²⁸ But incorrectly called penalties or incorrectly non-called penalties can both cause harm. In the MLB, NBA, and NFL, teams have the opportunity to call for instant replays. And in the U.S. judicial system, parties can call for immediate appeal prior to final judgment where a lower court's ruling may have immediate consequences, such as the enforcement of an injunction,¹²⁹ or where a party's constitutional rights are at stake.¹³⁰ This is

124. See, e.g., Jonathan Noble & Filip Cleeren, *How Has F1 Penalised Pushing Off Track? Penalties, Warnings and More*, AUTOSPORT (Nov. 19, 2021, 7:40 AM), <https://www.autosport.com/f1/news/how-has-f1-penalised-pushing-off-track/6799014/>.

125. *'It Was a Desperate Move' – Furious Horner Hits Out at Hamilton After Verstappen Crash*, F1 (July 18, 2021), <https://www.formula1.com/en/latest/article.it-was-a-desperate-move-furious-horner-hits-out-at-hamilton-after-verstappen.70vvrMmYUhnPjSVc4xDbi.html> (noting that Red Bull team principal Christian Horner said, "Lewis has stuck a wheel up the inside of one of the fastest corners on this world championship. He's driven this circuit for years; you know you don't do that here.").

126. See, e.g., Owen M. Fiss, *The Supreme Court, 1978 Term*, 93 HARV. L. REV. 219, 219 (1979) (noting the growth of collateral estoppel in response to docket pressure).

127. See *supra* text accompanying note 88.

128. 2021 F1 SPORTING REGULATIONS, *supra* note 13, art. 17.3, at 13, art. 47.3, at 48.

129. See 28 U.S.C. § 1292(a)(1) (noting appeals courts have jurisdiction for interlocutory orders); see also *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 83 (1981) (applying this principle).

130. See 28 U.S.C. § 1291, as applied by *Cohen v. Benefit Indus. Loan Corp.*, 337 U.S. 541, 546 (1949) (applying § 1291 in cases where the case "finally determine[s] claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.").

because injunctions can have immediate damages, as can decisions on an individual's constitutional rights. Similarly, as noted, incorrectly decided in-race penalties can have an immediate impact on the outcome of a race that cannot be undone later in the race or in a post-race situation. The underlying issue is one of desert: the essence of the sport is to determine which driver and team finish the race first, testing the engineering and ingenuity of the car and the physical capability and racecraft of the driver. Where an official makes an incorrect call, they upset the test, injecting an external element that affects the contest and undermines the test of the drivers' and teams' skills. Thus, the winner may not be the best driver in the best car—it may be the driver that benefited the most from errors in stewarding.

The FIA should implement an immediate, but limited, in-race appeals process.¹³¹ To limit the impact on the stewards' in-race workload, appeals should be permissible only in cases where a team believes a penalty was wrongly called (i.e., a false positive). Permitting teams to appeal false negatives—wrong non-calls—may open the floodgates too wide, overwhelming stewards who need to respond to a variety of other changing on-track circumstances. Teams must appeal the penalty within one lap of the announcement of the penalty and may only do so if they have additional telemetry or data that could change the determination of fact. This is similar to professional tennis's use of Hawk-Eye to use statistical algorithms, based on real-time data, to determine whether a ball was out.¹³² In fact, the FIA has established an offsite "Virtual Race Control Room" that helps process and analyze video and data to "replay and review aspects of the competition and the decisions made" during all races in the 2022 season.¹³³ This Virtual Race Control Room could help process the additional telemetry or data and help determine the outcome of the appeal, without adding to the workload of the onsite Officials.

Further, by limiting appeals to instances where new telemetry or data can change the determination of fact, the FIA prevents teams from making broad-based arguments. Officials will thus not be inundated with needless appeals and can make a decision based on the facts. The justice system has similar limitations, permitting retrials when evidence previously unavailable comes to light.¹³⁴ And to further limit abuse, each driver should only be

131. This is in addition to post-race reviews, which also permit reviews if "a significant and relevant new element is discovered which was unavailable to the parties seeking the review at the time of the decision concerned." 2021 FIA CODE, *supra* note 68, art 14.1.1, at 63. This process is also different from the proposed Video Assistant Referee system, which is designed to provide more resources and replay ability to officials. Alex Kalinauckas, *FIA Explains How VAR System Will Work in F1*, MOTORSPORT (Mar. 19, 2022, 7:09 AM), <https://us.motorsport.com/f1/news/fia-explains-how-var-system-will-work-in-f1/9136112/>.

