

# Extraordinary Meeting of the World Motor Sport Council

## I. Hearing

### 1. Preliminary Points

#### Max MOSLEY

At my request, Sebastian has gone to each of the two teams – McLaren and Ferrari – and explained that, because the dossier arrived very late last night, the World Motor Sport Council needed to take a bit more time to read it before we open the hearing. I am not sure that everyone has read it. There is a great deal in it that may not be directly relevant, and it is not as bulky as it looks. Nevertheless, I feel you should be given more time. If you wish to take this time to have a quiet look at your dossier, this would be a good opportunity to do so.

#### President of the World Karting Federation

I wished to point out a possible error in the first dossier, page 134. Regarding the telephone discussion, Jonathan Neale is the name that is listed for each of the witness responses on that page. If I recall correctly, it was Paddy Lowe who stated all of this, not Jonathan Neale.

#### Max MOSLEY

Thank you very much; we will take that on board.

Are there any other points that people wish to raise on the dossiers?

*[After 20 minutes time, Max Mosley asks whether there are questions or requests for additional time. As none are put forward, the teams are called in.]*

For clarity's sake, we ask that any teams other than McLaren and Ferrari please sit at the end, where they will be comfortable. Witnesses, other than the expert witnesses, will be asked to sit outside, as we do not have room to seat them all. In any case, it is preferable that witnesses not be present during the proceedings. Three seats have been provided for McLaren and three for Ferrari. We are trying to accommodate everyone as best possible.

*[It is ascertained that all of the witnesses other than expert witnesses are outside. Paddy Lowe being deemed by Max Mosley a witness of fact in this circumstance, he is also asked to wait outside.]*

I apologise that it was rather difficult to accommodate all those requiring seating in this room.

We sent out a note in an attempt to limit the amount of time spent in an actual hearing today, particularly in view of the large quantity of documents being circulated. I hope that we will be able to abide by that schedule.

We thought that the best way of proceeding was to allow to Ferrari to present its case, as we were criticised last time for allegedly failing to allow Ferrari the proper opportunity to do so. Thus, after preliminary matter, we will allow Ferrari to present its case for a maximum of 45 minutes. McLaren will then have 1 hour and 30 minutes to present its position. It would be most efficient if the actual submissions were very short so that more time could be dedicated to asking questions and listening to witnesses. However, it is up to each party how it wishes to allot time for questions and, perhaps, other people's witnesses.

I should also say that it is our intention – because it has been suggested in the press that these proceedings are less than fair or that we are in some way published – a full transcript of both hearings, (26 July and 13 September) having first given the parties the opportunity to redact from those transcripts anything that they feel is confidential, or for which they can give genuine reason for not publishing them. It is in the interest of motor sport and Formula 1 that people can understand what took place and form their own opinion as to what happened. We hope to circulate a transcript within 24 hours, then leave you 48 hours to make whatever redactions are deemed appropriate.

I should add that, if there is any question of imposing any sort of penalty at the close of the hearing, we will invite the parties back to make submissions on that, particularly the affected party. This is fundamental. We will also invite Lewis Hamilton's counsel, should there be any decision that might affect him, so that we can hear submissions on his behalf. That concludes the preliminary points, on my part.

## **Ian MILL**

I have two points.

The first is a matter that we did raise in our skeleton submissions: it concerns the Italian documents, if I may refer to them as such, which you have received and which form part of the evidence against us. You will have read in our submissions that we have concerns that those documents may have obtained improperly. We have present, in the room, if deemed helpful and relevant, our Italian lawyer, Professor Amodio, who can explain the issues to you. He has been responsible for drafting the Italian proceedings which are in our dossier papers. It may be that this is all a misunderstanding, but as the President wrote to us when we received these documents, he had understood that the reason for their arrival, at the time of their arrival, was that Ferrari had to obtain a court order to allow them to be disclosed. Please understand what these are: these are documents from the confidential files of the police, in relation to the potential prosecution of Mr Coughlan and Mr Stepney. If they are used today, they will be so for a purpose entirely unconnected from that. Professor Amodio, who is a witness of fact for these purposes, states that he spoke to the prosecutor. The prosecutor told him that Ferrari had indeed applied to him for permission, and that he refused it. We have written to Ferrari for a copy of the court order, for it is entirely possible that we have misunderstood the position or that the prosecutor had misremembered events. As far as we know, we have yet to receive a response from Ferrari on that. It is very important that, before hearing Ferrari's case, insofar as they are going to rely on those documents, that a substantive response be given: if they have obtained a court order, they should assure us of that and, if they

have, preferably produce it. In that case, we can forget about this and move forward. Otherwise, the World Motor Sport Council needs to understand that there may be issues on which my clients have to reserve their rights, insofar as they regard and are based upon documents improperly obtained.

**Max MOSLEY**

In front of us is a list of 323 text messages and telephone calls – a combination of the two – over a 3.5 month period. The World Council's only concern is whether that list is accurate and truthful. We are not concerned with whether there are issues over how that is obtained. Unless there is evidence that it is forged or inaccurate, we will take it on its face value. We do not enter a debate about Italian law; we have neither the time nor the skills for that. We have a list, we will look at it and you can make whatever points you wish to make about it.

**Ian MILL**

I understand that that is the position that the World Motor Sport Council has taken. It has to understand that the fact that it is looking at the list, and being invited by Ferrari to draw inferences from that list may create serious problems. However, if that is how the World Motor Sport Council wishes to deal with this, then that is fine. You simply need to know that we reserve our rights with regard to that.

**Max MOSLEY**

Absolutely; that is understood. What was your second point?

**Ian MILL**

The second was raised just now by Mr Dennis, who was concerned, upon coming into the room, a gentleman whom he believes is or has been a director of Ferrari: Mr Piccinini. He was concerned as to whether that gentleman intended to play any substantive part in the proceedings and have an impingement on the result.

**Max MOSLEY**

You are quite right to make the point. He is indeed a director and was, many years ago, the Ferrari Team Manager. He will not play a part in the proceedings and will not vote. However, as he is the Deputy President of Motor Sport for the FIA, it seemed entirely appropriate that he should be here.

**Ian MILL**

That seems entirely appropriate. I had thought that would be the answer.

**Max MOSLEY**

If you are ready, the floor is Ferrari's.

## **2. Counsel Statements**

**Henry PETER**

Mr President, Ferrari will be represented today by Nigel Tozzi, an English QC and myself. Ferrari's case has been presented in detail in a submission filed on Tuesday, with 64 documents. Two of these documents are highly confidential and are thus only with the World Motor Sport Council: the three exhibit to Mr Procogenta's affidavit; as well as two binders containing the 780 pages of material founded at Mr Coughlan's domicile. It is only by seeing and weighing it that one fully realises what is in question.

**Max MOSLEY**

Might I interrupt you. We are happy to have these documents shown quickly to the members of the World Council, but it is up to you to decide when that will happen.

**Henry PETER**

Thank you. As requested by the FIA, Ferrari also filed, before noon, a six-page skeleton in both French and English. We assume that this has been read and the case will therefore be presented quite briefly, at this stage.

I will do this and Nigel Tozzi will then carry on, developing some of our points.

Relying on the facts known at that time, on 26 July 2007, the World Motor Sport Council found that McLaren had breached Article 151c of the International Sporting Code. The WMSC, however, decided that evidence of any use of the material found in possession of McLaren was insufficient to impose a penalty. The Council, however, reserved the right to invite McLaren back in front of it in case new evidence emerged.

Since July 26th, new facts have indeed emerged. First, they show that McLaren has not told the full story, thus the WC was misled when it issued its first decision. Secondly, new and impressive evidence has now been collected, which shows that a substantial amount of additional confidential Ferrari information penetrated McLaren at advanced levels and was used in various manners. These facts results from documents collected by the FIA. We refer to the e-mails exchanged by Alonso, De la Rosa, Coughlan, Lowe and Stepney and by Ferrari. I am referring here to reports obtained – legally – by Ferrari, collected and prepared by the Italian police, with evidence that hundreds of SMS –

**Max MOSLEY**

Can I interrupt you? We know all of this. We need to hear information that is not contained in the documents, or hear the witnesses. There is very little new evidence and we are familiar with it.

**Henry PETER**

Fine. I would like to recall that, if this illegal possession used by McLaren had not been discovered by chance, McLaren would probably still be using it today. Furthermore, if the FIA had not written to McLaren's drivers, we would not be here today. In all of this process, McLaren never contributed to discovering the truth, at least not spontaneously.

We believe that McLaren derived substantial advantage from the knowledge and use of the material. We know that, with so little between McLaren and Ferrari, the slightest adjustments can make a major difference in terms of results. In view of these facts and this new evidence, we trust that the World Motor Sport Council will be able to make the appropriate decision today.

**Nigel TOZZI**

We started receiving McLaren's documents at 4 PM yesterday; we did not receive the detailed submissions until after 6 PM. We are thus unable to respond in detail. We are very conscious of the time constraints for today's hearing. It is important to understand, then, that any failure to deal with a point in McLaren's submissions as an acceptance of its truth, but simply a reflection of the time available to us.

The McLaren submissions and witness statements a number of completely unfounded criticisms of Ferrari, presumably in an attempt to deflect attention from their own conduct. We urge you to bear in mind that we are here to consider McLaren's conduct, not that of Ferrari, and indeed not that of Renault, which also seemed to bear the brunt of some criticism from McLaren. We are here to consider McLaren's conduct. That is the ambit of this enquiry.

The third point is to remind you of the language of Article 151c itself, and the fact that you have already found McLaren, and rightly so, to be in breach of that Article. Article 151c makes it an offence where there is any fraudulent conduct or any act prejudicial to the outcome of a competition, or to the interest of motor sport in general. There is no requirement in Article 151 that it must be shown that a party needs to have gained advantage or that documents have actually been used, as in this case. If I may provide analogies from another sporting arenas. In athletics, if a runner takes a banned substance, that runner is disqualified; it is not necessary to show that the runner has gained an advantage. It is enough that he has taken a banned substance. If a football team fields a player who has been banned, it will be disqualified or lose points. It is not necessary to show that the said player had any influence on the outcome of the match.

**Max MOSLEY**

Mr Tozzi, may I interrupt you for one second. I do not wish to keep interrupting. The point you are making is fundamental to motor sport. Someone can be 1mm over with their wing, or half a kilo over or under with their weight, and thereby be disqualified. We have exactly that principle. Last time, the World Motor Council was motivated last time by the fact that all of the information was reported to us to be in the hands of a rogue employee. We were told that none of the information had reached anyone in McLaren. Under those circumstances, it seemed to us unfair to impose the same sort of penalties as those that would have been imposed had .in McLaren. It was a question of fairness, not a rigid application of the rule. The principle you are explaining is one that we fully understand and follow. However, the particular circumstances on the 26<sup>th</sup> were that we did

not have sufficient evidence to rebut the assurance that none of the information has found its way into McLaren.

The real issue is as follows: were the 780 pages disseminated into McLaren, to any degree? Secondly, does the new evidence add anything in arriving at that answer?

### **Nigel TOZZI**

I understand and will not belabour the point I was making. I understand the boundaries, but that does not indicate that I accept that you are so prescribed.

The key facts for you to consider are, in light of the new evidence:

- The degree of contact which we now know to have taken place between Coughlan and Stepney. I will not respond in any detail when my learned friend raised his objection to the manner in which the information was used in the Italian prosecution. We say that objection is extraordinary from a party that has come before this body on several occasions, claiming a desire to be helpful, cooperative, and open. It is extraordinary that they are trying to suppress that information's being in front of you, even to the extent of taking materials from proceedings in Italy and having that withdrawn.
- We completely reject the suggestion that we have, in any way, behaved improperly in using that material. Our Italian lawyer, Mr Deluca, is here to provide counsel on that. It may be taken to say that we have a complete answer to all of the points made by McLaren, which are misconceived, quite possibly because they do not understand the full position.
- Thirdly, I would pick up on the suggestion of cherry-picking. If the FIA wants us to give all of the material to McLaren which we are allowed to give, then we are perfectly happy to do so. It was not a question of cherry-picking, choosing material that was advantageous to our case, whilst keeping that material that might have assisted theirs. Simply, a lot of material that is quite irrelevant. We are happy for them to see any additional material that we are allowed to show them.

More importantly, what does the new material show? You will have received with your papers, as Exhibit 61bis, showing exactly what the nature, timing and extent of these calls were, at different periods. I invite you, if you have not already done so, to look at that graph. There are a series of graphs.

### **Max MOSLEY**

Apparently, the document is confidential and has not been circulated.

### **Henry PETER**

It is not confidential, it is has been circulated and is our document, Exhibit 61bis.

**Nigel TOZZI**

This combines the material from Aligarto 9 with that in Aligarto 18.

**Max MOSLEY**

We all have it.

**Nigel TOZZI**

The graph seeks to show, in pictorial and colour format, detail from the SMS messages, from Mr Stepney to Mr Coughlan, and the replies from Mr Coughlan to Mr Stepney, as well as the telephone calls. We know that, from 11 March to 3 July, 288 text messages were exchanged, and 35 telephone calls took place. The graph shows that the contact increased in: the period leading up to the Australian Grand Prix; during private tests carried out by Ferrari in Malaysia, leading up to and during the Malaysian Grand Prix; leading up to and during the Bahrain Grand Prix; and leading up to and during the Spanish Grand Prix.

This is not the whole picture. These simply reflect the details that the Italian police have obtained, by looking at two of Stepney's phones. One covers only the period 21 March to 3 July, hence ten days are missing in this graph; the other covers only 11 March to 14 April. Anything on the latter phone is not reflected in this graph. This is still only a part of the overall picture, then. Regrettably, we do not have the texts of the SMS messages, despite our very best efforts to do so. As far as I am aware, the police does not either.

What conclusion can we draw from this? Mr Mill, speaking before you on 26 July, stated that: "inferences are always open to be drawn in appropriate circumstances". This is such a circumstance. The obvious inference was that Stepney was feeding confidential information about Ferrari and the Ferrari car to Coughlan. It demonstrates that the story that Coughlan told, of only limited contact with Stepney, was completely untrue.

What was the content of that contact? Unfortunately, it is unknown and we must draw inferences. However, we are assisted by a document not before you at the previous occasion: an e-mail that Coughlan has disclosed in a further affidavit, in the English proceedings. That document is found in Exhibit 57 of our bundle.

**Max MOSLEY**

Would it be possible for you to read it?

**Nigel TOZZI**

This is an e-mail dated 14 March, from Stepney to Coughlan. The subject is "drag".

*"Mike, apart from the rear wing, I don't think this is the whole story. Once the front floor compresses, when it makes contact with the ground, which is around the 200km per hour to full compression,, the drag reduces quite considerably, due to reduction of air beneath the car. At the*

*same time, the turning vanes also move. The front floor is about 100 cm long, so it is quite an effective device, also as mentioned in my previous e-mail, as a mass damper, because it helps in this mode to control the arrow and keep the front tyre contact patch. Other areas we look at are rear stall, but this is difficult to control. Another solution has been found, which I'll talk to you some other time. Regards, Nigel."*

What does that e-mail tell you that you did not know before? It is quite clearly part of a sequence of information exchange. He refers to an earlier e-mail in which he has passed information. He refers, at the end, to the intention to tell him further details about another solution, presumably another solution that Ferrari has found. Secondly, it plainly has nothing to do with so-called whistleblowing. The utterly discredited argument that McLaren ran before you on the last occasion to justify the admitted use of Ferrari confidential information, in order to make a complaint to the FIA. This demonstrates, quite clearly, that the flow of information from Stepney to Coughlan was a revelation of Ferrari's confidential secrets. In that this is part of a flow, one going on at the dates we saw, you can and should draw your own conclusions as to why Stepney should be funnelling this information to Coughlan, and whether it is realistic that he should have kept that information to himself.

As to the information being used, I have already mentioned whistleblowing, though I suggest that it was no such thing and, rather, part of a stream of information. In any case, one does not whistle-blow to the employer's major competitor. If any whistle-blowing was to be done, Mr Stepney should have been sending details to the FIA. So far as we are aware, he did not provide the sort of detailed information to the FIA which he chose to give Coughlan and, thereby, McLaren.

Secondly – and this brings us to the major piece of evidence that has come to light since the last hearing – the e-mails disclosed by Pedro de la Rosa and Fernando Alonso show that, contrary to what you were told on the last occasion, the information which Coughlan was receiving from Stepney was being shared within McLaren. McLaren has tried very hard to suggest that the information being disclosed was limited to only the two drivers, that there was no wider dissemination within McLaren, and that we have jumped to a series of inappropriate, unfounded conclusions. We ask you to use your common sense, stand back, look at what the e-mails actually say and compare them with what the McLaren witnesses try to say to explain them. Ask yourselves, "Does that ring true?" We suggest that, when you ask yourselves those questions, you will come to the only conclusion that you can: that you are being fed a line that is not the complete story. Moreover, this puts into context what you were told on the last occasion about, for instance: the installation of the firewall, Coughlan's extraordinary trip to Barcelona to tell someone to stop contacting him, and the incredible account of the meeting between Coughlan and Neale, when Coughlan tried to give him a document and Neale, quite deliberately, turned a blind eye.

The further documents that have come to light are found in the FIA dossiers at Tab 5. First, could you turn to Page 61? This shows a very short e-mail dated 21 March, from Pedro de la Rosa to Mike Coughlan: "*Hi Mike, do you know the red car's weight distribution? It would be important for us to know so that we could try it in the simulator.*"

Why does de la Rosa ask Coughlan? We would suggest that it is because he knows that Coughlan has a link into Ferrari via Stepney. Why does he want that information? You see what he has said in his statement. But look at what he explains in his e-mail: "*So that we can try it in the simulator*". This is not curious interest, as he attempts to portray it in his witness statements. He wants it in order to copy it in the simulator, in his own words.

I ask now that you turn to the next e-mail in the sequence. On page 52 of the English proceedings. It is an e-mail dated 25 March 2007, sent at 01:43. De la Rosa reports to Alonso on results which he has following the experiment in the simulator. In the versions we have, there has been a certain amount of redaction, or blocking-out of text. Consequently, one must work out what is actually said. Item 1 is about a variable brake balance system. This is important because, as you know – and we have drawn this to your attention on several occasions – one of the aspects that interested Coughlan in particular was the Ferrari brake balance system, an innovative and unique design. In his own, discredited affidavit, Coughlan admitted asking Stepney about it on no less than four occasions. We know also that he came back with a sketch, which he showed Taylor. Here, we see an exchange of e-mails demonstrating that McLaren is very interested in the design of a similar system. For those of you who are entitled to view the e-mail with all of the words left in, I invited you to do so. Regardless, in the e-mail, Mr de la Rosa is saying that, *“with the information that we have, we believe Ferrari has a similar system: they have three positions which they change from the cockpit.”* He also describes, saying: they have “A”. (In our version, the text has been blanked out, but in de la Rosa’s version, he tells you what they are.) He says, *“that was phrase which I did not understand, something that Coughlan had told me three days earlier, which I had memorised.”* Please think about whether this sounds very credible. He says, *“They have this system which delays the rear-braking initially then proceeds to increase it gradually.”* This is not an e-mail from a man who has not understood what he has been told. *“We get the same results [REDACTED].”* In other words, he clearly does understand what he has been told.

On Item 2, the flexible rear wing he says, *“this is also a copy of the system we think Ferrari uses. It is another two- to three-tenths of a second quicker”*. Then Item 5: *“information from Ferrari, their weight distribution in Australia was ‘...’”,* giving very precise details.

### **Max MOSLEY**

Not to interrupt, but in the next paragraph of the e-mail, he states that, *“it will take them a few weeks or a month or two to have it”*. That would suggest that, perhaps, the intention is to make the same device.

### **Nigel TOZZI**

Exactly. I agree with you.

Then there is reference to very detailed information, which De la Rosa admits having received from Coughlan: the car’s aerobalance, and the use of an alternative to air to inflate the tyres. Here, he comments, *“We use nitrogen; we’ll have to try it, it’s easy!”* They are clearly using that information with a view toward copying it.

Alonso’s reply in relation to the brake balance is: *“I hope you can try this out. I don’t know whether it is ready”*. He is keen for it to be tried it. The next passage that has been blanked out, allegedly on grounds of confidentiality. However, because we saw this before it was blanked out, we know what it said, cannot erase it from our memories, and we have referred to it in our submissions. I do not accept that this is in any way confidential. If you do see it, you will see what I say that.

On Item 2, the rear wing, he says, "*Let's hope this only takes one month*", indicating that he wants this process to speed up. On Item 5, he comments in terms about the weight distribution and what this draws attention to. "*It is very important to test the [blank], since in the race, they have something different from the rest.*" You can read this for yourselves."

De la Rosa comes back, saying: "*all of the information from Ferrari is very reliable. It comes from Nigel Stepney, their former chief mechanic. I don't know what post he holds now. He is the same person who told us in Australia that Kimi was stopping in Lap 18. He is very friendly with Mike Coughlan, our chief designer, and he told him that.*" He refers to something being ready for testing on Tuesday, then says, "*I agree 100%, we must test the [blank] very soon.*"

You are being told that this was being passed only between the drivers and that none of this information was shared with any of the engineers. Alonso is saying that "*we must test this!*". Yet you are asking to believe that because de la Rosa subsequently had a conversation with someone from Bridgestone who said that this does not always work, that the entire idea was dropped. Does this sound credible? We say it does not.

Going back to the e-mail and the information about Kimi stopping in Lap 18, there is a lame attempt to suggest that this is not reliable, because he actually stopped in Lap 19. As you will all know, the difference between Laps 18 and 19 may arise simply because you have enough petrol to eke into the next lap. The key point is that Coughlan was being fed information about Ferrari's race plans, which he passed on to the drivers. Did the drivers keep that information to themselves? Do you really think they would? Use your common sense. Use your knowledge of the sport. We say you should draw some obvious conclusions.

Let me take you forward in the bundle, to page 62. This very interesting sequence of e-mails starts with de la Rosa pressing Coughlan for details of the Ferrari braking system: "*Can you explain me as much you can Ferrari's braking system? What are they doing?*" Coughlan initially says, "*it may be difficult for you to understand*". Yet De la Rosa presses him for the information, saying, "*Fernando wants to know*". Eventually, Coughlan gives him a very detailed description of our braking system. He must have and can only have gotten that from Stepney. You are being told by de la Rosa that, because he did not understand it, he did not share that information with anyone. Again, use your common sense: does his sound very credible? Here is Coughlan, disseminating information. Bear in mind that Coughlan had said, in his affidavits, that apart from the whistle-blowing, he had no other contact with Stepney and that he had not shared this information with anyone from McLaren. You now see a very different picture emerging.

Why does this picture emerge? Because the drivers blew the whistle, making for a very interesting story in itself. When Alonso raised the existence of documentation on 5<sup>th</sup> August with Mr Dennis, obviously in the context of some dispute, he mentioned the matter to your President, but did he try to get to the bottom of it? Did he say, "If you have documents, I must have them, because I am under duty to the FIA to take them back to the World Motor Sport Council." No, he did not. We received this information only because the FIA wrote to the drivers, telling them that they were under duty to disclose. It was not been volunteered by McLaren. That tells you a great deal about the internal investigations carried out by McLaren and their enthusiasm to volunteer information. We therefore say: look at the facts; don't listen to the assertions. The facts are that this is information that FIA secured from the drivers. It did not result from an internal investigation by McLaren.

How does this fit in with the rest of the facts? According to Coughlan, we know that he spoke to Stepney on four occasions about the brake balance and was given a drawing, which he showed to Taylor. Mr Taylor seeks to suggest that this was nothing to him. An engineer of Mr Taylor's experience would instantly have known that he was being shown provided a significant improvement in functionality. We have included evidence from Professor Genter explaining this to you in some detail. In McLaren's submission (the lengthy document), more is told about what was happening in the McLaren camp. I ask that you turn to page 6 of their submissions, at Paragraph 15. It starts on page 5; I will pick up the story on page 6. "McLaren's novel system" – purportedly their own – is described in the following terms: *"From mid-February 2007, based on an idea of Mr Lowe, McLaren developed a novel and completely different system for achieving variation of the relative braking mode on the front and rear axels. They say that McLaren's system was tested on 22 and 29 March, and introduced at the Spanish Grand Prix on 13 May. It was inspected and approved by Mr Whiting"*, who is then quoted. *"In the first Grand Prix, McLaren observed that Ferrari was using lever, which it believed was likely to be part of a quick-shift system."* Immediately after the Grand Prix, Mr Lowe instructed a team of vehicle dynamics specialists to study footage – in effect, ordering a spying exercise to see what Ferrari has. He says that, *"Coughlan was not involved this study. The team confirmed that this appeared to be part of a quick-shift system."* Then, it is said that, *"since some engineering resource had become free, Lowe asked Coughlan to release an engineer to him to produce 2007 version. Coughlan released Chris Lewis to this task. Lewis quickly designed such a system."* They add that the evidence of Lowe and Lewis shows that this was designed entirely independently, based on McLaren's 2001-2002 design.

If you turn to the statement of Mr Lewis, which we received yesterday, it says that: *"In early April 2007"* – the dates are important, bearing in mind the e-mails we have just seen – *"Mike [Coughlan] asked me to begin work to design a quick-shift brake balance adjustment system, not a particularly difficult task, as McLaren had used a quick-shift system before, in 2001 and 2002. My work mainly involved taking the knowledge that we already had about quick-shift systems and optimising it for use on the 2007 McLaren car"*. He exhibits a document that we have not seen. He then confirms what Mr Lowe has said to you in a document we have not seen is correct. In particular, he states that, *"For the purposes of the quick-shift project, I reported to Mike directly, without the involvement of my team leader, while Mike supervised the project. His involvement was no more than the general supervision and direction he gives to all drawing projects. For example, Mike outlined the idea that I import that 2001-2002 design into the 2007 car. I looked at that previous design and brought it into a CAD scheme, with changes necessary for it to fit the 2007 car. Mike and I and Pat Frye reviewed this scheme and agreed the final details. I completed the detailed design and component drawings, which Mike approved for manufacturing."*

Here is someone reporting directly to Mike Coughlan, working on a brake-balance system. At the same time, you have hard evidence that Coughlan is pestering Stepney for details of the Ferrari system and exchanging that information with at least De la Rosa at exactly that time. Yet you are being asked to accept that he did not contribute any ideas that he might have obtained from Ferrari to the development of the McLaren system. The McLaren system may be different; of course it is, for it was designed by different people.

We submit that the idea that Coughlan did not use any of the information he had obtained illegitimately from Ferrari to contribute to the development of that design is so fanciful that you should not accept it. More to the point, the people who will come along and testify the "he did not give us any confidential information" probably don't know. If Coughlan simply says, "have you tried this?" or "have you thought about that?", they are not to know that he has that idea because it

has been purloined by Stepney from Ferrari. They see it as Coughlan contributing to the discussion. And we suggest that the fact that he is sitting on the information and pressing Stepney for details is the clearest indication of use, or perhaps only attempted use of Ferrari's documentation and information. It is certainly enough for you to conclude, gentlemen, that something has to be done.

Of further interest is Mr Taylor, with whom Mr Coughlan also seeks to discuss this on the first working day following his trip to Barcelona. He goes to him with the drawing, asking what he thinks about it. This is part of that bigger picture that we suggest you consider. We say that there is something odd about the fact that, in Australia, the Ferrari cars were so much better than the McLaren cars. Yet, as you all know, McLaren has caught up. Gentlemen, if you wish to ask about technical details, we have witnesses present. Mr Braun, in particular, will be able to deal with any technical inquiries you may have.

Might I also remind you of something that Mr Neale said in a relatively recent press interview? It touches upon the issue of use, what can be relied upon, etc. In the 11-12 August issue of the *Financial Times Magazine*, Mr Neale stated, referring to the McLaren car: "*There isn't much on the car that stays the same; maybe the seatbelts don't change. From the moment the car is formed in January to the last race in October, we make an engineering change on average every twenty minutes. We started behind Ferrari, but what determines how the season progresses is how quickly you can change the car.*"

You will be bombarded with technical information from Paddy Lowe, saying that he knows the DNA of every change and can tell you exactly its origin. With the greatest respect, whatever the document you are shown and we are not, I doubt that he will be able to detail with every change made every 20 minutes. The gap in Formula 1 is so tight that, as Dr Braun says, you can win or lose a race by a matter of one-tenth of a second. Top teams invest hundreds of millions of dollars to gain a technical advantage. Possession of a portfolio of information by someone as experienced as Mr Coughlan would be worth several tenths of a second. Coughlan is a designer with 15 to 20 years of experience. He is employed on a significant salary by McLaren. He is more than the Office Manager suggested by McLaren.

## **Max MOSLEY**

Mr Tozzi, I do not mean to be annoying, but we are nearing the 45-minute mark.

## **Nigel TOZZI**

I have my watch here and am quite aware of that.

The content of the e-mails is wholly-inconsistent with what you were told by McLaren at the last occasion, where they claimed to have carried out a thorough investigation. Either it was thorough and information was suppressed until Alonso blew the whistle, or it was not thorough, in which case you cannot place any trust in assertions such as those made on the last occasion and which are almost certain to be repeated on this occasion. In the context of what you now know, you must look at the other evidence. I have already mentioned the firewall, the trip to Barcelona and the meeting with Mr Neale. In view of the time, I will not develop those submissions. In our written submissions, we do say that the explanations offered are fantastic, simply unbelievable and should not be accepted, particularly in the light of the further information.

We have reached a position where we know that members of the McLaren design team were involved: Mr Coughlan certainly, as well as Mr Taylor and, possibly Mr Lowe. We know that the Management is involved. Whatever they may say, Mr Neale quite obviously turned a blind eye to the documents shown to him by Mr Coughlan, knowing that he had extensive contact with Stepney and had been receiving confidential information from him. We know that the drivers are involved, Pedro De la Rosa and Alonso both knew that Coughlan was receiving information from Stepney. Designers, management, drivers: how many people in McLaren need to be involved before it can be concluded that there was not only one "bad apple", and that there is systematic failure throughout McLaren to behave in a proper way. The conclusions we invite you to draw are listed in Paragraph 30 of our skeleton argument. I will not read them out. We do submit, bearing in mind Article 151, that it is important that the World Motor Sport Council does something now to restore the reputation of Formula 1 and not allow the sport to become an anarchic free-for-all.

I think I have managed to stick to my 45 minutes.

**Max MOSLEY**

Mr Mill, it is your turn.

**Ian MILL**

Gentlemen, could I start with the following central propositions:

- 1) The McLaren 2007 car is and the 2008 car will be 100% the product of McLaren technology, know-how, skill and endeavour.
- 2) No part of either car contains or will contain any element of Ferrari confidential information .
- 3) No use of Ferrari confidential information has been made, is being made or will be made, in the design or development of either McLaren car.

With regard to these central points, we offer the following general observations by way of opening:

- 1) Firstly, Ferrari is unable to point to any component part which it is able to establish as having been used by McLaren on its car. It is absolutely obvious that, over and above that what you have seen from Ferrari and hear from it today, every step imaginable has been taken to try to establish this. We know what sorts of steps are taken. We know what is done in the Formula 1 world, legitimately as Mr Tozzi rightly accepts: observation, photography, listening to transmissions, watching onboard footage, etc. I and you, certainly, have no doubt that Ferrari has pored over every piece of information that it can find on the McLaren car between April and today's date. Yet there is not a single allegation on the basis of that. The reason for this is that none can be made.
- 2) Ferrari is unable to make any more than a wholly-generalised assertion, backed up by nothing more than unjustified surmise and inference that use has been made.

- 3) The FIA does not point to any part of the McLaren car, which involves the use of Ferrari confidential information. The FIA has had, from the outset, an open invitation as stated last time and since repeated, to visit the McLaren premises, inspect the McLaren car, look at McLaren records (including test records), to satisfy itself whether any use has been made. That offer is repeated and has not been taken up. If the FIA had any genuine basis for concern in this respect it would have taken up the offer.
- 4) McLaren has provided and, if you have not had the opportunity to read the documents, compelling, clear and unequivocal evidence that no Ferrari confidential information has been used. You have before you the very detailed, confidential statement by Mr Lowe, attached to which is a signed statement from all of McLaren's engineers, except the five away on holiday and uncontactable. Every other McLaren engineer has come forward and put their names on the document.

This case, therefore, is not one about McLaren using Ferrari confidential information in its car this year or next. There simply is not a case to be made on that. Therefore, no question of any substantial sanction against McLaren can arise.

What is this case about? Let us briefly recall what happened last time: we were summoned on short notice to answer a wholly-ungeneralised charge of possession of Ferrari documents. We were informed of the charge on 12 July, and did our best on the time available to answer it. A hearing was held precisely two weeks later. I do not need to reiterate what occurred on that occasion. You were there, recall it and have had the opportunity, if you needed it, to view the transcript to remind you further. The allegations related to a dossier provided by Mr Stepney to Mr Coughlan in Barcelona and also, possibly, the disclosure to the FIA of allegedly illegal elements of the Ferrari car. We told you then what investigations we had carried out, we told you that we had spoken to the engineers, putting forward the evidence of Mr Lowe and Mr Taylor. We spoke to the Management, and put forth the evidence of Mr Neale and Mr Dennis. We instructed leading computer experts to trawl through the computers of Mr Coughlan and McLaren. We gave Ferrari access to do the same thing. Neither found any material document.

Nothing before you on 26 July suggested further avenues of inquiry or identified other parties about whom McLaren should have come forward. In particular, nothing on that occasion was available to us that we needed to make inquiries of our drivers: the FIA had not identified any material making that appropriate, nor had Ferrari, and Mr Coughlan had certainly not told us anything about that. We had his affidavit in the same way that you do. We put forth evidence on that occasion, which was and remains true. The dossier was kept by Mr Coughlan in his home. No one had knowledge of its existence. The disclosure that we knew about in March was legitimate whistleblowing. Since that last hearing, we submit that nothing has merged calling into question McLaren's evidence on these matters.

There have, however, been two developments. First, the drivers came forward with information, as a result of a letter from the President, showing that Mr Coughlan had given certain information to Mr de la Rosa, which Mr Coughlan said he had obtained from Mr Stepney. This happened last week. It is right to point out the background against which this occurred. Somehow, Ferrari wishes to make criticism or point on it. Quite to the contrary: it shows McLaren in a completely proper and straightforward light. Mr Dennis volunteered to Mr Mosley, at the time of the Hungarian Grand Prix, that one of his drivers had told him that he had received Ferrari information from a McLaren engineer. He then also told Max Mosley –

**Max MOSLEY**

I am sorry. First of all, I do not recall that being in Mr Dennis' statement. Secondly, it is completely untrue: he did not say that he received the information from an engineer. He told me that he had information that was damaging, which he was prepared to give to the federation. He did not say it came from an engineer.

**Ian MILL**

If I have mischaracterised Mr Dennis' evidence, I apologise. I was not intending to engage in evidential debate; I was simply seeking to summarise what I believed to be Mr Dennis' evidence. We will hear from him. If I am mistaken, I apologise.

Subsequently, he told Mr Mosley that Mr Alonso had retracted that allegation through his manager (and Mr Mosley's nod indicates that at least I got that part right). Mr Dennis did not believe the original suggestion from Mr Alonso. However, the fact that he brought it to the attention of the President of the FIA is the clearest indication that he believed that there was nothing further to be disclosed. If Mr Dennis had known that Mr Alonso might be in possession of damaging information, why would he tell the president of the FIA? That is hardly conduct consistent with bad faith or dishonesty on the part of my client and Mr Dennis, in particular. It is consistent only with our position throughout. It is said by Mr Tozzi that McLaren did not in fact investigate. You can ask Mr Dennis why this was: he genuinely believed that the assertion was not true and it was almost immediately retracted. Yes, he could have said that, despite his belief on this, he ought to go back and check. Hindsight is a wonderful thing. Do not infer from that any bad faith on the part of Mr Dennis. The FIA could have told Mr Dennis to go and check. It did not. Clearly, the FIA did not think that it was appropriate or necessary for McLaren to take any further steps at that stage.

The second development is that Ferrari has obtained – they say legally so – certain selected documents from police files in Italy and supplied these to the FIA. These suggest, assuming that they are accurate, contact between Coughlan and Stepney beyond that to which Mr Coughlan had previously admitted. However, this does not mean that McLaren was aware of it. It was not. The documents do not suggest, other than on the basis of an inference which we will rebut, further contact between Coughlan and people in McLaren, which is material for the purposes of your consideration. Ferrari's response to this new information has been to make a series of wild and unsubstantiated allegations. They are contained within the conclusion which Mr Tozzi has invited you to read. I will invite you to do the same. I will take you through it and tell you our answers to each point.

In response to the question as to what is in issue before you today, I will say the following: you are being asked by Ferrari to make a series of inferences and assumptions in the absence of direct evidence, from which you are inevitably being asked to infer that all those who come forth on behalf of McLaren are lying and that use has been made despite the denials from McLaren witnesses. McLaren invites you not to work on inference and assumption, when you have direct evidence. We invite you to listen to the witnesses, read their witness statements and to do so quietly, dispassionately and, above all, carefully, and reach your own conclusions.

What conclusion must you reach? Can you, to the standard required of you, as I will later define, be satisfied that our evidence, which fully rebuts any inference that Ferrari might wish you to draw, is to be disbelieved? The President, on more than one occasion, following the promulgation of the

last decision of the World Motor Sport Council, has made it clear (and correctly so) that, given the very serious nature of these matters, you would have to be satisfied to a very high standard before you can convict of usage. I think that, in one letter, the President, in response to the letter from the Italian MSA, referred to the need to show unequivocal evidence. In our submission, given the very grave allegations and the fact that several of my witnesses are facing potential criminal proceedings in Italy, you must be satisfied to a criminal standard – meaning, beyond reasonable doubt. I ask – I require – you to look Mr Lowe, Mr Dennis, Mr de la Rosa and Mr Hamilton in the eye and, unless you are satisfied beyond doubt that each and every one of them is lying to you, you will let us off. I am not asking that you dismiss the charge. That is a matter for elsewhere. However, you will not find that use has been made. If you do nonetheless do so, without being able to make those decisions, then you are making a very serious legal error. It is not only those who are here. 140 McLaren engineers signed the letter: will you disbelieve each of them as well? If so, we will contact them by phone and you will be able to question them. We did not bring them here, for that would have been absurd. Nonetheless, there is a huge body of evidence showing that you cannot and must not draw inferences adverse to McLaren on the information available to you, because those inferences are false.

It is right, given what I have just said, that you bear in mind that this is not the referral of your previous decision, which must go elsewhere. It has been withdrawn. However, the referral allowed the body to which the reference is being made – our International Court of Appeal – to look afresh at the events on the 26 July, the evidence given and the factual conclusions reached. That is not your function. You are *functus* in relation to that; you cannot review your own decision. Rather, you can consider the effect of new evidence. When you hear Mr Tozzi say that Mr Neale's evidence must, of course, be disbelieved, on what basis are you to do that? You made your findings on Mr Neale's evidence. You had your doubts about it. Mr Mosley made that clear. Yet you did reach your conclusions. Unless something material in the new evidence entitles you to form a different opinion about Mr Neale, that matter rests with you. If there is a subsequent referral or appeal, that is another matter, but is it not a matter for you. This is, in short, not an opportunity for Ferrari to make the same points as it did last time. Quite a large part of the submissions before you today were the same put in for the International Court of Appeal. I am not criticising them for this. Clearly, having produced a body of work, they are entitled to use it and adapt it. However, while their assertions may have been apposite at the time, they are not so for this body today.

Could I ask for some respectful silence, from your right?

**Max MOSLEY**

I think you have that.

**Ian MILL**

It is the identity of the person that is causing concern to my client.

What is the new evidence? Mr Tozzi has taken you through the e-mails. Perhaps I should do so as well. You will hear the evidence from Mr Lowe and Mr De la Rosa about them. Overall, so far as Mr De la Rosa is concerned, you will hear, quite simply, that he is friendly with Mr Coughlan. Anyone reading the last exchange of e-mails between Mr Coughlan and Mr de la Rosa in March can see the banter about football and Brentford. Read the e-mails to yourselves to understand the

relationship between the two. They are clearly friends. Mr De la Rosa says that this is why some of the contact took place and why he shared that information with Mr Alonso. Mr Alonso was new to the team and Spanish like him. Mr Alonso was feeling isolated and, as Mr de la Rosa wanted to make him feel part of the team, shared the information with him, in the friendly spirit intended. You need to familiarise yourself with the contents of those e-mails and understand and hear from me, if necessary, why they do not show any use of any Ferrari confidential information by McLaren. To put them in their context, you need to understand some of the background, in particular our submissions in relation to our brake-balance system.

There is a suggestion that, in some way, use has been made of Ferrari information in our brake-balance system. Mr Tozzi showed you the non-confidential summary of our case in that. I will not go over it again. You can hear from Mr Lowe when he testifies on it. It shows that, wholly-independently, prior to any contact between Mr Coughlan and Mr Stepney, we were developing our own system, one which Mr Whiting has looked at and deemed, before the Council, that it was entirely different from the Ferrari system.

What else is there beyond that? There is the suggestion that, because Mr Lewis was supervised by Mr Coughlan on the quick-shift system not yet on our car, that it can be inferred what Mr Coughlan might have said or done. It is symptomatic of Ferrari's lack of objectivity in its approach to this case that when Mr Tozzi read Mr Lewis' statement, he stopped at the end of paragraph 5. May I read Paragraph 6: *"At no time on the quick-shift project or at any other time did Mike give me any Ferrari confidential information or instruct me to do something which I, in any way, suspected was informed by Ferrari confidential information. In light of recent events, I have thought carefully about what interaction I had with Mike on this project, to see whether the benefit of hindsight might colour some of our interactions differently. I can honestly say it does not. What is more, given the nature of the quick-shift project, any information he might have imparted, would have been totally irrelevant. McLaren had all of the technology and know-how, and the design was a virtual carry-over of the 2001-2002 design. Mine was just the job of accommodating it within the 2007 car. This required reference to the McLaren 2007 car, not Ferrari's or that of any other team. He also says, "I have signed the letter attached to Paddy's statement."* Mr Lewis is here; Mr Tozzi can ask questions; you can ask questions. But you cannot convict my client on the basis of inference and assumption, unless you are in a position to say that Mr Lewis is a liar and you can be satisfied of that to a criminal standard.

I will tend to him in due course, as a witness of truth – as I do Mr Lowe. Surprisingly, it is suggested by Ferrari that Mr Lowe is not to be treated as a witness of truth. That is one of the conclusions they invite you to draw, on the basis of a single document, and not even one shown to you by Mr Tozzi in his opening. It is an e-mail exchange between Mr Alonso and Mr Lowe on 21 March (page 46, WMSC Dossier). Starting at the bottom of the page: *"Hi Paddy, I'm sure you have many of those, but one more. Regards, Fernando."* This refers to a photograph that Mr Alonso had obtained of the side-view of the Ferrari car, showing part of the floor-device which the FIA ruled illegal. In his response, Mr Lowe says, *"Hi Fernando, actually I hadn't seen a shot like that, so thanks. I hope to get this issue clarified with Charlie [Whiting] within this week, so they have to change it. By the way, we are now certain that the lever in their car is for brake balance. Pedro runs our variable system in the simulator tomorrow and ready for track test on Tuesday."*

Mr Lowe says it is certain that the lever is for brake balance. Ferrari will have us believe that this information can only have come from Mr Stepney; that is simply not so. Mr Lowe gives evidence and exhibits a report contemporaneous with this one, showing that it was based upon entirely legal

observations of the Ferrari car, as used in the Australian Grand Prix. We have enclosed Mr Mulholland's report, and Mr Lowe says that it is the reason for which he wrote what he did. You have absolutely no reason to doubt that evidence, but certainly have the possibility to examine Mr Lowe about it. In our respectful submission, the suggestion that Mr Lowe is not to be treated as a witness of truth, simply does not stand up to any scrutiny and we invite you to reject it outright.