132. See, e.g., BERMAN & FRIEDMAN, *supra* note 38, at 376-77.

133. Kalinauckas, *supra* note 131.

134. FED R. CRIM. P. 33(b)(1).

permitted two appeals per race.¹³⁵ Finally, if Officials—by majority vote of the stewards—are to reverse their decision, they should apply the More Likely Than Not (“MLTN”) standard, unlike the Clear and Obvious Visual Evidence (“COVE”) standard applied in the NFL.¹³⁶ This is because a MLTN standard minimizes the total number of errors,¹³⁷ which is the preferable outcome here since it is unclear whether the cost of false positives and false negatives differs greatly, and that assessment is circumstance-dependent.¹³⁸

This system of in-race appeal has several benefits, in addition to mitigating the problems outlined in Part 0.0. It goes hand-in-hand with preventing post-race appeals for most in-race penalties without new evidence, since post-race appeals for in-race penalties may engage in difficult causation and counterfactual analysis that may provide no fruitful outcome. For example, assume Officials incorrectly applied a ten-second penalty to Verstappen on lap ten, causing him to move from first to second. If the third-place contender then crashed into Verstappen causing Verstappen’s retirement from the race, a counterfactual analysis may suggest that without the incorrectly applied penalty, Verstappen would have maintained the lead, and won the race—where in reality he did not finish. Because the intervening causes create an innumerable number of potential outcomes, this counterfactual analysis provides no help, and need not be engaged in.¹³⁹ But an in-race appeal process at least provides drivers and teams with some recourse, thus increasing stewarding accuracy and allowing them to account for facts that may not have been available at the time of decision but are nonetheless relevant.

V. CONCLUSION

F1 is arguably the pinnacle of motorsport. It combines the limits of human physicality with engineering that is dreamed up in science fiction.

135. Of course, a variety of appeals processes exist. The NFL penalizes appeals that do not overturn the original decision by docking a timeout. BERMAN & FRIEDMAN, *supra* note 38, at 435-38. The MLB and professional tennis limit players to three incorrect challenges. *Id.* But because teams in F1 do not have timeouts or other pause-game options, it seems unnecessary to penalize the drivers or teams for appealing.

136. Michael N. Berman, *Replay*, 99 CALIF. L. REV. 1683, 1691-97 (2011); *see also* BERMAN & FRIEDMAN, *supra* note 38, at 438.

137. *Replay*, *supra* note 136.

138. *See supra* Part II.A. Note that assessing the optimal standard and the potential impacts of an MLTN standard are beyond the scope of this Article. But there may be negative effects to a MLTN standard, such as striking stakeholders as arbitrary and possibly biased, which would reduce fan and competitor confidence in the sport.

139. An additional problem is that even if this counterfactual analysis could be successful, an effective remedy would be impossible. Unlike do-overs in NBA games, given that there are more than two teams at play and an immense number of variables, in addition to no “score” at any point in the race, a do-over that replicates conditions at the time of the incorrect call would effectively be impossible. *See* BERMAN & FRIEDMAN, *supra* note 38 at 458.

However, that pinnacle has been overshadowed by politicking, poor stewarding, and questions of fairness and justice that cast a pall on the essential contest and test. The procedural mechanisms suggested in this Article are just a start that will take F1 from flying by the seat of its race suit, to a more formalized system that prevents issues of fairness and justice from overtaking racing as the key factor in championships. This Article addresses only a few elements of fairness in F1. There remain many unjust practices in F1, including ineffective cost caps,¹⁴⁰ a lack of women, diverse, and generally underrepresented or underprivileged team members on the grid,¹⁴¹ the hosting of races in countries with known human rights violations,¹⁴² and the integrity of the broader appeals process from F1 and the FIA to the ICA and the Court of Arbitration for Sport. However, F1 changes incrementally, but moves forward every year. These solutions might help move it forward, too, though that progress will not be measured in tenths of seconds, but in how fair the sport becomes.

140. See, e.g., Christian Sylt, *The \$1.8 Billion Exemptions from F1's Budget Cap*, FORBES (Nov. 1, 2019, 6:15 AM), <https://www.forbes.com/sites/csylt/2019/11/01/the-18-billion-exemptions-from-f1s-budget-cap/?sh=50749aa14bb7> (discussing the major loopholes in the new F1 cost caps).

141. See, e.g., *When Will We See the Next Female F1 Driver*, MOTORSPORT WK. (Oct. 20, 2021), <https://www.motorsportweek.com/2021/10/20/when-will-we-see-the-next-female-f1-driver/> (discussing the history of female F1 drivers and the lack of a current woman on the grid); Mark Hughes, *Billionaires' Sons Only? Mark Hughes on Money and Talent in F1*, THE RACE (Dec. 3, 2020), <https://the-race.com/formula-1/billionaires-sons-only-mark-hughes-on-money-and-talent-in-f1/> (noting the overrepresentation of F1 drivers from wealthier backgrounds).

142. *Saudi Arabia: F1 Events Risk Whitewashing Abuses*, HUM. RTS. WATCH (Dec. 2, 2021, 12:00 AM), <https://www.hrw.org/news/2021/12/02/saudi-arabia-f1-events-risk-whitewashing-abuses>.