The other e-mails, which I think you have seen at least in part, are dealt with by Mr Alonso and Mr de la Rosa in their evidence. We apologise that Mr Alonso is unable to be here today; he has other commitments and because of the relatively short notice of this hearing has been unable to change them. Nonetheless, you have a signed statement from him. As indicated, Mr Coughlan passed the information to Mr de la Rosa because they were friends and Mr de la Rosa passed it to Mr Alonso to help his integration into the team. It is important to note that both have stated, in terms, that no use was made of any of the information that they received.

That is, furthermore, corroborated by evidence. In relation to the brake balance, it will be explained by Mr Lowe. In relation to Mr Lewis, I have read Paragraph 6 to you, and he is here to corroborate that. In relation to other matters, the rear wing was lit upon by Mr Tozzi, with the reference to copying it. It is absolutely clear that this was a matter of observation: the rear wing is visible. If there is an attempt to copy, it is one being made using visible information. There is no confidential information from Ferrari to McLaren about the rear wing. If you look at Ferrari's own submissions about this, in Paragraph 90, under the heading "Flexible Rear Wing", indicate that: "*McLaren was observing Ferrari's rear wing with the intention of reducing drag.*" If that is the conclusion you are invited to draw, so be it. I dare say that if and when we put on a rear wing which Ferrari deems interesting, it will do the same and see how they can they improve their own car. That is what Formula 1 is about. No suggestion of any promulgation of confidential Ferrari information has gone into our work on the rear wing.

This leaves the evidence: on two occasions, Mr Coughlan passed on to Mr de la Rosa what he presented as Ferrari's pitting strategy. In relation to the Australian Grand Prix, he was not far off the mark (one lap). On the only other occasion this happened, in Bahrain, he was completely wrong. The point is that no one takes notice of this information. You will see all of the evidence attesting to this. You know this yourselves, from your intimate knowledge of the sport. Everyone gossips, but no one takes any notice of it. In particular, a team does not inform its own race strategy based on what it might have been told about another team's race strategy. The way in which the race strategy is devised works upon internal thought about the circuit and the car. Mr Lowe, in his confidential statement, which I ask you to read again if you are troubled about this, in Paragraphs 37 to 43, clearly explains how McLaren devises its own race strategy.

The only other matters raised in the e-mails have to do with weight distribution, aerobalance and the tyre elements. Ask Mr de la Rosa whatever you wish; he is absolutely clear that no use was made and that no tests were carried out. If the FIA wishes to look at our test reports to verify this, they are welcome, now as in the past. Our evidence is that no use was made. Do not work on the basis of inferences or assumptions; test it on the evidence that you have. Examine Mr de la Rosa and Mr Lowe. Draw your own answers from the evidence, not from assumption and inference.

Mr Taylor has arisen in the Ferrari submissions. We are puzzled by the evidence put in by Ferrari on this matter. It seems to work on the basis of two misconceptions. The first is that we had said that the drawing Mr Taylor said was one that looked familiar, was in reference to year 1996. I do not remember ever saying that, and it was certainly not in our statement of facts or in our evidence.

It seems to be that Ferrari has found a drawing signed by Mr Taylor in 1996 and has thus inferred that this was the drawing to which Mr Taylor was referring. The second misconception is that we were saying that the document was an historic document. We did not say that either. Mr Taylor said that he did not know. He was asked whether it looked like something he had been working on at the time. He said yes. That is still evidence, but it was not in 1996, but in 1993. I do not where this is headed. At the moment, I am not particularly interested in asking questions of Professor Genter or, indeed, Dr Braun. It is all highly irrelevant.

In summary, it is embarrassing to McLaren and McLaren regrets that this further information did not emerge last time. However, we respectfully ask you to accept that this was neither a matter of suppression, as Ferrari would indicate, nor a matter for criticism, presented as the alternative by Ferrari. We did our best using the material that we had. Mr Dennis, in his second statement, summarises the investigations that took place. We are sorry if you do not find them adequate, but they were genuine and intended to be helpful. We should not be punished because we failed to ask a particular question of a particular individual, when there was no reason that we would have heard anything other than a negative answer.

Ultimately, what matters to you today is that none of the confidential information referred to in the e-mails was passed to McLaren engineers, nor has it been channelled into the McLaren car or race strategy. Mr de la Rosa has been quite clear in his evidence: this was all that he received. You cannot infer from the stream of text messages that Mr Coughlan continued to funnel information to Mr de la Rosa; that is not his evidence. It stopped. I don't know what Mr Coughlan's state of mind was. I maintain that it could well have been with the idea of going to another team. One of the concentrations of e-mails and text messages happens to be at the time when Mr Stepney was in contact with Mr Frye about going to Honda. We do not have the content, so we simply do not know: were they banter, or information? We do not know. Nor do you, and you cannot draw any inferences from it, so as to convict my client. There is no evidence that Mr de la Rosa or Mr Alonso passed on the information to anybody else. They have denied that they have and you can test that evidence. You have clear evidence from the McLaren engineers that neither Mr de la Rosa, nor M Alonso nor Mr Coughlan passed on any confidential Ferrari information to them. That is the evidence which you have. You cannot, in my respectful submission, convict McLaren on the basis that these are untruths, without putting a specific case to the McLaren representatives whom you would be accusing of lying. It would be quite wrong to do without all of the relevant material before you. How can the material be deemed comprehensive, indeed, when the FIA has not taken up the opportunity to inspect McLaren and its records? You simply cannot.

Let us turn to the Italian police file. No conclusions adverse to McLaren can be drawn from this information. Ferrari looks at the spikes, but there was also a spike in early May, when Mr Stepney and Mr Coughlan were discussing a move to Honda. We do not know whether the Italian police has sought to obtain the same information in relation to communications between Mr Stepney and other teams. We do not know what is in these files. It is fine for Ferrari to say that we are free to come and inspect them if we wish; that freedom can hardly be of use to us today. It is stated that Ferrari confidential information was being passed to Mr Coughlan. That may be right in part; I simply don't know. You cannot infer, on that basis, that it was passed on to McLaren, not when all of the relevant parties at McLaren tell you that it was not.

Bear in mind two other points in this context. Do you think that, had there been dissemination of Ferrari confidential information within the engineering team or the Management that neither of the two computer experts would have found any documentary reference thereto? That no one recorded

it is inconceivable. You will hear from Mr Hamilton this morning. What is interesting about this? Mr Hamilton did not receive any information. Test that against the two rival arguments. Ferrari says that if the information was passed to Alonso and de la Rosa, then it must have been passed within the team. We suggest that you believe Mr de la Rosa and Mr Alonso. Is it probable that, if the information was to be used by McLaren, that they did not tell one of their two drivers about it? It is completely inconceivable. If it was being used in testing and considered as a development for the car, the driver is told! Drivers want to know. Test Mr Hamilton. Ask him! Unless you want to call Mr Hamilton a liar, that evidence is, on its own, sufficient to say that you cannot possibly convict us of a serious offence.

In summary, if there had been a complete absence of any evidence from McLaren, if we had simply sat back and “taken the 5th”, leaving others to prove the case – the course of action typically taken by parties with potential difficulties in defending themselves – it might be possible for you to draw certain inferences adverse to my client, based on the material before you. Yet in circumstances where McLaren has come forward with comprehensive evidence, doing the best we can – and I apologise if there has been inconvenience due to the late arrival despite our working 24 hours a day so that this information can reach you – fundamentally countering any such inferences, you must either accept that this evidence rebuts any such inferences, or conclude that McLaren’s evidence is untrue. Being objective, you cannot do this, unless you are absolutely satisfied that those who come here to give evidence are lying to you. And for such an extreme allegation to be made, you must be satisfied that those you characterise as liars are lying, beyond reasonable doubt. This cannot be contemplated without giving the individual whose evidence you choose to reject as lies the opportunity to deal with the finding that you are attempting to make. That does not mean making some generalised allegation; you must put a specific allegation to him, which enables him to respond. It is our respectful submission that the process, simply, does not allow you to do that. We have only had one week to live with this information. Our attempts to prepare for this hearing have been derailed and disrupted in number of ways, some inevitable (the interposition of the Grand Prix), some avoidable (such as the service of wholly unnecessary documents upon my clients’ principle witnesses during the process of qualifying), only to derail our preparations for the Grand Prix, for they have now had to take up Italian legal advice to deal with this. Thirdly, it is not permissible, in circumstances where all proper enquiries have not been made and where we have, once again, offered the facility to inspect without that being taken up, to accuse us of lying, the grossest and most obvious breach of natural justice.

May I now turn to the Ferrari conclusions that are before you, in Paragraph 30?

I will read out the conclusions proposed to you by Ferrari, then give McLaren’s answer to them:

A. *“The illegal possession of Ferrari’s stolen materials would not have been discovered by Ferrari had it not been notified by an unrelated third-party about them being copied onto a computer disk. Coughlan would still be actively employed by McLaren and would still have access to Ferrari’s confidential information”*. I do not know whether this is true. Nor do you. So what? What is the conceivable relevance of this conclusion to the issues before you today?

B. *“McLaren’s ‘whistleblowing’ argument was an opportunistic fabrication.”* That is an outrageous statement, one that is completely untrue and completely unfounded. Mr Costa – and I am looking forward to this – is apparently going to come along to state that the illegal floor device was a minor modification merely requiring FIA clarification. Before you hear from him, I invite you to read Mr Lowe’s response to that suggestion. The fact remains that Mr Stepney drew to our

attention a device ruled illegal by the FIA. The device was used by Ferrari in the Australian Grand Prix, which it won. As Mr Dennis told you last time, in the interest of motor sport, we did not protest this, despite having drawn it to the FIA's attention before the race took place. A complaint is made that Mr Stepney had not drawn this to the attention of the main authorities. You may know that Mr Stepney has written to the President making it clear that he had (page 503, Ferrari dossier). He says he mentioned it to Mr Wright –

### **Max MOSLEY**

If you wish to make this point, then we must include the e-mails between Mr Wright and Mr Stepney, as well as between Charlie Whiting and Stepney. If we do so, however, you will see that they contain no detail whatsoever. If there was any hint of whistleblowing, it was not in those documents. He had the opportunity to whistleblow at the beginning. He did not. Instead, he communicated the information to McLaren. Whether he did so as whistleblowing or as a stream of information is a matter for today. The fact is that he did not give us information, despite being in touch with our people. It is up to you to make the points you wish, but I would have thought that this entire exchange greatly undermines the whistleblowing argument.

### **Ian MILL**

With the greatest of respect, it does not fundamentally undermine the whistleblowing argument. Rather, it calls into question the accuracy of Mr Stepney's statements. The only reason to even consider that is because it has been suggested that Mr Stepney acted improperly by going to McLaren first. Mr Stepney says that this is not what happened. Perhaps he did not give the details to the FIA; I am not interested in going into the reasons or manner he adopted.

### **Max MOSLEY**

I am sorry to keep interrupting you. We are very interested. If you are saying that he gave the information to the FIA, we will produce the e-mails demonstrating that he did not. It is a completely separate matter. What he gave to McLaren and what he gave to us are two entirely separate things. If you wish to pursue the point, we can, but please do not suggest that there was any whistleblowing to us, because there was not. He had the full opportunity to whistleblow to us, being in touch with our people. He chose not to, and for some reason, to give the details to your client. It is up to you to draw whatever inferences you will from that. Do not, however, try to suggest that there was any whistleblowing to us.

### **Ian MILL**

Mr Mosley, I am not interested in debating the detail with you. It is simply that Ferrari states that there was no disclosure to the proper authorities. If the FIA says that it did not receive the detail, so be it. But how can this affect the suggestion that the whistleblowing argument was an opportunistic fabrication? I could see this if there were no basis for saying that that which he disclosed to our clients was an illegal device. It cannot be said, because it was and was ruled as such. Nothing has changed in relation to that.

C. *“At the hearing on 26 July 2007, McLaren formally announced that it had carried out a thorough in-house investigation and that it could guarantee that no information coming from Stepney through Coughlan had penetrated McLaren. There are only two alternatives: either (i) McLaren did carry out thorough investigations, in which case it necessarily discovered the inconvenient truth, but decided to hide it, or (ii) McLaren did not carry out thorough investigations. In both cases, McLaren did not tell the truth to the WMSC.”* Neither of those is a justified conclusion. You have my submissions on that already. The suggestion that we discovered an inconvenient truth is not only offensive, but completely inconsistent with Mr Dennis' disclosure to the President at the beginning of August. Secondly, we did the best we could with the time available to us since 26 July. If you feel we could have done better, we are very sorry, but you did not ask us to do anything else. I am sure that we could have been more proactive, but we did not think about it and I am sorry for that. There is no basis for a serious sanction against us because there were steps we could have taken which we did not.

D. *“The repeated assertions that McLaren was not interested in Ferrari's brake balance system were dishonest.”* Where does this come from? The only assertion regards Mr Taylor, who said that he was not particularly interested in the drawing. Mr Taylor said that he was not interested in the brake balance process at McLaren. That was not his task. It was not as though he was someone busy working out the variable brake balance system for McLaren; he was working on something else. Asked about it, he said he was not interested. It is not the same thing as saying that McLaren was not interested. Of course McLaren was interested! Just as, when we put our quick-shift on our car, Ferrari will be interested and will study the on-board footage to see what it can discern from it.

E. *“The extent and timing of the contact between Coughlan and Stepney leads to the irresistible inference that data and information about Ferrari's cars, race preparation and race plans was being improperly fed to McLaren by Stepney”.* There is an inference that some information may have been improperly fed by Stepney to Coughlan. There is no inference that it was going to McLaren. The evidence adequately and completely rebuts this.

F. *“Mr Lowe's failure to reveal that he was privy to information passed on to McLaren about Ferrari's brake balance system casts doubt upon the objectivity and reliability of this report and his evidence to the World Motor Sport Council on 26 July..”* However it is phrased, this statement is asserting that he lied. This is completely unjustified, baseless, groundless and false. I have already explained why.

G/H. *“The doubts which the WMSC already had about Jonathan Neale's evidence regarding Coughlan's trip to Barcelona are well-founded.” “Mr Neale's account of his meeting with Coughlan on 25 May 2007 cannot be believed.”* That is not open to say, in this hearing. Mr Neale had nothing whatsoever to do with the subject of this new evidence. You heard his evidence. There is no basis upon which you can begin reinvestigation or cast fresh doubt on that.

To be complete, I must turn to paragraph 31: *“It is now perfectly obvious that McLaren did use confidential information belonging to Ferrari which was improperly obtained by Coughlan from Stepney. The knowledge and use of that information gave McLaren a substantial unfair advantage. In common parlance, they were cheating.”*

Please consider the complete lack of specificity in any of that. You cannot convict McLaren on the basis of such generalised allegation. It must be specific, put it before McLaren and give opportunity for the facts to be found. The fact that Ferrari put it in this way simply demonstrates what I said from the outset: that there is not a shred of evidence to support any such conclusion.

We suggest that these conclusions are not only baseless, but demonstrate that Ferrari has lost objectivity in relation to this matter; they are prepared to and do make wild and defamatory allegations against my clients. It is suggested that this has nothing to do on behalf of motor sport to expose a "bad apple". It has to do with the desperate need to win this season's and next season's championship off the track, if it cannot achieve it where it should be won and lost, namely on the track.

I have finished my submissions and opening in one hour, leaving me 30 minutes of your time, which would not otherwise be available. I am aware that you have not had much time with my client's evidence. I am going to call Mr Lowe. You cannot hear and question Mr Lowe if you have not read his two witness statements, particularly the confidential witness statement. If there is to be any suggestion, in particular in relation to the brake balance system that McLaren has done anything wrong, you must be given this opportunity. We ask you to take the half-hour to read Mr Lowe's statement.

Subject to the Council's or Mr Tozzi's requests, you will hear Mr Lowe, Mr de la Rosa, Mr Hamilton, and Mr Dennis. Mr Lewis and Mr Taylor are both here if you wish to ask questions. You will see that the papers contain two other statements, from Mr Sutton and Mr Cook. They are not here and, if you read their statement, you will see that they are very much at the margins of this matter. Can we take that half-hour to read the evidence when you are comfortable that you have properly understood what they wish to say to you?

**Max MOSLEY**

This sounds very helpful. In other words, you are suggesting that we remain here for 30 minutes, to read the document.

**Ian MILL**

I certainly want to call them. We have also brought Mr Lewis and Mr Taylor.

**Max MOSLEY**

Or you might subsequently wish to call on other people.

**Nigel TOZZI**

I would like to make two points. It is very important for the Members of the Council to remember, in reading Mr Lowe's confidential witness statement, that it is not one provided to Ferrari, nor will it be. Therefore, I do not have and have not had the opportunity to look at what he has said in order to cross-examine him. It is a very one-sided presentation of the case. Giving that document to me now, were it to be done, would not help the situation

Furthermore, in your timetable, you suggested that my time for questioning witnesses should be fifteen minutes. I would point out that there are only a certain number of areas that I can cover in that 15 minutes. I cannot cover all of the ground in that sort of time.

**Max MOSLEY**

We and McLaren would not expect you to do so. The point being made is that these witnesses will demonstrate the exact opposite of your case. As far as Patrick Lowe's confidential statement is concerned, we will very much take into account the fact that it is not possible for Ferrari to cross-examine and test that evidence

*[The proceedings are suspended for 30 minutes, to allow Council Members the opportunity to become more familiar with Patrick Lowe's statement.]*

**II. Witness Questioning****Ian MILL**

Provided you are in agreement, I will simply show my witnesses their statements and have them confirm that their signature is indeed the one on the documents, have them confirm that their statements are true to the best of their knowledge, after which you may ask them questions. Only with Mr Lowe do I have a few matters that I wish to clarify.

My first witness is Mr Hamilton.

Mr Hamilton, you have a copy of your statement in front of you. Please look at the second page. Is that your signature toward the bottom of this page?

**Lewis HAMILTON**

It is.

**Ian MILL**

Have you read this statement?

**Lewis HAMILTON**

I have.

**Ian MILL**

Are the contents true to the best of your knowledge and belief?

**Lewis HAMILTON**

Yes.

**Ian MILL**

Thank you.

**Max MOSLEY**

Mr TOZZI, do you wish to ask any questions of Mr Hamilton?

**Nigel TOZZI**

I have no questions for Mr Hamilton.

**Max MOSLEY**

Does anyone have any questions for Mr Hamilton?

Thank you very much, Mr Hamilton.

**Ian MILL**

We are making very good progress!

**Max MOSLEY**

I don't think it will go on that way...

**Ian MILL**

Our next witness is Mr Lowe.

Mr Lowe, in the bundle in front of you, could you turn to the last page of the Tab 2, under B "Statement of Patrick Lowe". Is that your signature?

**Patrick LOWE**

Yes, it is.

**Ian MILL**

Does this represent your non-confidential witness statement to the World Motor Sport Council?

**Patrick LOWE**

Yes, it does.

**Ian MILL**

Are the contents true to the best of your knowledge and belief?

**Patrick LOWE**

Yes.

**Ian MILL**

Could you go on to Section C Tab 1, behind which there is a document entitled "Confidential Statement". Is that your signature on page 19?

**Patrick LOWE**

Yes, it is.

**Ian MILL**

Are the contents true to the best of your knowledge and belief?

**Patrick LOWE**

They are absolutely true.

**Ian MILL**

Mr Lowe, I informed the Council this morning that there was, annexed to this, a letter signed by various people within McLaren. Is that right?

**Patrick LOWE**

Yes. That is correct.

**Ian MILL**

Before we turn to it, could you inform the members of the Council the background to that document?

**Patrick LOWE**

Earlier this week, I feel that I was in a position to come here and represent my statement, which I believe to be totally true. I felt very confident that I can convince you that I am an engineer of great integrity. Many of you in the room know me and have known me for many years. You can take that as read. I felt it would add a great deal of weight if I could show that this applied to my entire team. I therefore drafted a letter addressed to the Council and invited the engineers to sign. They all did so, voluntarily. It is found in the Annex; I have also brought the originals, which I can pass around to illustrate..

**Ian MILL**

For the assistance of the Council, the document, which may or may not bear signatures, is found in Annex 12. Perhaps the originals can be circulated.

**Max MOSLEY**

I think that we can accept that. No one is questioning that.

**Ian MILL**

Perhaps you could tell the Council who signed the letter.

**Patrick LOWE**

This letter has been signed by every engineer within my Department. I manage the entire Engineering function at McLaren, from the aerodynamics, to the design, operation, circuit, etc. No aspect of the car's engineering does not come within my brief and the remit of my staff. All of them have signed, it, apart from one or two individuals who were abroad in distant countries and were not traceable in the short time available.

They have signed on three principle points:

- that they have not seen any of the technical information
- that they have not incorporated any of the information
- that the car that we built this year and the car we will build next year is wholly derived from their own work.

**Ian MILL**

I have nothing further for this witness.

**Nigel TOZZI**

Mr Lowe, I want to ask you first what you say about Mr Coughlan's role as chief designer at McLaren. Mr Coughlan had fifteen to 20 years of experience as a designer, did he not?

**Patrick LOWE**

That is correct.

**Nigel TOZZI**

He was paid around [REDACTED] pounds per annum. Is that correct?

**Patrick LOWE**

That is correct.

**Nigel TOZZI**

Therefore, he brought to the role a great deal of knowledge and experience, did he not?

**Patrick LOWE**

He did, within certain constraints.

**Nigel TOZZI**

With regard to those constraints, you say that he had the role of a functional manager of a drawing office. Is that not over-stating the position, Mr Lowe?

**Patrick LOWE**

No. The function of the Drawing Office, also known as the Design Department, is to draw the car and show that it operates safely and reliability at the circuit, in terms of design. That does not extend to generating the performance programme for that car.

**Nigel TOZZI**

Mr Coughlan had ideas, did he not?

**Patrick LOWE**

Of course he did. Yes.

**Nigel TOZZI**

And when he had them, they were contributed to the pool, were they not?

**Patrick LOWE**

They were, and may or may not have been accepted.

**Nigel TOZZI**

When Mr Coughlan came up with an idea, you or anyone else could not have any idea where that came from.

**Patrick LOWE**

I would not agree with that. You are trying to put words in my mouth. The ideas generated at McLaren come from our own analysis and research. If people throw in ideas that are from a foreign source and do not flow naturally from the developments we are pursuing, based on the problems we have with the car, that would be immediately obvious.

**Nigel TOZZI**

Ideas must be generated by suggestions, formulated as: "Have we thought about trying X or Y?" That must happen, must it not?

**Patrick LOWE**

It does. However, I am familiar with all of the ideas that come to the pool, as you describe it, during the period in question. I am at the centre of that process and can tell you that there is no idea from Mike that I do not understand.

**Nigel TOZZI**

Let us explore that. Do you agree with this proposition: *“There isn't much on the car that stays the same; maybe the seatbelts don't change. From the moment the car is formed in January to the last race in October, we make an engineering change on average every twenty minutes.”* Do you agree with that?

**Patrick LOWE**

I agree with that. You need to understand, however, that perhaps 80% of those changes are responses to detail faults with the car (i.e., radius, an update to the quality of the material, etc.). These are not performance stems.

**Nigel TOZZI**

You have not been able to analyse every change made every twenty minutes to the McLaren car since January.

**Patrick LOWE**

No. However, as I said, most of those are quality issues or maintenance issues on the cars. Those relating to performance are in the documents which the gentlemen here have today and which you analysed when you last met. That is the performance schedule; it is comprehensive, complete and exhaustive. There is nothing not on there that influences lap time. There is nothing of any dubious nature.

**Nigel TOZZI**

As I do not share the advantage of viewing that information and analysing it with a critical eye, I regrettably cannot challenge you on that. I simply wanted to say that Coughlan is part of the idea pool, changes are made to the car every 20 minutes and you cannot possibly know the origin of every single idea.

**Patrick LOWE**

I think you have used your own words and constructed them for your own purpose. I already discussed the 20-minute issue. Yes, Mike may throw in an idea, but I am aware of the source of every idea that contributed to the performance programme. The members here have seen it and had every opportunity to analyse it.

**Nigel TOZZI**

In your witness statement, paragraph 5 you say that the Chief Designer is responsible for how things are done, but not what is to be done. You add that, “while we work collaboratively from time to time, and the Chief Designer may be aware of what is being considered by the engineering team, if the car concept is poor, that is not the Chief Designer’s responsibility. The fact is that there are discussions constantly ongoing between the design team and the engineering team.

**Patrick LOWE**

That is not so. As I explained in my statement, the model used by McLaren is designed so that the Chief Engineering structure generates the performance programme. That is fed into the Chief Designer to implement. As I said earlier, while he is allowed to have ideas and did put them in every now and then, the performance programme was generated by the chief engineers.

**Nigel TOZZI**

You have just told us about the letter signed by the engineers at McLaren. In the same way that I suggest that you do not know where an idea from Coughlan has entered the picture, now would they.

**Patrick LOWE**

We have covered this already.

**Nigel TOZZI**

I have covered you; I am asking whether you agree that the same is true of them.

**Patrick LOWE**

I don’t understand. We have a performance programme. Everything on it is controlled by the Chief Engineer. The people who report to Mike in terms of implementation will deal only with that aspect.

**Nigel TOZZI**

As regards the signing of the letter, am I correct to assume that the wording was put to each engineer, who was then asked to sign off?

**Patrick LOWE**

Each engineer was asked to sign if they wanted and were allowed to sign in privacy.

**Nigel TOZZI**

They are all employed by McLaren.

**Patrick LOWE**

Yes.

**Nigel TOZZI**

It would be right to say, would it not, that since this affair has blown up, there is something of a "siege mentality" at McLaren?

**Patrick LOWE**

I don't know what you mean by that.

**Nigel TOZZI**

Read the British press, Mr Lowe. There are complaints about victimisation and the FIA purportedly picking on McLaren. There is a siege mentality.

**Patrick LOWE**

I think that you are suggesting that people would have lied in signing that, and –

**Nigel TOZZI**

I am not suggesting that at all. I am not suggesting that they have lied, Mr Lowe. I am suggesting that they have signed a document which, upon analysis, they cannot know to be true, as they do not know which ideas have come from Ferrari or not.

**Patrick LOWE**

We all know on what ideas we have worked and know their provenance. We are absolutely confident, as I have written in my statement and as they have all signed to now, that the said work is wholly original.

**Nigel TOZZI**

I cannot ask you about the brake system, unfortunately, not having seen your confidential witness statement.

Instead, I would like to ask you about the attack that you made on Mr Costa's statement, regarding the alleged illegality of the Ferrari car. I will take this shortly, because I do not think it is that relevant, but you make a big deal of it. Mr Lowe, Article 315, to which you refer, of the Technical Regulations refers to aerodynamic influence: "*with the exception of the cover described in Article 652 and the ducts described in Article 11.4, any specific part of the car influencing its aerodynamic performance, must, in compliance with rules regarding bodywork, be rigidly secured to the entirely sprung part of the car*". Rigidly secured means having no degree of freedom. That is the part on which you suggest that the Ferrari car was in breach.

**Patrick LOWE**

Absolutely.

**Nigel TOZZI**

Do you agree with me that nothing is infinitely rigid?

**Patrick LOWE**

I don't know, Mr President, whether we want to explore the finer details of Article 3.15 today. It is a very complex topic; Charlie Whiting is very familiar with it.

**Nigel TOZZI**

Do you agree with me that nothing is infinitely rigid?

**Patrick LOWE**

I do agree, hence there are refinements to this in Article 3.17.

**Nigel TOZZI**

Exactly. The way the rigidity is tested.

**Patrick LOWE**

But –

**Nigel TOZZI**

Follow my questions, please!

**Ian MILL**

My witness is in the middle of an answer. My friend will wait for him to finish.

**Nigel TOZZI**

I will not be told by my friend what to do, but I am happy to let the witness finish.

**Patrick LOWE**

Article 3.15 is a very complex and old regulation. The refinements in Article 3.17 do not offer an exclusion, but rather practical guidance on some aspects of 3.15, as Charlie Whiting knows.

**Nigel TOZZI**

The test for rigidity is that provided for in 3.17-4, namely that the bodywork may deflect no more than 5 mm vertically, when a 500-Newton load is applied vertically to it, at a point which lies on the car centre line and 380 mm rearward of front-wheel centre line. That was the test, was it not?

**Patrick LOWE**

The test in 3.17 does not absolve one of full responsibility under 3.15.

**Nigel TOZZI**

That was the test, was it not?

**Patrick LOWE**

It is not an exclusive test, as to your compliance with 3.15.

**Nigel TOZZI**

That was the test, was it not?

**Patrick LOWE**

I have already answered that.

**Nigel TOZZI**

No, you have not. The answer is “yes”, Mr Lowe, because I just read it from the regulation.

**Patrick LOWE**

That is your answer.

**Nigel TOZZI**

No, I read it from the regulation. And if you comply with the test, you are deemed to comply with 3.15.

**Patrick LOWE**

We could spend all day on Article 3.15, with all due respect.

**Max MOSLEY**

Could I intervene? The situation is as follows. Mr Tozzi means that it is completely wrong to describe Ferrari's system in Australia as illegal; it is one that passed the test as it then existed. You then quite rightly challenged this, and Charlie issued a reinterpretation of the test.

**Patrick LOWE**

I think the issue is being blurred again by Ferrari. There were two stages to the clarification from the FIA. In the first, it was said that "you will remove illegal devices". An illegal device is a mechanism with pivots, springs, and degrees of freedom that allows one to cynically exploit the behaviour required in 3.17, in contravention of 3.15. There was a further later clarification that changed the understanding for the test. Those are two separate issues. That is clear in my statements.

**Max MOSLEY**

I do not think that anyone on the World Council would seriously consider that the Ferrari device was illegal at the time, any more than the Renault mass damper before it was eliminated.

**Nigel TOZZI**

I am very grateful for that. It was important that this be clear, as these proceedings are apparently going to be made public. McLaren has repeatedly asserted, wrongly, that the Ferrari car was illegal, and it is appropriate that the world knows that it was not.

**Patrick LOWE**

I find that an extraordinary positioned: that something should be only illegal when it is clarified to be so.

**Nigel TOZZI**

Mr Lowe may find that extraordinary. You have said what you have said, so it is on the record.

Mr Lowe, what about the interesting question about the McLaren car? You tell us, in Paragraph 26, that when the testing was changed for the Spanish Grand Prix, the concept of McLaren's front floor attachment remained unchanged. Did the detail remain unchanged, Mr Lowe?

**Patrick LOWE**

The stiffness required by the test was increased.

**Nigel TOZZI**

You were using buckling stay, were you not?

**Patrick LOWE**

You clearly have not read my statement.

**Nigel TOZZI**

Oh, I have read it.

**Patrick LOWE**

That means you do not believe my statement, where I say that we did not use a buckling stay.

**Nigel TOZZI**

I have a series of photos – a very interesting series of photos – of your car, which show buckling stay, Mr Lowe.

**Patrick LOWE**

That is what you assume to be a buckling stay, but you fail to understand the behaviour it has.

**Max MOSLEY**

Can you help us, because I do not understand and perhaps others do not. If it is not a buckling stay, what is the proper description.

**Patrick LOWE**

It is a pre-buckled stay. It is already in the buckling mode before the start.

Buckling implies that it is stiff initially, then buckles. This means it would be very rigid at the start, then very soft, which would cynically exploit the behaviours in Article 3.17.

**Nigel TOZZI**

Your suggestion is that nothing on the pre-buckled stay was changed following the change of test by the FIA.

**Patrick LOWE**

I did not say that nothing was changed; I said that the concept remained the same. The characteristics were changed, because the stiffness requirement in 3.17 were changed.

**Nigel TOZZI**

Exactly. When I asked whether the detail had changed, I thought you said no.

**Patrick LOWE**

I said yes.

**Nigel TOZZI**

In other words, when the rule changed, it was not only Ferrari that had to change its car; McLaren did too.

**Patrick LOWE**

We changed the detail, as I stated a minute ago, but we did not change the concept.

**Nigel TOZZI**

It is the pot calling the kettle black.

**Patrick LOWE**

Those are your own words, and I think you know how you arrived at them.

**Max MOSLEY**

Could I raise a couple of points?

We were told, during the last hearing, that Mr Coughlan did not communicate into the system; his contribution was the sign-off. *“If he were here, Mr Lowe would tell us that any of the McLaren designers, if they wish to add a new idea, must clear it with others, in particular with him.”* We were given the strong impression that Mr Coughlan was signing off drawings. That is not entirely true, is it?

**Patrick LOWE**

That he was just signing off drawings? I do not know what you are referring to, exactly. That would be an over-simplification. I absolutely acknowledge that.

**Max MOSLEY**

We are then told, on page 12 of your statement, that *“Pat Frye held several brainstorming sessions with Mr Coughlan. I have specifically checked with Pat Frye, and he has confirmed with me that Mr Coughlan did not impart any Ferrari confidential information.”* You have stated several times that you did not impart confidential information. You did have a spectacular idea...

**Patrick LOWE**

Yes, I am rather proud of that idea.

**Max MOSLEY**

*“Thinking laterally overnight, I suddenly hit upon a solution.”* I will not read anymore, because it is a bit confidential. It was like a brainwave, in effect.

**Patrick LOWE**

Yes, it was really. One of those that comes about once a year.

**Max MOSLEY**

Then, it has been admitted that Mr Coughlan produced a few ideas himself. You said so just now.

**Patrick LOWE**

Generally speaking, or on this project?

**Max MOSLEY**

Generally.

**Patrick LOWE**

Of course. Every engineer can, without reference to position, can submit an idea.

**Max MOSLEY**

What most people find a bit difficult was that on 20 April, Mr Coughlan was given this absolutely extraordinary dossier. You do not know the contents, but believe me that it is a gold mine for anyone interested in racing cars. You don't know what is in that?

**Patrick LOWE**

No. Well, I have seen the titles, because they are in the dossier. I don't know anything in there.

**Max MOSLEY**

How are you and all of your engineers are able to tell us, then, with absolutely certainty, that none of these details appear on the McLaren car?

**Patrick LOWE**

I understand, Max, that this is a very central point.

As I said at the last hearing, we have 140 engineers working in one office. It is very large, but works very effectively. We are a very close community, and know everything that is coming in. We would thus be able to recognise anything that is of foreign origin, so to speak. The philosophy of our design operation is one of strong analysis. This is why we are one of the leading teams. This has not happened by accident. I have great respect for the technical ability of Ferrari. Many teams do not. That is why I have stayed at McLaren for such a long time: because this philosophy is in-tune with how I think an engineering team should be run and what would make me proud to win. I understand the issue. In that community, if people are submitting foreign ideas, we do not want them and I don't think they are useful.

The value of the dossier is overstated. I have 780 better pages which I do not have the opportunity to read. I don't know why Mike Coughlan took position of the dossier, as is alleged. I can only think that he had some sort of collector's mentality. I have come across engineers who like collecting things, like people collect stamps. It is of so little use, genuinely. What we need on our car is what has to do with our car, not on someone else's. There are teams that obtain information from the experience and knowledge of the staff they bring in. We do not bring in engineers from other teams, on the whole. We like to build people on their experience over years. I believe Ferrari has the same philosophy. We do not buy in ideas from elsewhere. We need to generate our own

performance. That is the formula that takes you to the top, rather than a copying formula, which can take one to fourth, third or second place at best.

**Max MOSLEY**

That is not quite the point. Rather, it is very difficult for anyone to believe that you and the other engineers can say with certainty that Coughlan's contributions did not originate in this dossier, when you do not know what is in it. You do see the point?

**Patrick LOWE**

I have looked at the headings in the dossier, first to rule out all of those that have no possible influence. You should understand that Mike Coughlan is not someone who could have walked up to a race car and make a recommendation without explaining himself. Each of the engineers working in their respective areas know what they are doing understand what they are doing and why they are doing it. Mike Coughlan does not have the ability to influence all aspects of the car or the business. His area is very constrained. I have been able to look in detail at all of the areas that he could have influenced to see what issues of novelty were generated in those areas at that time. That is all captured in the performance sheet that you have all seen. I know the pedigree of everything on that sheet, so I can know that nothing from that dossier has affected our car. I can because I know where everything in that car came from. It is listed on that sheet. In fact, very few of those ideas, absolutely, let alone those listed, came from Mike Coughlan during the period of interest.

**Nigel TOZZI**

Mr Lowe, I want to pick you up on the suggestion that the Ferrari dossier which you were just shown by the President of the FIA, would have been of so little use to McLaren. It is right, is it not, that all teams closely inspect each other's cars in the paddock and in television footage.

**Patrick LOWE**

That is right.

**Nigel TOZZI**

And if something is spotted, the teams will try to work out, through observation, what that is and what it is doing, in order to determine whether there is some area of that which they need to catch up on.

**Patrick LOWE**

There are two reasons for this: ensuring that the competitors are operating within the legal limits; and you are always interested, particularly in aerodynamics, as I explained the last time.

**Nigel TOZZI**

So, you scrutinised onboard camera footage?

**Patrick LOWE**

That is right; I explained this last time.

**Nigel TOZZI**

You even go to the extent, when cars are lifted on cranes, of performing image analysis to determine the car's weight distribution, do you not?

**Patrick LOWE**

We have, on occasion. Actually, we have not done that for a while.

**Nigel TOZZI**

Before a race, your engineers analyse the difference in lap time between the third and fourth qualifying lap of every driver in order to predict pitting strategy, don't you?

**Patrick LOWE**

That is correct.

**Nigel TOZZI**

Thus, when you say that the dossier is of so little use, this must be put in the context of an operation that spends millions of dollars constantly and legitimately spying on competitors' cars. Yet, you say that if you were to receive the dossier, it would be of little use. Is that your evidence, Mr Lowe?

**Patrick LOWE**

It is a question of relative value. On aerodynamics, for instance, there is a lot of interest. But in most cases, if not in all, the data actually proves to be of no value.

**Nigel TOZZI**

Let me give you the chance to answer this. It is a question of credibility, in fact. You are asking the World Motor Sport Council to accept your assertions that no idea came from Ferrari in a McLaren car. Yet, at the same time, you ask it to believe that the Ferrari dossier is of "so little

use". I would suggest that this indicates that your evidence on this issue is not reliable, because the dossier plainly would have been of use.

**Patrick LOWE**

I restate the position. It would not have been of great use. That is objective assessment. The fact is that we did not see the dossier; nobody in the company did. It is all hypothetical. Our car is completely different from the Ferrari. It is amazing how close the cars end up in lap time. The value of someone else's information is extremely limited from the outset.

**Max MOSLEY**

Did you want to ask any further questions, Mr Mill?

**Ian MILL**

I do not have a question. I have an observation, which I feel it is important to make at this point, otherwise my friend may make a comment at the end of the hearing.

**Max MOSLEY**

Is this the right moment?

**Ian MILL**

Yes, otherwise Mr Lowe's examination may come to an end, therefore it is important that I make this observation prior to that. One of the conclusions that Ferrari invites you to draw in its skeleton argument, which I read out and dealt with in my opening submissions this morning is that Mr Lowe's failure to reveal that he was privy to information about Ferrari's brake balance system cast doubt about the objectivity and reliability of his report and evidence to the World Motor Sport Council.

That was based upon a complete misconception of Mr Lowe's e-mail, which you read this morning, dated 21 March. I observe that Mr Tozzi has not put that allegation to Mr Lowe. The only conclusion one can draw from that is that Ferrari withdraws it. If it does not do so, for Mr Tozzi him not to do so is completely improper and we can take it as read.

**Nigel TOZZI**

You cannot take it as read, and my learned friend knows that.

The difficulty is that you have a stack of material dealing with the brake balance system that I do not have. As I have stated several times now, I cannot cross-examine when I am not given the material with which to challenge any answer that the witness gives. I leave that proposition on the table and am happy, if my learned friend so wishes, to take Mr Lowe to the one e-mail that I have

on this point and ask him a question about it. One must bear in mind the constraints under which I must work, putting a case on a point when I do not have the material.

**Ian MILL**

There was no constraint in making the accusation in the skeleton argument, based on one e-mail. You cannot leave it on the table. You need to hear Mr Lowe's response to the case specifically made on the e-mail. .

**Nigel TOZZI**

Rather than playing lawyer's games, let me raise the question. The e-mail is in the FIA dossier, behind Tab 5, on page 46. Mr Lowe, in that e-mail, in the second paragraph, you say: "*By the way, we are now certain that the lever in their car is for brake-balance*". Mr Lowe, certainty is a very high test. One way to reach it is from a source you know to be impeccable, such as Mr Stepney.

**Patrick LOWE**

That is a correct observation, hypothetically.

**Nigel TOZZI**

As I understand it, you say that this was not the basis for your certainty, but rather it was reports which you received.

**Patrick LOWE**

It was partly from reports, and partly from an assessment which we made. Analysis of the situation shows that there are no other things that this could possibly be. That is the principal reason for the certainty. There are so few things possible within the regulations. That was our feeling, but we applied some rigour to that thinking. As I explained in my statement, a number of us brainstormed and came to that conclusion.

**Nigel TOZZI**

That evidence, which you say you say you explained in your statement about brainstorming is not evidence that McLaren wishes Ferrari to see.

**Patrick LOWE**

I thought you had received a redacted copy. I formed a redaction yesterday.

**Nigel TOZZI**

As far as I know, I did not receive it, so I have to leave the matter there.

**Max MOSLEY**

Thank you very much. This is perhaps a convenient moment to stop for lunch. It is presently 1:15 PM; I suggest we reconvene here at 2:15 PM.

**Ian MILL**

Is there anything I can do to help those around me? We will call Mr de la Rosa and Mr Dennis; this seemed essential. It might be helpful if we knew whether Mr Lewis or Mr Taylor were needed. If you do not know, that is fine, but if you have some indication, it would help us adjust accordingly.

If it is helpful to my learned friend, considering the learned debate that he and Mr Lowe have had before the World Motor Sport Council, it would probably be a complete waste of everybody's time that I question Mr Costa. I can say that there is no need for me to hear him. I am entirely content if the World Motor Sport Council wishes to take his evidence as read. I do not need him to be here, if that is helpful to you. The only person I would need to see is Dr Braun.

**Nigel TOZZI**

That is very helpful. I do not mean to be mean to either Mr Lewis or Mr Taylor, but at this stage, I would prefer for you to keep them here. Perhaps we can review, immediately after lunch, whether I will ask them any question.

**Max MOSLEY**

That might be prudent.

**Nigel TOZZI**

Just one more point: we and you may conclude that it may be helpful to hear from Mr Neale again.

**Max MOSLEY**

Indeed.

*[The session is suspended from 1:15 PM to 2:15 PM.]*

**Max MOSLEY**

Mr Mill, is Paddy Lowe still in the building?

**Ian MILL**

I am sure he is.

**Max MOSLEY**

Could we have him back for a few minutes?

Thanks for returning, Paddy. I have just a couple of points which I should put to you, giving you an opportunity to comment. First, would you agree that, for the team's race strategy, it is very important and even useful to know precisely how much fuel is used and what their weight is, before the race?

**Patrick LOWE**

It would be useful, but as I said in my statement, it is one of the bits of information that even the teams do not make up until the very last moment. Whilst it would be useful, then, it is impossible to have information of accurate nature.

**Max MOSLEY**

Is that correct that the team does this at the last minute? Surely it decides its fuel load on the Saturday evening?

**Patrick LOWE**

Perhaps we are confused here. You were referring to knowing the team's fuel load after the qualifying and before the race? I have answered the wrong question.

**Max MOSLEY**

I am privileged to have the list of the top 10 teams, with this information. That would be very useful to a competing team, would it not?.

**Patrick LOWE**

No, because by that time, the die is cast. All of the cars are fuelled.

**Max MOSLEY**

The fuel level cannot be changed, but you might react.

**Patrick LOWE**

There is no way to react. What can you do?

**Max MOSLEY**

Ross Braun does this all the time for Ferrari. I think that most people have someone there to react as they do during the race. Should the safety car come out in the first stint, it might be useful to know who is going to stop when, based in the weight information.

**Patrick LOWE**

I see what you are getting at. We do not know, ultimately, where we are going to stop. The prediction is not precise. Teams want to save fuel wherever possible. That is why my first answer still applies. Hypothetically, it would be useful, but practically speaking, it is never sufficiently accurate to be useful.

**Max MOSLEY**

Secondly, would it be possible to run something in a simulator at McLaren, without the engineers operating and programming the simulator knowing what you are running?

**Patrick LOWE**

Absolutely not.

**Max MOSLEY**

Lastly, would you agree that the weight distribution and the aerodynamic balance of a car are critical and useful parameters?

**Patrick LOWE**

They are important in terms of performance of one's own car. A great deal of lap time can be generated by optimising the two parameters. However, they only work when operating one's own vehicle. The philosophy applied to the design of the car, at a fundamental level, dictates where those optima lie. That can be very different from one car to the next. We know, in general terms, where different cars teams on that spectrum. We feel that we are toward the forward end of the grid, where weight distribution is concerned. We know that Renault – as it has admitted, and as we can see from the relative performance – is at the other extreme, and this has had a significant impact on them this year. It is a parameter which we continually explore to achieve the best performance with the car.

In the last season, when we first ran the new tyres in December, we did a great deal of testing on weight distribution, to determine whether we should push forward or rear-ward. We found that ■

[REDACTED]. If you consider the technical schedule that I distributed both this time and last, it includes a large section on weight and weight-saving, [REDACTED]. For us, the policy this year has been [REDACTED]. This has been [REDACTED]. The engineering has been influenced in large part by this. In response to questions earlier, that is what occupied Mike; it was the focus of most of the projects in which he was involved.

**Max MOSLEY**

With the aim of [REDACTED].

**Patrick LOWE**

Yes. As you know, [REDACTED]. This was a great example of that policy.

**Max MOSLEY**

Those were my supplementary questions. Does anybody want to add anything?

**Ian MILL**

Mr Lowe, are you involved in the pitting strategy for McLaren at Grand Prix competitions.

**Patrick LOWE**

I am involved in discussions about what we might do.

Ian MILL

During those discussions, do you take into account information you might have received from whatever source about what other teams might be doing?

**Patrick LOWE**

No, not at all. The input to those discussions relate to our own study of the particular race at hand. The performance of the other teams does not enter the picture. We look at the relative performance of our car, with previous events. We would not bring in data points from an external source, as they would be completely untrustworthy and would skew the results in a way we would not want.

**Max MOSLEY**

Thank you very much.

**Ian MILL**

Mr de la Rosa is our next witness.

**Nick CRAW (via teleconference)**

I have a question for Mr Lowe.

**Max MOSLEY**

I am afraid it is too late; he is gone.

**Ian MILL**

He can come back, if you want him back.

**Nick CRAW (via teleconference)**

I do have a question for him, Max.

**Max MOSLEY**

All right, we will bring him back quickly.

Paddy, our American member has a question for you by telephone.

**Nick CRAW (via teleconference)**

Mr Lowe, setting aside the questions to whether any of the Ferrari intellectual property was in fact put to use by McLaren, would it be a fair statement to say that the two drivers were aware that intelligence was coming from Ferrari?

**Patrick LOWE**

I did not know that until the recent e-mail declarations.

**Nick CRAW**

The April 14<sup>th</sup> e-mails. Mr Taylor was also aware that information was coming in from an outside source.

**Patrick LOWE**

He was shown a drawing, which he has described in his statement. He did not know where that came from.

**Nick CRAW**

Was Jonathan Neale also not aware that information was coming in from Ferrari.

**Patrick LOWE**

He was aware only of the whistleblowing episodes from the Australian Grand Prix

**Nick CRAW**

Mr Coughlan was quite aware of what was coming in. It is fair to say that Mr Whitmarsh was also aware.

**Patrick LOWE**

He was also aware of the whistleblowing items described in the statements.

**Nick CRAW (via teleconference)**

That is my question. Thank you.

**Max MOSLEY**

That is all for Mr Lowe. Thank you.

**Ian MILL**

Mr de la Rosa, you have a statement in front of you. Is that your signature on the final page?

**Pedro DE LA ROSA**

Yes, it is.

**Ian MILL**

Do you recognise this as your witness statement to the World Motor Sport Council?

**Pedro DE LA ROSA**

Yes.

**Ian MILL**

Are the contents true to the best of your knowledge and belief?

**Pedro DE LA ROSA**

Yes.

**Ian MILL**

Thank you. I have no additional questions for my witness.

**Nigel TOZZI**

Mr de la Rosa, please turn to paragraph 8 of your Witness Statement, in which you tell us about the observations made on your competitors' cars. It is correct to state, is it not, that you, personally, and McLaren as a team, are very interested in what your closest competitors are doing.

**Pedro DE LA ROSA**

Yes, we are interested in all of our competitors, especially after qualifying, based on the delta in lap time, between the Q2 and Q3. We deduce from this – as do all participants – the expected pit stop strategy arrivals. We do this for everyone.

**Nigel TOZZI**

You covered just one point there; but you make four points in Paragraph 8 on the various stages of observations. The difference in lap time between Q2 and Q3 is important because one of the pieces of information that is of importance to you is when a competing team is going to make its pit stop.

**Pedro DE LA ROSA**

Yes, we look at all of this. We look also at sound analysis, based on onboard camera footage. We analyse the sound, look at the revolutions and thereby determine the speed. This helps us overlay the speed traces of our competitors' cars. We do this on every race we can.

**Nigel TOZZI**

You would not do that if you did not think the information resulting from it would be of no use. You only do it because you think the information is going to be useful, don't you.

**Pedro DE LA ROSA**

We do it regularly, at all times, as a discipline. That is regular practice. Every morning, we have our homework done.

**Nigel TOZZI**

Can you turn forward in your witness statement to Paragraph 16, where you refer to an e-mail sent to Mike Coughlan. Keeping your witness statement open, can you find or be given a copy of that e-mail? It is in the FIA dossier, behind Tab 5, page 61.

This is the e-mail where you asked Mr Coughlan's about the red car's weight distribution. The red car is the Ferrari, is it not?

**Pedro DE LA ROSA**

Absolutely.

**Nigel TOZZI**

You say that *"it would be important for us to know so that we could try it in the simulator"*.

Two points: did you address that question to Mr Coughlan because you expected him to know the answer?

**Pedro DE LA ROSA**

I was expecting him to at least look for the answer, because at the Australian Grand Prix, one of the cars was picked up. Whenever this happens, everyone is eager to calculate the weight distribution based on the point at which the car is picked up, the angle, etc. Also, in the back of my mind, I knew that he had told me in which lap Kimi would stop. This was not correct, as it was one lap later, but still, it was possible that he had more information.

**Nigel TOZZI**

He has been described as Mr Lowe as having the role of a functional manager of a drawing office. What would you expect the functional manager of a drawing office to know the weight distribution of the Ferrari car?

**Pedro DE LA ROSA**

Regardless of his title, Mike is someone I knew him from my Arrows day in 1999; I had quite a good and long-standing relationship with him. Whether he was Functional Manager or Chief Designer, did not matter.

**Nigel TOZZI**

Is the real reason not that you already knew, at this time, that he was receiving information from Nigel Stepney?

**Pedro DE LA ROSA**

That is not correct. I learned from Mike that he was receiving confidential information from Nigel Stepney on 22 March, when I went to the simulator.

When I asked about the weight distribution, he came back with two text messages, saying that this was the weight distribution.

**Nigel TOZZI**

You then used that information in the simulator, did you not?

**Pedro DE LA ROSA**

No, but I must tell you why. When Mike told me the figure, it was so radically different from ours that there was no way that our care could ever achieve that. The whole philosophy of our car was [REDACTED]. We had managed to [REDACTED]. There was no point. At the previous stage, I thought the information might be important and that we could try it in the simulator, but then the figures were so different.

**Nigel TOZZI**

Your intention had been to use any information that Mike Coughlan sent to you to try things out in the simulator.

**Pedro DE LA ROSA**

Had it been an interesting figure, I might possibly have at least tested it. Unfortunately, at that moment, I did not think that it was interesting.

**Nigel TOZZI**

The information that he gave you, as you state in Paragraph 17 of your Witness Statement was "*precise weight distributions and also a precise figure for the aerobalance*". That is information that is very useful, isn't it?

**Pedro DE LA ROSA**

No.

**Nigel TOZZI**

Let me suggest why: for optimising the car's stability and balance.

**Pedro DE LA ROSA**

I don't know how much you know about Formula 1. The aerobalance is dependent primarily on the wind tunnel data. It is a number, but every wind tunnel is different. He also sent me a text message with that figure.

**Nigel TOZZI**

Mr de la Rosa, having asked this question and having received a very precise answer from Mr Coughlan, are you asking the World Motor Sport Council that you then did not share that information with any of the engineers when you went to the simulator on the next day?

**Pedro DE LA ROSA**

Yes.

**Nigel TOZZI**

You had that information on your mobile phone then, but then kept it to yourself.

**Pedro DE LA ROSA**

At that stage, I kept it to myself, then I shared it with Fernando. All of the information that can to me from Mike, I shared with Fernando. I did not share it with any engineers.

**Nigel TOZZI**

What was the point of sharing it with Fernando if you believed the information to be of no value, given that the McLaren car was so different from the McLaren car.

**Pedro DE LA ROSA**

Because it was information. It was information I had learned from Mike. It is something that all drivers do. Drivers talk about set-ups, formulas, cars. This is common practice.

**Nigel TOZZI**

And with your engineers, Mr De la Rosa.

**Pedro DE LA ROSA**

I did not. We are focused on our cars. I can assure you of that.

**Nigel TOZZI**

Let us look at Paragraph 20 of your Witness Statement. You say that, on 22 March, Mr Coughlan told you that he believed the Ferrari system to be based on a "[REDACTED]", which [REDACTED]. You gave evidence saying that you did not understand what he was talking about.

**Pedro DE LA ROSA**

Yes, I am a driver. I am not an engineer. When he started talking about the [REDACTED], that was too much to me.

**Nigel TOZZI**

Why do you think that Mr Coughlan whispered this to you?

**Pedro DE LA ROSA**

When he whispered to me, I realised that he was not willing for anyone to listen.

**Nigel TOZZI**

This was the occasion when he told you, according to your statement, that he was receiving information from Mr Stepney.

**Pedro DE LA ROSA**

No. He told me that when I asked him how he could be so precise about the weight distribution.

**Nigel TOZZI**

When did you have this conversation?

**Pedro DE LA ROSA**

On the 22<sup>nd</sup>.

**Nigel TOZZI**

I think there is a misunderstanding. I am referring to the 2<sup>nd</sup>.

**Pedro DE LA ROSA**

I know. It was before he told me this. That is what I was talking about.

**Nigel TOZZI**

You also stated that he told you about the way that Ferrari inflated their tyres. You think that is the only information and were surprised by this. When he told you he was receiving information from Mr Stepney, whom you understood to be the Chief Mechanic at Ferrari, did you ask him any further questions about that?

**Pedro DE LA ROSA**

I understood that he was an ex-Chief Mechanic at Ferrari. I did not anything more.

**Nigel TOZZI**

From the way Mr Coughlan told you this, did you understand that he was entitled to this information, or that it was something that he had obtained improperly?

**Pedro DE LA ROSA**

No, it was his friend. Possibly, they went to dinner together and had relations that I did not know about. I expected, as it always happened, that if they talked about engineering – Mike's passion – they would talk about their cars. In this business, I always expected Mike to tell him as well thing about our car. You give and you receive; that is how it works between drivers.

**Nigel TOZZI**

It is not usual for a Chief Mechanic of a rival team, particularly Ferrari, to pass on very detailed information of this nature, though. You would not expect that, would you, Mr de la Rosa.

**Pedro DE LA ROSA**

I did not know what Mike was giving back.

**Nigel TOZZI**

You knew it was wrong, didn't you?

**Pedro DE LA ROSA**

It was common practice in Formula 1. If that is wrong, then we are all wrong. That is what I have been doing. I have been listening with all of our fellow drivers. I can give you lots of examples, if you want. I don't know what all of this is about. This is common practice. We talk about car set-ups, rivals, etc., all day long. It is our passion. It is as simple as that. There is nothing else.

**Nigel TOZZI**

I suggest that you knew it was wrong that Coughlan was receiving this information and that you did nothing about it.

**Pedro DE LA ROSA**

I did nothing about it.

**Nigel TOZZI**

And you are an employee of McLaren, are you not?

**Pedro DE LA ROSA**

No. I am an agent.

**Nigel TOZZI**

You work for McLaren.

**Pedro DE LA ROSA**

I am one of the test drivers, but strictly speaking, I am not an employee.

**Nigel TOZZI**

I accept that.

Let us look at Paragraph 24 of your witness statement. This is the testing you say was performed. You say that, "*I did not mention to any engineers any of what Mike had told me.*" Mr de la Rosa, bearing in mind the answers you told the World Council only five minutes ago – that this was your passion, that you do it all the time – why didn't you exchange this information with your engineers. Or did you?

**Pedro DE LA ROSA**

I did not. I did not because there was no point in talking about things that were completely out of our range. You also have to be careful about what you talk about with your engineers. At the end of the day, you do not know how reliable Nigel Stepney was. Mike Coughlan had made mistakes too, with the stops in Bahrain.

**Nigel TOZZI**

I will come to that.

You are contradicting yourself. You are offering as your explanation of the fact that Coughlan was receiving the information from Stepney because it was a shared passion and that everyone talked. But then you are saying, in the next breath, that you did not mention it to anyone else. That is a contradictory position.

**Pedro DE LA ROSA**

I did not mention it to anyone else but Fernando Alonso. Everything I knew from Mike is in the e-mails to Fernando.

**Nigel TOZZI**

I will give you a chance to answer this: why not?

**Pedro DE LA ROSA**

Because the weight distribution was so different from ours and our philosophy that it was out of the question.

**Nigel TOZZI**

Please turn forward to paragraph 29, where you discuss the e-mail that you sent to Mr Alonso, on 25 March. Keeping that open, can you find the e-mail in the FIA Dossier, behind Tab 5 (page 52 in the English version and page 48 in the Spanish version). This is a string of e-mails. You are reporting to Mr Alonso on how you fared in the simulator, to update him on projects you were working on. Item 1 concerns the variable brake balance. Toward the end of that, you say "*with the information we have, we believe Ferrari has a similar system, but they have three positions which they change from the cockpit. They have a [blank]*" – the blank reflecting exactly what Mike Coughlan had told you three days earlier – "*which apparently [redacted]*".  
[redacted]. *We get the same results [redacted]*".

In your witness statement, you say that you had not really understood what Mr Coughlan had told you. If that was so, why bother passing this information on to Mr Alonso?

**Pedro DE LA ROSA**

When I explained to Fernando the brake balance system, which we had been developing since 7 February, I explained our system (as in Point 1). In the last point of that paragraph, I say that we think Ferrari has a similar system, but they have three positions which they change from the cockpit. That is what I knew from the analysis that we had performed based on the camera footage and a study that some McLaren engineers had done.

Our system, I must say, was developed well before this e-mail. It is based on problems that we had in our Week 48 November tests: we were [REDACTED] and we already started to think that we should [REDACTED]. The process had thus begun well before that. In the books there is a picture of the Ferrari lever. This is not strictly confidential and unknown to everyone but experts. These are books that are commercially available. There is nothing confidential.

**Nigel TOZZI**

You wrote, "They have a [REDACTED], which [REDACTED] [REDACTED]. You are passing on to Mr Alonso exactly what you said you had been told by Mr Coughlan three days earlier, though you say that you had not understood it.

**Pedro DE LA ROSA**

Yes, exactly. What does this mean ?

**Nigel TOZZI**

Why were you passing this on to Mr Alonso?

**Pedro DE LA ROSA**

I was passing everything along. It did not make much sense to me, but I was passing everything I heard along. Everything I passed on did not have to be 100% certain or fully-integrated by myself.

**Nigel TOZZI**

How did you know that you were achieving the same result, [REDACTED]?

**Pedro DE LA ROSA**

Our system is [REDACTED].

**Nigel TOZZI**

But how did you know that you were achieving the same result? The same result as Ferrari?

**Pedro DE LA ROSA**

We were adjusting the brake balance. I was explaining to him that we did that [REDACTED], a very different system.

**Nigel TOZZI**

Let us look at Item 2: the flexible rear-wing. You were aware that McLaren had tried to raise an objection to Ferrari's flexible rear-wing with the FIA, based on information provided by Mr Stepney to Mr Coughlan.

**Pedro DE LA ROSA**

No. What was the objection?

**Nigel TOZZI**

It had been suggested that the flexible rear-wing was illegal. Did you know that?

**Pedro DE LA ROSA**

I did not know that. Flexible and illegal are two different concepts.

**Nigel TOZZI**

I am not suggesting that it was illegal. Indeed, the FIA, ruled that it was acceptable. I was asking whether you knew that McLaren had raised an objection, or query.

I have tried out a flexible rear-wing, based on data in the wind tunnel. This is also a copy of the system we think Ferrari uses. Mr de la Rosa, you do not know exactly the origin of that idea, do you?

**Pedro DE LA ROSA**

I can assure you that it did not come from Mike. He never told me about aerobalance or elasticity. We had evidence, based on sound analysis, that Ferrari was achieving higher topspin than us. We could only assume that this was from elasticity.

**Nigel TOZZI**

Yet you clearly thought that McLaren engineers had been copying Ferrari's system, making you two- to three-tenths quicker.

**Pedro DE LA ROSA**

In the simulator, we tried an aero-map, all theoretical, nothing physical. Based on those numbers, we were able to achieve higher topspin. This is what I tested in the simulator. As far as I know, we never raced with that. It was just another item tested in the simulator.

**Nigel TOZZI**

You pass information from Coughlan to Alonso, and also pass on details of how the tyres are inflated, saying, "*We'll have to try it. It's easy!*" In other words, you were intending to use that information.

**Pedro DE LA ROSA**

Yes, I was interested in the [REDACTED]. It is part of the air. When I was in Malaysia, I went to our Bridgestone engineer and asked him whether other teams had been using this. Usually, the engineers there are able to tell you about such details, compared to other teams, having a report after every race. I went to him because he was the person best-equipped to respond. He told me that this had been used in the past, but with no clear result.

**Nigel TOZZI**

Mr Alonso replied to you, and it is perfectly clear that he was interested in some of the things you were telling him.

**Pedro DE LA ROSA**

He sounded interested, yes. That is one of the main reasons why I went to Bridgestone.

**Nigel TOZZI**

He thought it was very important to test the alternative tyre inflation technique, did he not?

**Pedro DE LA ROSA**

He was interested. He replied saying that we should try this, etc. This is one of the main reasons why I went to the Bridgestone engineer.

**Nigel TOZZI**

You came back saying, "*I agree 100% that we must test it.*" Yet now you are telling us that you did not.

**Pedro DE LA ROSA**

Yes. If the Bridgestone engineer had told us that this was a very interesting test – and this would have been a surprise, as he would have told us in January – then I might have pursued. But I realised that it was nothing.

**Nigel TOZZI**

You are told that Ferrari is doing this and Alonso becomes very excited about it. You talk to a Bridgestone engineer, who says that this is not necessarily any better. You still know Ferrari is doing it, yet you simply dropped the point?

**Pedro DE LA ROSA**

Yes. What is wrong with that? There is so much information going in and out. We are listening and doing things every day. That is part of work. We are always in contact with people doing similar things. We have daily contact with our drivers. Information flows.

**Nigel TOZZI**

You preferred the Bridgestone engineer's opinion, rather than what Ferrari was known to do?

**Pedro DE LA ROSA**

If my Bridgestone engineer tells me that this has been tested in the past and that it is not necessarily better, then I accept that. He is the expert; I am only the driver.

**Nigel TOZZI**

Let us turn forward in the bundle to page 62 and the exchange of e-mails from mid-April. Mr de la Rosa, you were very persistent about asking Mr Coughlan to give you details of the Ferrari braking system. You were persistent because Mr Alonso wanted to know.

**Pedro DE LA ROSA**

Not necessarily. Fernando was very interested in the [REDACTED], when he answered back.

**Nigel TOZZI**

At the top of page 62, you told Mr Coughlan, "*Come on, explain the system, Fernando wants to know*".

**Pedro DE LA ROSA**

Here, I must be fair to Fernando. I was very interested in his explaining the system to me. I used Fernando to make him give me a bit more information, if he could. It was not Fernando

**Nigel TOZZI**

So it was a white lie. Fernando did not want to know.

**Pedro DE LA ROSA**

Fernando did not ask me.

**Nigel TOZZI**

You are saying that you persisted in asking for this information, purely as a matter of curiosity.

**Pedro DE LA ROSA**

Mike had told me that the [REDACTED]. This did not make much sense to me. I thought that with a better explanation of this, I could grasp it. The e-mail did not clear anything up to me, though, and that is why I never asked for more information. It was too complicated.

**Nigel TOZZI**

One final point. This is the information you were receiving about pit stops. You make the point that Raikkonen had stopped in Lap 19, rather than Lap 18. As you well know, that is simply a consequence of his being able to use up the last reserves of petrol.

**Pedro DE LA ROSA**

It could be for saving fuel or for any other reason.

**Nigel TOZZI**

In Paragraphs 37 and 28 of your witness statement, you tell us that Coughlan also sent you a text message, predicting when the Ferrari drivers would make their pit stops in Bahrain. You think you passed it on to Alonso. Mr Alonso's very short statement does not deal with this. Then you say,

*“In the event that Mike’s predictions prove wholly wrong for both drivers, this made me think that the information may not have been reliable in the first place”*. Is that true, Mr de la Rosa?

**Pedro DE LA ROSA**

From what I recall, he gave me the stopping laps and they were wrong for both drivers.

**Nigel TOZZI**

Why was that? Do you remember what happened in the Bahrain Grand Prix. There was a safety car from the first to fourth lap, was there not? Do you remember that, Mr de la Rosa?

**Pedro DE LA ROSA**

No.

**Nigel TOZZI**

I am happy for everyone to check that, if they wish.

If there is a safety car on the track, then earlier predictions of pit-stops will be wrong. Do you agree with this?

**Pedro DE LA ROSA**

It could be, because one would save fuel. When he told me, I did not realize this.

**Nigel TOZZI**

The fact that the predictions did not proved accurate in the Bahrain Grand Prix did not prove that the information was not reliable, but that it was simply a reflection of the safety car’s being out.

**Pedro DE LA ROSA**

This could be. I did not recall the presence of the safety car.

**Nigel TOZZI**

If you were being full and frank with this Council, you would have been careful to include this in your Witness Statement, in Paragraph 38, rather than the very misleading information that you were being given faulty information.

**Pedro DE LA ROSA**

No. I honestly forgot that there was a safety car in the first few laps in Bahrain. That is how reliable Mike's information was. That is the whole story.

This information was never that relevant to me. I have had, in the past ten days, to go into my computers in Barcelona, Zurich, looking back to what I did six months ago. In context, events from six months ago were nothing. We are making a mess out of all of this for nothing: whether or not there was a safety car? I had forgotten about all of this information until the time came to find these e-mails.

**Nigel TOZZI**

When you told Mr Alonso that the Ferrari information was coming from Nigel Stepney, who had been the Chief Engineer at Ferrari, in the e-mail we have seen, did Mr Alonso say to you, "What do you think you are doing? We should not be getting that kind of information from someone at Ferrari? That is wholly improper."

Pedro DE LA ROSA

No he did not.

**Nigel TOZZI**

He was happy to use the information as long as it was valuable, wasn't he?

**Pedro DE LA ROSA**

He did not say he was happy, but I fed him all of the information. We are touching the Ferrari information, I was sending him an e-mail after every test in the simulator, every test, to keep him up to speed. This is only an example of the many e-mails I was exchanging. I had never mentioned Ferrari before. This was our way of working at that stage.

**Max MOSLEY**

Thank you, Mr de la Rosa.

Your next witness.

**Ian MILL**

You have no questions.

**Max MOSLEY**

I think they have all been asked already.

**Ian MILL**

Mr Dennis.

Mr Dennis, in the bundle before you, behind Tab 1, you will find your witness statement. Looking at the final page, can you confirm that this is your signature?

**Ron DENNIS**

Yes, it is.

**Ian MILL**

Can you confirm that the evidence is true, to the best of your knowledge and belief?

**Ron DENNIS**

Yes, I can.

**Nigel TOZZI**

Mr Dennis, in light of the statement provided by Mr Sutton, I would like to read a declaration by Kimi Raikkonen to you and ask you about it: "I confirm that, during my time at McLaren, between 2002 and 2006, it was routine practice for McLaren to eavesdrop on pits to car radio transmissions of other teams." Do you agree with that?

**Ron DENNIS**

During what years?

**Nigel TOZZI**

Between 2002-2006, when he was your driver.

**Ron DENNIS**

2002-2006.

I am trying to remember the year of encryption. I think that 2002 may be possible.

**Nigel TOZZI**

In any case, you accept exactly that which Mr Sutton describes Ferrari as doing: eavesdropping on pits to car radio transmissions.

**Ron DENNIS**

At that point?

**Nigel TOZZI**

Don't worry about the dates; I just want you to confirm that this is something that McLaren has done.

**Ron DENNIS**

It was established practice up and down the pit.

**Nigel TOZZI**

Exactly.

When you carried out your initial investigation, you state that it did not cover the drivers.

**Ron DENNIS**

That is correct.

**Nigel TOZZI**

The drivers were aware, of course, that McLaren had been asked to come before the Council, on a charge of being in breach of Article 151 of the Sporting Code.

**Ron DENNIS**

The drivers?

**Nigel TOZZI**

Yes, they must have known about that.

**Ron DENNIS**

They heard about it after 3 July. They must have, from the newspapers.

**Nigel TOZZI**

Yes, and they knew that the basis for all of those allegations had been that Mike Coughlan was receiving information that belonged to Ferrari.

**Ron DENNIS**

No. The 3<sup>rd</sup> July issue focused on a quantity of documents that were, as we all know, obtained by him, copied by his wife, shredded by his wife and burned in the back garden and ultimately, seized on the 3<sup>rd</sup> of July. Everything that emerged thereafter was focused on the possibility of the material contaminating our company.

**Nigel TOZZI**

Neither Mr de la Rosa and Mr Alonso came to you at that time saying that there was something you ought to know: that Mike Coughlan had been receiving information from Nigel Stepney.

**Ron DENNIS**

No, 100% negative. No driver approached me and, in fairness to them, I never approached them.

**Nigel TOZZI**

Thus, it is established that at least two people on the McLaren team who, in the course of your very thorough investigations, did not come forward with information which I suggest was clearly relevant.

**Ron DENNIS**

Three people, insofar as Lewis was and is driving the cars. I was trying to establish, through the actions I had unstructured to be taken, whether the drawings or material from those drawings had contaminated the McLaren system. There was no way that I could make the link between drawings coming into the company and being looked at, or material reputedly floating around. How could I make that link to the drivers? There was no way. It never occurred to me that the drivers could be involved, yet clearly they were.

**Nigel TOZZI**

When Mr Alonso said to you, after the Hungarian Grand Prix, that he might disclose information to the FIA, unless –

**Ron DENNIS**

You are wrong in your timing. The exchange between Fernando and I, with his manager present, took place on the Sunday morning of the Hungarian Grand Prix.

**Nigel TOZZI**

When he came to you, saying that he had information – as you tell us, in the course of a heated discussion – you did not carry out any further investigation to see whether there had been any truth in what he had said.

**Ron DENNIS**

That is completely out of context.

**Nigel TOZZI**

Answer the question, then give us the context.

**Ron DENNIS**

I will not answer the question.

**Nigel TOZZI**

Very well.

**Ron DENNIS**

I will give you a detailed account, so that you can put the whole issue in context.

**Nigel TOZZI**

I am assuming that we have it in your witness statement.

**Ron DENNIS**

The material placed before the World Council has not been read by all of the World Council members. Therefore, for the Members to understand, I would like to repeat what took place. That is entirely reasonable.

First, the relationship between Fernando and myself is extremely cold. That is an understatement. In Fernando's mind, there is the firm belief that our policy, whereby each driver receives equal treatment, does not properly reflect his status as World Champion. He bases this assertion on the

fact that his experience and knowledge and what came to him from his former team is such that he should receive an advantage.

In that discussion, he was extremely upset with what had taken place the previous day, but nowhere nearly as upset as I was. He said things that he subsequently and fully retracted. Within the passage of material, he made a specific reference to e-mails from a McLaren engineer. When he made this statement, I said, "Stop". I went out, brought Mr Whitmarsh in, and Fernando said everything again, in front of his manager. When he had finished, I turned to Martin Whitmarsh, asking what we should do with this particular part of the conversation. Martin said we should find Max. After Martin and Fernando left, that is exactly what he did. I recounted the entire conversation to Max. I was upset and angry, but mainly upset. Max calmed me down. He said that I should do nothing. I started to calm down. Then, prior to the race, Fernando's manager came and said that he had lost his temper and completely retracted everything he said. When I phoned Max, Max was understanding and said things to me that are irrelevant here, though I would be more than comfortable sharing them. He was completely understanding and said that, on the basis of what I told him, if he felt there was any real validity in what Fernando had said, he would contact me prior to taking any action.

I, however, on the basis that this was an engineering matter, I asked Martin whether he thought something was amiss in that area. He told me, "We have been too thorough in talking to the engineers; he cannot have been telling the truth." We subsequently had a reasonable Grand Prix. Fernando came to me. He had come in 3<sup>rd</sup>. He apologised for the outburst and I put it down to the heat of the moment, in which he was angry. That is how I took it. Other than following up with Martin, the matter ended there, until 26 days later, when the drivers received a letter. What took place between those times, I do not know. I do not know what circumstances brought that into the public domain.

### **Nigel TOZZI**

That is not quite right. You know what Mr Mosley said in his letter dated 6 September 2007. You know what the explanation is: Mr Alonso apparently showed some information to someone else.

### **Ron DENNIS**

I have not seen anything anywhere indicating who said what to whom. To this day, I do not know how this came to Max's attention, apart from my telling him. Only Bernie may said that he had seen something and said he would pass it to Max. I do not know what that is. I do know that Bernie said it was in Spanish, but I do not know how this material came to the knowledge of the FIA. Most certainly, I advised Max of this. I am pretty sure I said to Max that there was reputedly ... Specifically in that conversation with Fernando, Martin said, "You mean, your engineer on the car". He said, "No, I don't mean your engineer on the car.

### **Nigel TOZZI**

After matters had calmed down with Mr Alonso and you were once again on speaking terms, you did not ask him then...

**Ron DENNIS**

We are not on speaking terms, but that does not matter.

**Nigel TOZZI**

You did not ask him, in a calm and measured way, whether his suggestion that he had e-mails was correct on the basis that, if he did have them, he should have told you about them, rather than keep them up his sleeve. You did not have that conversation, did you?

**Ron DENNIS**

We have not had any conversations since that point.

**Nigel TOZZI**

And you did not inquire of Mr de la Rosa, whether he knew?

**Ron DENNIS**

Why would I talk to drivers, when the conversation with Mr Alonso was subsequently retracted in full, through his manager. Why would I deal with that? And if I were trying to conceal something, would I have called Max?

**Nigel TOZZI**

Let us put that in context. You started that conversation by saying, "We have never had this conversation", did you not?

**Ron DENNIS**

To Max?

**Nigel TOZZI**

Yes.

**Ron DENNIS**

I said, "in the strictest confidence". I do not know that I used the phrase, "We have never had this conversation. I am not disputing that Max's recollection may be more accurate than mine. The fact remains that I was speaking to the President of the FIA. Max will tell you that we have a difficult relation. It is not a great relationship, due to various issues in the past years over which we have had differences of opinion.

To call him on the telephone and tell him what had taken place clearly indicates that there was absolutely no effort on my part to hide what had happened. There was no such effort at all. It was subsequently retracted and put down to one of our engineers. I had absolute confidence that the information passed to our engineers had not been involved in it. That gave me the confidence that he was not telling the truth. And he retracted it.

**Nigel TOZZI**

If Alonso had not shown the documents to Mr Ecclestone, and Mr Ecclestone had not alerted Mr Mosley, who then wrote to the drivers, we would not have found out about these e-mails. Is that not so?

**Ron DENNIS**

The simple fact is that they did not even exist, as far as I was concerned. Nothing existed, because he said that he retracted it, that it did not happen. I phoned Max and said that he had retracted it and calmed down.

**Nigel TOZZI**

Why is Mr Alonso not here?

**Ron DENNIS**

Mr Alonso is not here because he does not want to be here. He does not speak to anyone much. He is a remarkable recluse for a driver. He is not here by choice. Moreover, he said he had other things to do by previous arrangement. I cannot force him to come. We asked him to come.

**Nigel TOZZI**

Would it be fair to say that it would not be as supportive of McLaren's case as your other witnesses?

**Ron DENNIS**

I presume that what he has written in his statement is the truth. If our relationship is as it appears to be, why would he make the statement? The statement is the truth. That is what statements are about.

**Nigel TOZZI**

In your witness statement, Paragraph 3, Sub-paragraph 5, in the context of the investigations carried out, you stated that you offered access to Quest. Ferrari's experts carried out similar searches. You say they found nothing. They actually found that the Ferrari dossier – the

documents which Coughlan had downloaded onto the CD – had been viewed by him on a computer at McLaren's premises.

**Ron DENNIS**

No.

**Nigel TOZZI**

Are you saying that this did not happen, Mr Dennis?

**Ron DENNIS**

I cannot exactly remember, but as far as I can recall, there was a reference to material having been looked at, but they did not know what it was. As far as I know, that was consistent with what Coughlan said. Where it happened, nobody knows, because it was on his laptop, which he took back and forth from his home. I therefore have no clue where it happened, nor do I know what he was looking at. It is an assumption that he could have been looking at that material. There was no evidence that he was; that was but a shadow.

**Nigel TOZZI**

That was a McLaren-owned laptop, was it not?

**Ron DENNIS**

And it drives home in a McLaren car. Yes, at the end of the day, it was a McLaren computer. But, like many others owned by engineers, it went backwards and forwards. We trust the engineers and believe them to be correct people. But we cannot require them to leave their laptops at the office.

**Nigel TOZZI**

The computer searches carried out by both your experts and ours did not turn up the e-mail exchanges which Mr de la Rosa and Mr Alonso have now disclosed.

**Ron DENNIS**

Nor was anything found on the computers that you held on the morning of the 3<sup>rd</sup>.

**Nigel TOZZI**

Thus, if there are other e-mail exchanges that have not been disclosed, it is quite likely that they will have been missed by the computer experts as well. Is that not so?

**Ron DENNIS**

Is that not a double-negative? How can we assume what someone did or did not do? Either it exists or it does not. The forensic nature of those processes, as I understood, was not only very detailed, but could reconstruct most of the material held in a computer. That is why they are experts. They did reconstruct a great deal of material, as I understand it.

**Nigel TOZZI**

We can test that in this way. As you told us, on 26 July, when you came before this Council, as far as you were concerned, the e-mails which we have now seen disclosed by Mr de la Rosa and Mr Alonso did not exist.

**Ron DENNIS**

Can you say that again?

**Nigel TOZZI**

I am quoting you. You said that, as far as you were concerned, on the 26<sup>th</sup> of July, when you came before this Council, the e-mails we now have did not exist.

**Ron DENNIS**

I had absolutely no knowledge of them. How could I? 1 300 people work for our group. How on Earth could I know all about what moves amongst my employees? How do you expect me to know that? I certainly did not know anything about the e-mails moving between our drivers.

**Nigel TOZZI**

Mr Dennis, I agree with you. This puts into context any categorical assurances, however.

**Ron DENNIS**

You can only give categorical assurance about knowledge: what you do know, not about what you do not know.

**Nigel TOZZI**

Thank you, sir.

**Max MOSLEY**

Do you want to ask Mr Dennis further questions?

**Ian MILL**

No.

**Max MOSLEY**

That is all, then, as far as Ron is concerned.

Then, we have reached the stage of –

**Nigel TOZZI**

I have Dr BRAUN here. I think that Mr Lewis and Mr Taylor are here, as well, if the Council is willing to hear them.

**Ian MILL**

Of course, they are here to assist.

**Nigel TOZZI**

Sir, I am reminded that Mr Neale may still be here. I do not know whether you want to hear from him further. You will know, from our submissions, that we feel his answers have been unsatisfactory.

**Max MOSLEY**

You may take up matters with him, but I do not think that we have any further questions.

**Ian MILL**

Of course, if the Council thinks Mr Tozzi should be allowed to question him. I would remind you, however, that this is not a referral of your previous decision. I am not objecting, but rather stating, so that the Council hears me before Mr Neale gives evidence.

**Max MOSLEY**

Mr Mill, the point is well-taken, but our objective is to reach the truth. If we can get close to that by asking a few questions, then by all means we should.

**Ian MILL**

I am not objecting, but merely noting that this Council cannot be asked to reconsider its own decision based on the evidence before it last time.

**Max MOSLEY**

Your point is noted.

**Ian MILL**

Mr Lewis, do you have in front of you a document that bears your signature on its second page?

**Mr LEWIS**

I do

**Ian MILL**

Is this your evidence to the World Motor Sport Council?

**Mr LEWIS**

Yes, it is.

**Ian MILL**

Can you confirm that the contents of it are true to the best of your belief and knowledge?

**Mr LEWIS**

They are.

**Ian MILL**

Thank you.

**Nigel TOZZI**

In Paragraph 3 of your Witness Statement, you tell us that were assigned to this project in early April 2007, describing it as “not a particularly difficult task”. However, you specify that you did not complete it until June 2007. Thus, although not a particularly difficult task, it appears to have taken you the better part of three months to complete it.

**Mr LEWIS**

There was a reasonable amount of work involved. It was not difficult, but there was a lot of it.

**Nigel TOZZI**

Throughout that period, you were in regular contact with Mike Coughlan and reported to him, were you not?

**Mr LEWIS**

Yes, I reported to him.

**Nigel TOZZI**

And you were in regular contact with him?

**Mr LEWIS**

Yes.

**Nigel TOZZI**

He took part in any discussions that you may have had in the course of your work, did he not?

**Mr LEWIS**

No, he did not take part in all of them.

**Nigel TOZZI**

That must be right. However, he took part in some of them.

**Mr LEWIS**

He took part in some of them, yes.

**Nigel TOZZI**

In your Paragraph 6, you say, "*at no time did Mike give me any Ferrari confidential information, or instruct me to do anything which I in any way suspected was informed by Ferrari confidential information.*" Have you seen the Ferrari information?

**Mr LEWIS**

No.

**Nigel TOZZI**

So, when you had a discussion with Mr Coughlan and he suggested something, gave you an idea or provided input, you frankly have no idea whether that is based on something that he had learned from the Ferrari information or not.

**Mr LEWIS**

My task was to repackage an existing McLaren system into the 2007 car. It had no bearing. I was simply re-packaging what we already had.

**Nigel TOZZI**

It was plainly more complicated than that, because you spent three months on it.

**Mr LEWIS**

As I said, there was a lot of work involved in re-packaging it. They are two totally different cars, and I had to re-package them.

**Nigel TOZZI**

Do you agree that, in your discussions with Mr Coughlan, when he came up with ideas or suggestions, you have no idea as to whether they came from him having read the Ferrari information or not.

**Mr LEWIS**

I do not recall him coming up with any suggestions that did not involve my re-packaging existing materials.

**Nigel TOZZI**

Very well. Thank you.

**Max MOSLEY**

Thank you very much.

**Ian MILL**

Mr Taylor, you should have in front of you a document. Can you confirm that this is your signature, on the second page?

**Mr TAYLOR**

Yes, it is.

**Ian MILL**

Does this statement represent your evidence to the Council?

**Mr TAYLOR**

Yes, it does.

**Ian MILL**

Are the contents true to the best of your knowledge and belief?

**Mr TAYLOR**

They are.

**Nigel TOZZI**

Mr Taylor, you worked with Mr Coughlan at Ferrari, as well as at Arrows.

**Mr TAYLOR**

That is correct.

**Nigel TOZZI**

It would be fair, would it not, to say that you are old friends.

**Mr TAYLOR**

Yes, it would.

**Nigel TOZZI**

Have you been in touch with him since the search conducted by Ferrari on 3<sup>rd</sup> of July.

**Mr TAYLOR**

Yes.

**Nigel TOZZI**

I will now show you a document for which confidentiality has been claimed. However, I want you to look at it because I want to ask you a question. I will have my learned friend look at it as well. It is the exhibit to Professor Gantor's report: the hand-penned drawing that Mr Stepney is said to have given to Mr Coughlan when he was in Barcelona.

**Max MOSLEY**

Mr Tozzi, is that this one?

**Nigel TOZZI**

Yes.

Mr Taylor, you know what this is, do you not? You can recognise it for what it is?

As we understand it, this is the copy of the drawing that Mr Coughlan showed to you. Looking at it now, even briefly, you can see that there are two differences to any brake system on which you worked while at Ferrari: a lever to adjust the brake balance and a means to pre-load the bar.

**Ian MILL**

Before the witness answers the question, I think Mr Tozzi has made an assumption, which we should first check to be correct. The first question is: was this the document that Mr Taylor recalls Mr Coughlan's showing to him. It may be, but I think that, logically, that should be the first step.

**Nigel TOZZI**

I am happy for Mr Taylor to answer my learned friend's question.

**Mr TAYLOR**

No, it is not.

**Nigel TOZZI**

You say this is not the document, Mr Taylor?

**Mr TAYLOR**

This is not the document that Mr Coughlan showed me.

**Nigel TOZZI**

What were you shown then?

**Mr TAYLOR**

A GA of a brake system.

**Max MOSLEY**

Could you help us understand what that means?

**Mr TAYLOR**

It was a General Arrangement drawing, of general assembly.

**Nigel TOZZI**

Perhaps you could hand that one back then!

What do you remember of that general arrangement drawing so that you can say, with such certainty, that it is not the one I have just shown you.

**Mr TAYLOR**

It was a proper engineering drawing.

**Nigel TOZZI**

You mean a more detailed drawing, rather than a hand-penned drawing.

**Mr TAYLOR**

Yes.

**Nigel TOZZI**

Why do you think that Mr Coughlan was showing this to you?

**Mr TAYLOR**

The conversation as a reprise to some work I had done a decade or so at Ferrari.

**Nigel TOZZI**

Why was he showing it to you?

**Mr TAYLOR**

He was asking me to remind him of work that we had done in around 1994.

**Nigel TOZZI**

How long did you spend looking at that drawing with him?

**Mr TAYLOR**

Moments.

**Nigel TOZZI**

He must have shown it to you, presumably to request some sort of specific input.

**Mr TAYLOR**

We were discussing the systems we used in around 1994, which were hydraulically activated brake balance systems. He asked me my opinion of what this view showed. I gave it to him.

**Nigel TOZZI**

Whatever the mechanical arrangement, he asked your opinion and you discussed it with him. You did not ask him where that drawing came from? If it is a general arrangement drawing, did it not have a little box, indicating its source and date?

**Mr TAYLOR**

It was a considerable reduction from the original, and thus fairly illegible, apart from the cartoon-style picture.

**Nigel TOZZI**

Did you realise that it was Ferrari system, Mr Taylor?

**Mr TAYLOR**

I think so, yes.

**Nigel TOZZI**

It would have the prancing horse on it.

**Mr TAYLOR**

It did have a logo in the corner.

**Nigel TOZZI**

Yes. And you did not think to ask Mr Coughlan why he had a Ferrari drawing in his possession.

**Mr TAYLOR**

It was a fairly fleeting conversation, alluding to a system that I had worked on many years ago.

**Nigel TOZZI**

As old friends, did he not confide in you that he had been in touch with Mr Stepney?

**Mr TAYLOR**

When you say, "in touch", what do you mean?

**Nigel TOZZI**

Did you know he had been to see him that weekend?

**Mr TAYLOR**

No

**Nigel TOZZI**

Did you know that he was in regular contact with Mr Stepney?

**Mr TAYLOR**

What do you mean by regular contact?

**Nigel TOZZI**

Did you know that he was in contact with Mr Stepney during this period, from March to June 2007?

**Mr TAYLOR**

Yes, I assume they would have been. They are known friends. When they travelled to races, he was very likely to bump into him.

**Nigel TOZZI**

You say they were known friends. According to Mr Coughlan, though, he had not spoken to Mr Stepney for five years before March 2007.

**Mr TAYLOR**

You would have to ask Mike.

**Nigel TOZZI**

I would love to.

It is suggested that Mr Coughlan and Mr Stepney were scheming to leave McLaren.

**Mr TAYLOR**

No.

**Nigel TOZZI**

You did not. Mr Coughlan did not discuss with you his desire to leave at any time?

**Mr TAYLOR**

No.

**Nigel TOZZI**

Even though you and he had effectively moved teams together three times.

**Mr TAYLOR**

Three times?

**Nigel TOZZI**

Twice.

**Mr TAYLOR**

Yes.

**Nigel TOZZI**

Despite this, he never discussed that matter with you?

**Nigel TOZZI**

Thank you.

**Ian MILL**

To clarify, were you working on McLaren's brake balance system at that time (April-May-June 2007)?

**Mr TAYLOR**

No.

**Ian MILL**

No further questions.

**Max MOSLEY**

We were to hear again from Mr Neale.

**Ian MILL**

We have no further statement from Mr Neale, so I do not have to put the formalities to him.

**Nigel TOZZI**

Gentlemen, Mr Neale's original statement can be found in the Exhibits, which we have attached to our submissions behind Tab 23. It is also the original documents submitted by McLaren at the last hearing.

Mr Neale, in Paragraph 5, you state that you became aware, from Mr Coughlan at the Australian Grand Prix in March, that Stepney had been in contact with him, for the purpose of informing him that Ferrari had not been in compliance with the FIA regulations. Did you ask Mr Coughlan about the nature of those communications?

**Jonathan NEALE**

In a general way, I had a conversation with him. He let it be known that there had been a couple of e-mails, but nothing specific.

**Nigel TOZZI**

Did you know that they were also texting and telephoning one another?

**Jonathan NEALE**

I was aware that they were in general communication.

**Nigel TOZZI**

When, in Paragraph 6, you tell us of the conversation said to have taken place with Mr Coughlan, which resulted in your telling Mr Coughlan to cease communication with him, did you understand this to extend to telephone and text communications, as well as e-mails?

**Jonathan NEALE**

Yes. It was clear to me that he was to stop communication.

**Nigel TOZZI**

In Paragraph 7, you state that Mr Coughlan stated to you in mid-April that, despite his attempts to end contact, he was still receiving contact complaining about his treatment at Ferrari. Therefore, you arranged for a firewall to be introduced. What was the nature of that contact?

**Jonathan NEALE**

As I said in my statement, he was receiving contact from Mr Stepney, complaining about his treatment at Ferrari. He said he had been unsuccessful in his attempts to stop that.

**Nigel TOZZI**

The introduction of a firewall would imply that your concern pertained more particularly to e-mail traffic. Do you agree?

**Jonathan NEALE**

It was a preventive measure, but was not related to the conversations at the Australian Grand Prix. It was a countermeasure at that time to further ensure that communications would stop.

**Nigel TOZZI**

Did you ever ask to see the e-mails passing between Stepney and Coughlan?

**Jonathan NEALE**

The only e-mail traffic of which I was aware was the whistleblowing at the Australian Grand Prix and it was not my business to deal with that.

**Nigel TOZZI**

When Mr Coughlan came to you to make a point about the problem he was having – that Stepney was contacting him – did you ask him what form that contact was taking?

**Jonathan NEALE**

No. I was given the impression that this was general nuisance contact. Someone he had known for a long time, clearly in some form of discomfort, was continuing to make contact with him. I did not see it as particularly sensational at that point.

**Nigel TOZZI**

Mr Coughlan regarded it as significant enough to tell you, not even his immediate superior. You are an additional level above him. You regarded this as significant enough to install a firewall. Are you really telling us that you did not enquire any further as to the nature of that communication.

**Jonathan NEALE**

Yes, that is what I say in my statement: I did not regard it as any more significant than that.

**Nigel TOZZI**

I know you said that in your statement. I am giving you a chance to tell us more now that we know something about the extent of the contact. Would you like, now, in the light of that further information, to tell us more?

**Jonathan NEALE**

No, that is my position.

**Nigel TOZZI**

This brings us to the visit that Coughlan paid to Barcelona. Who paid for this?

**Jonathan NEALE**

Initially, I think he paid for it, then reclaimed it as expenses at a later time.

**Nigel TOZZI**

In other words, this is a trip that McLaren paid for, made by Coughlan to meet Stepney.

**Jonathan NEALE**

The trip had been suggested by Mike, to cease contact with an individual whom he had known for a long time. Insofar as it was his task to do so, on legitimate instruction, then it is not unreasonable for an employee to be reimbursed.

**Nigel TOZZI**

It strikes me as odd that, to stop someone from contacting him, the best method was to fly to Barcelona. What is wrong with sending a letter, making a telephone call or sending an e-mail?

**Jonathan NEALE**

As I say in my statement, previous attempts to do this had failed. At the time, given the context of the situation, I did not regard that as particularly abnormal.

**Nigel TOZZI**

Did you ask for a full report from Mr Coughlan?

**Jonathan NEALE**

No, I did not.

**Nigel TOZZI**

In your Witness Statement, you tell us only that Mr Coughlan told you, after the event, that Mike Gascoyne, the Technical Director of Spyker, had been in the same restaurant as that which he had been in with Mr Stepney.

**Jonathan NEALE**

Yes, that is correct.

**Nigel TOZZI**

So he told you nothing about the meeting at all?

**Jonathan NEALE**

You are leading me. In my statement last time, I told you that he had said and led me to believe, in a cursory manner, that all contact with Stepney had stopped. I thought the matter was dealt with.

**Nigel TOZZI**

You do not say that in your witness statement. Coughlan had gone specifically and with the sole purpose of telling Stepney to stop communicating. I suggest to you that one would naturally have expected you to ask what had been said and whether Stepney was going to stop.

**Jonathan NEALE**

We were dealing with a nuisance factor from an employee at another organisation, whom I furthermore regarded as erratic. It was a very busy time of year and I had a great deal to do. In that context, I did not give it any more thought. The benefit of hindsight is a wonderful thing.

**Nigel TOZZI**

When you say that he led you to believe that there was no more communication, are you saying that he actually told you this?

**Jonathan NEALE**

Yes.

**Nigel TOZZI**

That is not in your Witness Statement. When did he tell you that?

**Jonathan NEALE**

During that particular transaction, when he referred to Mike Gascoyne's being there.

**Nigel TOZZI**

Why did you not mention that in your witness statement? It is actually rather more important than Mike Gascoyne's presence.

**Jonathan NEALE**

At the time, this was my position. I went under questioning from various members of the World Motor Sport Council last time on this, and made it absolutely clear that Mike had stopped the communication.

**Nigel TOZZI.**

Let us come to the meeting on 25 May.

We have read your statement and see what you say. I suspect that most of us have read the transcript from the last meeting. Mr Neale, what did you think that Mr Coughlan was trying to show you at the end of that meeting?

**Jonathan NEALE**

Again, I covered that with the World Motor Sport Council last time. I think he was trying to make a pitch for resources to spend on mock-up technology. There was nothing else that he would have wanted to talk about with any relevance. That is, however, speculation.

**Nigel TOZZI**

You tell us, in your statement, Paragraph 10, that he took two multi-coloured pictures out of his bag, which he quickly showed you. You thus knew that this was not an offer from a rival organisation, but something different.

**Jonathan NEALE**

That is self-evident.

**Nigel TOZZI**

Yet you immediately said you did not want to look at it. Why not?

**Jonathan NEALE**

It was not pertinent to the reason why we were there. I did not regard it as important. I had spent an hour and a half with him, on a Friday morning, over breakfast, settling down an employee whom I thought was giving a cry for help and who wanted to leave the organisation. These were low-level concerns. It was not an issue.

**Nigel TOZZI**

It was in issue: here, an employee wanted to show you something in strict confidence. He pulled it from his bag, and you immediately recoiled from it, told him that you did not want to know and advised him to destroy it.

**Jonathan NEALE**

I don't think I said "recoil" anywhere.

**Nigel TOZZI**

I said it. You did not want to know, and told him he ought to destroy it.

**Jonathan NEALE**

You are putting words in my mouth. I told him that, if this was something that he should not have, he should destroy it. I was closing the incident down, having spent 90 minutes discussing the primary reason for being there. With the benefit of hindsight, there are many questions I might have asked. As I also say in my statement, at no point did Mr Coughlan reveal that he had documents belonging to Ferrari, or that these pictures had come from Stepney.

**Nigel TOZZI**

Let us stay with what you thought it was. You say that "if" it was something that he should not have, then he should destroy it. You are his employer, his superior. If he has something that he should not have, surely it is your duty to question him sharply about what he has and what is going on.

**Jonathan NEALE**

Again, you are leading me. I regarded the matter as a low-level issue. I did not think it was significant at all. Nothing on there would have drawn my attention to any team, specifically.

**Nigel TOZZI**

Why did you think it was something he should not have?

**Jonathan NEALE**

I think we covered this ground at the last World Motor Sport Council, where the same question was put to me: the way in which he produced the document, prefacing the subject with "I want to show you something in strict confidence" naturally alerted me.

**Nigel TOZZI**

You said, "If my suspicions were correct, he should immediately destroy them". What suspicions were those?

**Jonathan NEALE**

It was a general statement. I had no specific allegations. However, by the way in which he produced it, there appeared to be something confidential. I did not want to go into the conversation. I did not think that what I was looking for was particularly grave.

**Nigel TOZZI**

Let us step back and look at the situation. In March, you became aware that Mr Coughlan had been receiving Ferrari information from Mr Stepney. Through April, you are told by Mr Coughlan that Mr Stepney is still contacting him and trying to pass him information. In May, you meet him and he suddenly produces from his bag documents which you obviously regard as suspicious because you immediately tell him that if they are not McLaren documents, he should not have them, you did not want to see them and that he should destroy them. Where did you think they had come from, if not from Stepney.

**Jonathan NEALE**

I think I have covered this. There are several questions and allusions in your question. As to where I thought the documents had come from, I did not know. You are also misleading the World Motor Sport Council when you make three events, separated by one month at the beginning of a busy racing season, appear to have occurred in close succession. This was, moreover, not the main focus and worry of my business. Now, with the benefit of hindsight and what we know now about the communication, we can wonder at all types of things.

**Nigel TOZZI**

It is not me who is trying to mislead the World Motor Sport Council. I suggest that, in reality, you knew that in Coughlan's bag were documents he had secured from Stepney. Instead of doing the

right thing – immediately investigating it so that the matter was brought out into the open and dealt with properly – you turned a blind eye, by telling him that you did not want to know.

**Jonathan NEALE**

Mr President, I think this is offensive and misleading.

**Nigel TOZZI**

What is offensive about this?

You are told, in terms, that he wants to show you something in strict confidence, and you turned a blind eye.

**Jonathan NEALE**

Those are your words, and not mine.

**Nigel TOZZI**

Actually, they are the President's word from the last occasion.

**Jonathan NEALE**

We discussed this the last time.

**Nigel TOZZI**

Yes, and he said that this was an inference, but not one that you thought was right. I am suggesting that it is exactly the right inference, is it not?

**Jonathan NEALE**

I will not be badgered into changing my position, nor will I mislead the World Motor Sport Council.

**Nigel TOZZI**

I asked for you to be called, because I am going to say that you quite intentionally turned a blind eye. I asked for you to be called so that you could have the opportunity to answer those questions. This has now been the case.

**Jonathan NEALE**

What I have said may be inconvenient to the point you are trying to make, but I have told you the truth. I want the World Motor Sport Council to be quite clear on that. You will find that what I am saying is entirely consistent with what Mike Coughlan has said, what I have stated and what I testified when I was here last.

**Max MOSLEY**

Thank you very much, Mr Neale.

**Nigel TOZZI**

Dr BRAUN, now.

**Max MOSLEY**

I am fearful that we are not able see all the witnesses before a few people must leave for flights.

**Nigel TOZZI**

Dr Braun, could you please go to the last page of your witness statement. Can you confirm that this is your signature, on the last page?

**Dr BRAUN**

Yes it is.

**Nigel TOZZI**

I have one very short question I wish to ask of you. This statement was made on 28 August 2007. This was before any of us had seen the e-mails that Mr de la Rosa and Mr Alonso have disclosed. Have you seen those e-mails?

**Dr BRAUN**

Yes, I have.

**Nigel TOZZI**

Is the information in them information that you would have regarded as significant, in your position?

**Dr BRAUN**

It reinforces my opinion, as stated in the last page, particularly information such as weight distribution, aerodynamic balance, the type of gas used to fill tyres, etc. All of this is strategically critical information.

**Ian MILL**

Dr Braun, have you ever worked for McLaren?

**Dr BRAUN**

I have not.

**Ian MILL**

Has anyone from McLaren, at any time, told you what the role of Mr Coughlan was?

**Dr BRAUN**

Yes.

**Ian MILL**

Who was this?

**Dr BRAUN**

I interviewed Michael Coughlan at the end of 2005, for a position at Ferrari.

**Ian MILL**

Thus, your evidence in Paragraph 5 of your statement, where you say that the precise role of a Chief Designer might vary from team to team, adding that you have knowledge of Mr Coughlan's career, you were saying this in part because of your interview with him.

**Dr BRAUN**

Yes. Mr Coughlan worked for me for a short period at Ferrari.

**Ian MILL**

Indeed. Then you state: "However, whatever the detailed structure of a team's engineering division, it's Chief Designers role would include the following." I had understood that to be not an account of what M Coughlan told you, but rather intelligent speculation and experience. Which is it?

**Dr BRAUN**

It is a combination: primarily my experience of the role of people with Mr Coughlan's seniority in a racing team.

**Ian MILL**

Is there any reason that you did not include in your statement the fact that you had interviewed Mr Coughlan and obtained information of this nature from him?

**Dr BRAUN**

No, until you asked me the question.

**Ian MILL**

Have you read Mr Lowe's statement, in which he comments on Paragraph 5 and explains Mr Coughlan's actual role?

**Dr BRAUN**

I have read it, yes.

**Ian MILL**

Presumably, you have no reason to doubt what Mr Lowe has told the Council about this?

**Dr BRAUN**

We are in agreement on a number of points. We do disagree on some points. I think that Mr Lowe's statements here and his testimony at the original hearing converge with my opinion that Mr Coughlan would have had some input in the ideas for McLaren's Formula 1 car.

**Ian MILL**

Thank you; that was not quite the question I asked. I asked whether you have any reason to doubt the accuracy of Mr Lowe's statements regarding Mr Coughlan's role.

**Dr BRAUN**

I don't agree with it, no.

**Ian MILL**

You do not agree with it.

**Dr BRAUN**

With portions of it, no.

**Ian MILL**

Are you suggesting to the Council that Mr Lowe is mistaken about what the Chief Designer at McLaren is doing or that he is trying to mislead the Council.

**Dr BRAUN**

My opinion is that Mr Coughlan would have more input into the car. Mr Lowe paints a picture of under-the-door engineering, as though a door separated Mr Coughlan from the people with ideas, and information is passed under that to be approved. Mr Coughlan deals with them, turns them into a car and passes them back again. I have never seen an arrangement like that work, so I do not agree with Mr Lowe's representation.

**Ian MILL**

You are thus suggesting to the World Motor Sport Council that Mr Lowe is not telling the truth.

**Dr BRAUN**

I would not agree that someone of Mr Coughlan's seniority would do that, based partly on what Mr Coughlan told me, partly based on Mr Lowe's first statements to this hearing, where he comments that Mr Coughlan contributes to the idea pool and is free to make suggestions.

**Ian MILL**

I will not ask the same question again. I will move on.

You go on, in Paragraph 7, to make informed speculation about the way in which a Formula 1 team might benefit from access to rivals' confidential information. Mr Lowe has dealt with that in terms, in paragraphs 14 and 15 of his Witness Statement. Have you read Mr Lowe's response to your Paragraph 7?

**Dr BRAUN**

Yes, I have.

**Ian MILL**

Do you accept that what Mr Lowe says is the position, and should be given more weight by this Council than your supposition?

**Nigel TOZZI**

That is not evidence; it is a comment, a submission.

**Ian MILL**

I will put it differently: having read Mr Lowe's answer, do you accept what he says?

**Dr BRAUN**

I do not, because Mr Lowe makes reference to the 2006 and 2007 Bridgestone tyres, commenting that the latter were not the same as the 2006 ones, thus inferring that Ferrari could have gained advantage. In fact, the 2007 Bridgestone tyres were based on the 2005 Bridgestone tyres. Bridgestone produced a tyre in 2006 which was very difficult for them to manufacture. Thus, they took a step back, technologically. The 2005 tyre and the 2007 tyre were very similar, so I do not agree with Mr Lowe's comments about the tyre situation.

**Ian MILL**

Do you have any other comments?

**Dr BRAUN**

I stand by my comments.

**Ian MILL**

I know that you have left Ferrari to take a break from motor racing. Are you planning to return to motor racing?

**Dr BRAUN**

I am currently in discussion with Ferrari about that possibility.

**Ian MILL**

Thank you very much indeed.

**Max MOSLEY**

Thank you very much.

Are there any further witnesses?

**Nigel TOZZI**

My witnesses are here if anyone wants to question them. I personally do not need them to repeat what is already in their witness statements.

**Max MOSLEY**

We do not. Do you, Mr Mill?

Let us go straight into the final submissions, then. The schedule calls for 10 minutes for Ferrari and 20 minutes for McLaren. If you are able to do so more quickly, it would be to everyone's advantage, but I did not want to put either of you under pressure.

**Nigel TOZZI**

I will be as quick as possible.

I will pick up on a few points that Mr Mill made in his presentation and give you bullet point responses.

First, Mr Mill suggested, on a number of occasions, that this was a trial in which there is to be "conviction of use", one in which each and every McLaren witness must be convicted of lying, in short, one where a very high threshold that must be crossed. With the greatest respect, this is not what this hearing is about at all. May I remind you of a point I made at the outset of my submissions. This is an investigation if a charge that McLaren is in breach of Article 151c. That is all. You do not have to convict them of usage. That word does not appear in the wording of Article 151c. I urge you not to be seduced into thinking that there is some harder and higher test than that contained in the Article. The matter is simply to determine whether there has been conduct prejudicial to motor sport.

Secondly, it was suggested that the burden should be beyond all reasonable doubt; in other words, if you have any reasonable doubt whatsoever, then you should acquit McLaren. First of all, there is no question of acquitting McLaren. You have already found them in breach of Article 151c. The purpose of this hearing is not to revisit that decision, but to determine whether that breach was rather more serious that you were led to believe on the last occasion. We suggest that the further evidence that has now come to light plainly demonstrates that it is more serious.

Thirdly, great emphasis was placed on the document signed by the 140 engineers at McLaren. I do not want to belittle or deride that document. I am sure that they are all very loyal to McLaren and are all honest men. The point is, as your President said, that they simply do not know. They do not know whether ideas have come from Coughlan's use of the Ferrari documents, or the Ferrari information plainly being fed to him by Stepney.

You do know, in contrast, that the accounts given my Mr Coughlan are untrue. In the UK proceedings, Mr Coughlan has given an account that did not tell that court anything about all of the SMS texts and other communications that were going on between him and Mr Stepney. You know that you cannot trust what he says, when he says he does not use that information. Use your common sense, then: Is this man, in possession of those documents, obviously having read them, really not going to use them? Mr Lowe's suggestion, furthermore, that those documents really are of no use at all, does give us grounds to attack the objectivity and credibility of Mr Lowe. He is here to "fight McLaren's corner". He is not an objective witness in any true sense of that word. He is a McLaren representative, through and through, and has come here to fight their cause.

It was also suggested to you that, in some terms, you are "*functus*" and cannot revisit issues that you have already decided. You have decided that McLaren is in breach of Article 151c. You are perfectly entitled to revisit, for instance, the role of Mr Neale in light of the further information that has come to light since then. For example, you did not know about the exchange of information between Mr Coughlan and Mr Stepney, which is said to be one of the reasons why Mr Neale introduced a firewall. You might have expected Mr Neale to explore this a bit further. The idea that you are *functus* in that you cannot revisit those issues, is simply wrong.

With regard to the computer investigation, there were rightly serious restrictions as to what McLaren could look at on Ferrari's computers. That will come as a surprise to no one. Secondly, we do not know what we are looking for. The e-mails that have come from de la Rosa and Alonso are interesting, in that they were not returned by any of the investigations thus far. The idea that, because a computer investigation has taken place, all of the relevant information has been returned, is frankly naïve. That there may be other smoking guns present was not picked up during the investigation.

I conclude with this. We suggest that the evidence before you now shows that the problems in McLaren did not have only to do with Mr Coughlan, though he held a very senior position there. We now know that McLaren was infected in all sorts of other areas, by knowledge either of the fact that Coughlan was receiving this information, or quite possibly by use. That is sufficient, in our submission, to impose a severe punishment, under Article 151c. Were you not to do so, that would be a failure, effectively rendering Article 151c impotent as a clause. Sometimes, when a patient is sick, unpleasant medicine must be administered, for it is in the best interest of the patient. That is the position we are in today.

## **Max MOSLEY**

Mr Mill, before you begin, may I raise a point with you in the McLaren submission?

On page 25 is a document headed "non-discrimination and transparency". On page 27, there is reference to the assertion that: "*FIA's undertaking to the European Commission to act in an even-handed way as between competitors is fundamental*".

On paragraph 59, I would have a lot to say about this, but we do not have time.

Then, in paragraph 60, there are a number of “further serious concerns”. It is stated that McLaren has been the subject of discriminatory treatment in the context of its preparation for this hearing. Two example are listed under that. One says that McLaren has been faced with barrage of materials and subject to a series of extremely short deadlines in what the press now routinely describes as a “witch hunt”. Is this a point that McLaren is actually making and wants to make: that this should be described as a witch hunt?

**Ian MILL**

You will forgive those in McLaren who have taken quite enough “medicine” – Mr Tozzi referred also to a siege mentality – if they sometimes believe this to be the case. I do not know whether there is a witch hunt and am not here to make submissions on that either way. You will forgive those in the company if they sometimes think this is the case.

**Max MOSLEY**

You say that you are not here to make submissions on that, but you do. They are here in front of us, in writing, and refer to a “witch hunt”.

**Ian MILL**

It says that the press refers to a witch hunt. Our point is simply that we have been met with no small amount of new material and have had a short period of time in which to deal with it. In other situations, not before this sporting body, a much greater period of time would have been given, and far greater time set aside for this matter to be dealt with. We would have had the opportunity to produce all of our evidence. We could have produced all of our engineers and done everything so much more effectively. The FIA takes its own course as to what it believes to be a just, fair and reasonable process. Other bodies might take a different view. All I can tell you is that we have done the best that we can in a very difficult set of circumstances. Factually speaking, this is the result of the deadlines imposed upon us. I am not telling you that you would have given Ferrari four months in a similar situation. I am simply saying how we find ourselves.

**Max MOSLEY**

You adopted that phrase, “witch hunt”. Do you still adopt it?

**Ian MILL**

I am not here to support or deny. I am telling you only what my clients feel.

**Max MOSLEY**

In the second paragraph, it says that “steps have been taken” – implying that these have been taken by the FIA –

**Ian MILL**

Oh no. I am so sorry.

**Max MOSLEY**

This is all about the FIA and our being non-discriminatory.

**Ian MILL**

I am not suggesting and have no evidence to suggest that we have been subjected to particular treatment in that respect, specifically by the FIA. What is of very great concern to us is why we have been treated that way in Italy by those who chose that course of action. Let me make that absolutely clear. I am not here to suggest that you in any way orchestrated what happened in Italy. Our concern is what happened. We think it was disgraceful and those responsible for it ought to regret what happened.

**Max MOSLEY**

If you list the European Commission and the concept of non-discrimination and transparency,

**Ian MILL**

Will you take my apology as someone who has not had a great deal of sleep and who has done his best to produce a document for this body, in the time available to him.

**Max MOSLEY**

Enough said.

**Ian MILL**

May I make my submissions?

**Max MOSLEY**

Yes.

**Ian MILL**

Thank you.

Gentleman I would like to remind you of the decision on the last occasion.

*“It is the unanimous view of the World Council that Vodafone McLaren Mercedes were in possession of Ferrari secrets or Ferrari information, by virtue of Mr Coughlan’s possession thereof, irrespective of certain other elements. We therefore find Vodafone McLaren Mercedes in breach of Article 151c. However, the evidence of any use of this material in a manner calculated to interfere with the Formula 1 World Championship is insufficient for us to impose any penalty. Should, in the future, evidence emerge showing that the Formula 1 World Championship was prejudiced in any way by the possession of this information by Vodafone McLaren Mercedes, either in 2007 or 2008, we reserve the right to invite the team back in front of the World Council, where they would be faced with the possibility of exclusion.”*

Subsequently, the President wrote, “However, these suspicions did not amount to prove to the standard that the Council felt was necessary to reject McLaren’s team principal and managing director and convict the team of an offence so grave as to warrant, in all probability, exclusion from the Championship. In the absence of unambiguous evidence that McLaren as a team has received and used Ferrari information, the Council was left with McLaren’s responsibility for its employee. Exclusion or withdrawal of points did not seem appropriate.

That was the position then and it is the position now. I started my submissions to you this morning, with three central propositions. I will not repeat them; I hope you heard them. We stand by them, and nothing that you have heard today, impacts on that. I did not hear Mr Tozzi say otherwise in his submissions. There is no evidence of use. There is no evidence of prejudice to the Formula 1 World Championship by the events that have occurred. I ask you to accept the evidence that is being tendered by a series of witnesses of truth who have come forward here, on behalf of McLaren, and whose evidence has not been shaken by questioning today, not under the gentle guise of the President on this occasion, but through cross-examination from extremely-experienced leading counsel in England.

With the greatest of respect, the question is not: can McLaren prove that it has not used Ferrari’s confidential information, but rather the opposite. Is it established, to the standard that the President himself suggested was appropriate, and that is a very high standard indeed, that we did use the information? Of course not. How can it? We are left with the suspicion that the President has, based on the slightly theatrical run-through of those pages, as he stood up and showed everyone the two files. The suspicion that there is probably something in there. Fine. Then the response is not bring us back here, let alone throw us out of the championships. Rather, you bring in Mr Whiting. We have issued an invitation, and it remains on the table. Do not draw conclusions against us. Tell Charlie Whiting to go into McLaren to go into the organisation and not return until, having checked it from top to bottom, he is satisfied that no use has occurred. That has not happened; I don’t know why. I do, however, know that if you convict us today without the FIA having done that, that will be the grossest misjustice in my professional experience.

*[The World Council Members debate behind closed doors, from 16:45 to 17:10.]*

### **III. Meeting Conclusion**

#### **1. Submissions Regarding Sanctions**

**Max MOSLEY**

Mr Mill, we are minded to impose a penalty. Therefore, I invite you to make any comments regarding that. Furthermore, as any penalty we may impose will impact on Lewis Hamilton, we will also invite his counsel to speak.

**Ian MILL**

With the greatest of respect, how am I possibly to make any submissions on sanctions when you have not told me what your factual findings are.

**Max MOSLEY**

I beg your pardon? When we have not told you –

**Ian MILL**

You have not told us the factual findings.

Let us take a criminal case: someone is charged with murder, manslaughter, grievous bodily harm or actual bodily harm. The counsel representing the defendant cannot be asked for his submissions on sanctions without specifying of what charge the defendant has been found guilty. Am I to assume that you will find there was actual use? Will you tell me what criticisms you wish to make? I cannot make submissions in a vacuum.

Secondly, I am grateful for the indication that Mr Phillips can speak, but if you are minded to impose a very serious sanction, then I would suggest that you hear not just from me – and indeed I may not be the best person to hear from – but also a statement from Mr Dennis and Mr Norbert Haug. In justice, I would like you to hear what they have to say. Again however, unless and until we know precisely what you are going to do, in particular on liability, I don't know what to say to you.

**Max MOSLEY**

We will issue a reasoned decision, setting out our reasons for finding you, as already indicated, in breach of Article 151c. We will set them out in some detail, for we think this is the right, proper and fair thing to do. If you wish, you may wait for this to be ready, then make your submissions. We planned to listen to whatever you had to say, then tell you the decision – the actual finding – then issue the reasoned decision. If you wish to do so in a different order, we are happy to do so.

**Ian MILL**

Subject to instructions, how can I assist you? There are so many different possible decisions that you could have reached: we think that Mr Neale should not have turned a blind eye, being a manager, and thus should be penalised.

**Max MOSLEY**

This is such a waste of time

**Ian MILL**

Or, at the other extreme, you may deem that the McLaren is riddled with Ferrari information. I will not help you if I make a submission about one end of the spectrum if you are not even considering that.

**Max MOSLEY**

In our last decision, we said that, if evidence emerged and if we thought, at a further hearing, that McLaren had made use of Ferrari information and disseminated in McLaren, you would potentially face exclusion in 2007-2008. I would have thought it was fairly straightforward for you to start from that position, subject to whatever you may say, then say what you wish to say, at which point we will consider that. If Mr Dennis or Mr Haug wish to say something, our patience is unlimited. That seems the sensible approach. If you are not happy with that, we will put together our reasoned judgement, you can wait the 1-2 hours required and we will read it to you. I would have thought, based on what was said last time, that it would be straightforward for you, as well as Mr Dennis and Mr Haug, to make representations on that. However, if you do not wish to, that is fine.

**Ian MILL**

Since I understand that the desirable course is to hear from me now, in what I maintain is an unfortunate vacuum. On behalf of McLaren, we would invite you not to exclude McLaren, either from this championship or next year's championship, for a number of reasons. In the first place, we simply cannot accept that our car is or that our car in the future will be infected with confidential information from Ferrari. In those circumstances, to eject us from the Championship would be completely disproportionate.

Secondly, we would ask you to accept the information from our witnesses, even if you think there is any possibility that you will find that the information has been used. We have not come here to mislead you and try to deny what has occurred. Therefore, do not remove us from the Championship, for that would simply be far too harsh a result. There are comments that others can make better than I can about the impact on the Championship of our exclusion. It would be, in the lowest terms, very very unfortunate. It is a great Championship this year and next year's may be equally great. If we are not present, it would potentially do great damage to the sport, for those who participate in it and those who watch it. We want to be there and, if there is any way we can be there, then we will do it.

Find a way to keep us in there, please. I am not going to make submissions to draw any distinction between the Manufacturers' and Drivers' Championships. If anyone should, that would be Mr Phillips. I want, if we are indeed in the cataclysmic situation to which you alluded, you to hear the words of Mr Dennis and Mr Haug, on how they feel about this, from the heart.

**Ron DENNIS**

I will go first.

I am known to ramble, so I will try to keep this as short and unemotional as possible. I have dedicated my life to motor sport. Every team principal has written or spoken to me about the process and situation I am in. I am not in the situation by choice or design, but because of the actions of one rogue employee. Everybody knows that is a fact. I don't think that anyone doubts that what took place was between two individuals, who acted independently of their companies. Both did incredibly stupid things that have involved their companies in such an unbelievable mess that it is just hard to believe that something so huge could have manifested itself out of that mess.

I believe that nobody, not even Ferrari, thinks that any part of our car is the result of their design work or anything. I know they are upset and that they even feel that we should be severely punished. However, punishing 1 300 people and my lifetime's work for the action of one individual is extremely severe.

I understand that you could say that I am responsible, because I am the boss. That would, again, be severe, because it is impossible for me to take responsibility for the actions of everyone, especially when those actions are in homes and when individuals are communicating with friends, etc. Again, I had no knowledge of anything. I have spoken the truth throughout this. I made phone calls to the FIA and Ferrari as and when information became available. I compromised myself, Max, by calling you in Hungary, but I told the truth. Anything you choose against the company will be severe, even if it is only guilt of employing a rogue employee. If there is a punishment, let it fit the crime.

**Max MOSLEY**

Thank you very much, Ron.

**Norbert HAUG**

I have followed the evidence very precisely and was kept informed of developments throughout. I look at the findings of the World Council on 26 July and the assumptions that have emerged now. All I can say is, please check the car for the evidence. We, at Mercedes have brought a lot to the sport and will try to do so into the future. If we are guilty, I would be the first to admit that we are completely wrong and would take the consequences. For us to be fair is even more important than taking part in races, and our track record attests to this. We are speaking to a second team now; as you know, there are other issues in Formula 1 now.

This is not a threat; this comes from my heart.

I would like to ask you to reconsider the situation, looking at what it means for a manufacturer to be thrown out. We hold 25% of television time worldwide, 150 more (as Bernie could tell you). We are contributing and doing a better job in all countries. I think it is important that we have the chance to compete. Being thrown out would cause a great deal of reaction and damage. We ask that you take this into consideration and keep in mind what speaks for Mercedes Benz. I cannot see that we did not behave in a correct way.

### **Ian MILL**

The economic effect on McLaren on itself has not been specifically mentioned here, but the human effect will be devastating.

Where the business is concerned, Mr Ecclestone will be able to tell you the precise figures. Suffice it to say that exclusion for this year and next would give rise to extraordinary losses in revenue under the Concorde Agreement. I have seen figures. I will not articulate them, as they contain confidential aspects, but they are very damaging indeed. That is not all. We have our sponsors, our drivers. You will destroy McLaren if you exclude it. Please do not do that.

### **Max MOSLEY**

Let me simply set the scene, so that there is no doubt. Were we to exclude McLaren from this year's championship, the FIA's precedent in 1984 is such that, for all practical purposes, it would be as though the team had never entered.

It follows from that the drivers' points would disappear as well. McLaren's drivers, however, have received indemnity, and were told they would not be the subject of proceedings. Were we to exclude McLaren from the 2007 Championship, the drivers would lose the points so far accumulated, but would be free to race for whomever they pleased and their superlicense would not be affected. This would apply as well in 2008, were McLaren to also be excluded there.

Only once in our entire history did we separate the drivers' points from the manufacturers' points. It was in Brazil, in a matter related to fuel. The fuel used in the car was not in conformity with the sample submitted. Therefore, there was an offence. It was subsequently tested and it turned out that, had the fuel in the tanks been tested, it would have passed. Thus, the drivers were deemed to have no conceivable benefit from that and their points were not taken away. I felt this was just, but the decision was largely criticised by the teams and I was told we must never do this again. In this case, if McLaren had an advantage, so did the drivers. If they were excluded, there could be no question of the drivers' keeping their points.

### **Mr Hamilton's Counsel**

Thank you for that helpful information, which is what we anticipated.

Mr President, Gentlemen and Ladies, my opening remark is that, from the length of time that Lewis Hamilton spent giving evidence earlier today, you may think that this has very little to do with him. However, in our respectful submission, it probably has more to do with him than with many others involved.

You have received a written statement from Lewis Hamilton and you almost heard oral evidence from him. Every word I am about to say has been read and approved by Lewis himself. You know that he knew absolutely nothing about Mr Stepney and Mr Coughlan or any Ferrari information. He knew nothing of the e-mail exchanges you saw between Mr de la Rosa and Mr Alonso. You have had evidence and heard submissions from many others, and have obviously formed your conclusions. As an informed observer, having looked at the evidence from the outside, I ask you whether, if that information had been present at the last hearing, would you now be thinking as you are, or whether your thought process has been affected by the fact that those particular e-mails were not identified at the time and have emerged subsequently. I leave you with that thought.

You decided, on 26 July that McLaren was in breach of the rules because Mr Coughlan had received the information that he did from Mr Stepney. Through Mr Tozzi, Ferrari has made it clear that it wishes a severe penalty to be imposed on McLaren for 2007 and 2008. It is clear that, for both of those years, they want McLaren ejected from the Formula 1 Championship. Gentlemen, their argument is that, if you do not do that, you will send the wrong message to the public at large and millions of motor racing fans, amongst whom I count myself. Would it end the right message to eject McLaren from the F1 championship? Would you have done justice by doing so?

Lewis Hamilton has done nothing wrong. He has driven brilliantly and is leading the Drivers' Championship by 3 points. If McLaren were banned from competing in the remaining races, Lewis Hamilton would not be able to compete in the final four races. He would lose the points that he has so brilliantly won over the last few months, to the sheer delight and excitement of millions of ordinary motor racing fans. The same would be true in 2008: if McLaren were excluded, Lewis Hamilton would not be able to compete in 2008 and McLaren would lose him as a driver. Perhaps he would drive elsewhere, assuming first that he could find a seat and assuming that that was a competitive seat. But I ask you to remember what he said in his statement: he has wanted to drive for McLaren for all of his racing life. He has been there since he was a young boy. He has been supported throughout his career for McLaren and wants to continue racing for McLaren.

Of course, if you do eject McLaren from the 2007 and 2008 Championships, the consequence will be that Ferrari will certainly win this year's championship and probably that of next year. It would leave the Formula 1 to be decided by four races, in which one of the two top teams, if not the top team, would not be competing. It would be an absolute disaster for Formula 1. The public would lose all confidence in the sport that we all love. It would also be a disaster for Ferrari. As a third-party and avid motor sport fan, it begs disbelief that Ferrari could seriously want to see McLaren ejected. Their victories would be as hollow as the ones we saw in Indianapolis 2005. We respectfully suspect and suggest that racers like Kimi Raikkonen and Felipe Massa would feel cheated if they were to win the World Championship after their two main rivals had been thrown out.

The following is critical. As a punishment for what has happened, and putting aside the timetable of how it came out, it would not be fair or proportionate, based on the core material alone, to eject McLaren. You may therefore decide that you should deduct points. Of course, that will give rise to the question: whose points should you consider deducting? Lewis Hamilton has done nothing wrong and has won his points by driving. One remembers his passing move on Kimi Raikkonen and respectfully suggest that it would be a travesty to penalise him. We do not ask that any different treatment be given team-mate and chief competitor in this year's Formula 1 Championship, Fernando Alonso.

As for the teams' points in the Manufacturers' Championship, we would leave it to McLaren to justify why those should be retained. However, we would observe that stripping McLaren of the manufacturers' points, leaving Ferrari to win that championship in the most hollow of victories. Gentlemen, when you come to consider what is fair proportionate and just, we invite you to have in mind that the world wants to see the world's top drivers competing on-track for the World Championship. They do not want to see it decided by lawyers. We respectfully invite you to leave the World Championship alone. Where Lewis Hamilton is concerned, let him get back to the track, to become the first rookie world champion in Formula 1 history.

### **Max MOSLEY**

As a motor sport fan, you will be aware that, time and time again, in Formula 1 and other forms of racing, there have been small infringements of the technical regulations. One of our principles, as in all other sports, we do not look at whether there was an advantage: a slightly-higher wing or a slightly-lower weight means exclusion. In such cases, the driver can say that he did not know, that it was not his fault or that it made no difference to his performance. In this case, it appears that information has been circulating at McLaren that was very likely to have an impact on the performance of the car. It is very difficult to see how we can let that happen without its' impacting the Championship.

How could I look Raikkonen in the eye and tell him that other drivers, benefiting not only from their own manufacturer's technology, but also that of Ferrari. He would say that this is indeed very unfair. In this area, we have a problem. What you said is entirely right. We have to take the longer view and consider the credibility and legitimacy of our championships. If we allow wholesale transfer of information from one team to another, without the consent of the team from which that comes, this calls into question every issue of fairness. Sponsors, the television and the public would conclude that Formula 1 has gone down the same road as cycling or athletics. We must make sure that this does not happen. Unfortunately, if an athlete is given drugs without his knowledge by his trainer, it is grossly unfair both for him, for he is not morally responsible for the offence, and for the other athletes, who did not have the benefit of the drugs.

It is not an easy or straightforward situation. We fully understand what you said and what McLaren has said. I am sorry for that long discourse. If you want to say any more on that, it may be helpful.

### **Lewis Hamilton's Counsel**

If there had indeed been wholesale transfer of technology from one team to another, you are postulating a circumstance in which you are satisfied that the car used by Driver A is a hybrid Ferrari. Were that the case, I can well see that you would reach the point where it would be justified to exercise the most extreme sanction.

However, there is a range of sanctions, and your decision will depend on the degree to which the Council has been satisfied that there probably has been an advantage. In my respectful submission, the evidence of an advantage is non-existent. The evidence of a possibility of an advantage is very weak. Against that background, you must start from the top – ejection – work through points, then down to financial penalties. I have not mentioned the latter, but the fact of the matter is that the McLaren business is a large and wealthy one. A very strong point can be made that the public would understand if you considered only a financial penalty without any alteration the

championship, considering that, in this context, you cannot go beyond a suspicion that there may have been an advantage.

*[World Motor Sport Council debate behind closed doors, from 17:35 to 18:40, to determine sanctions.]*

## **2. Council Decision**

### **Max MOSLEY**

The decision of the World Council is that, for 2007, McLaren will not be excluded from the Championship, but will lose all of the manufacturers points scored thus far and will score no manufacturers points for the rest of the season. They will also pay a fine of USD 100 million, less the money lost through the removal of the 2007 points. A very considerable sum of money is lost through the 2007 points; that will be deducted and the actual fine will be the difference between that figure and the USD 100 million. I hope that is clear.

The Sporting Code (Article 152) provides that removal of the manufacturers' points also entails removal of the drivers' points, barring exceptional circumstances. We believe that to be the case in that the drivers were given immunity; they therefore will not lose their points. Therein lies the exceptional circumstance. It is our belief that, without making that offer to the drivers, we would not have received the information that we had today. The drivers may continue to score point. If there is a podium, the drivers will go on it, but not McLaren. Furthermore, the other manufacturers' points remain as they are: the McLaren points gained thus far will disappear, and the rest of the places and money will be calculated on that basis.

For 2008, with McLaren's consent, the FIA proposes to send a technical delegation to work over the next months, with a view to giving a report to the World Council as to whether there is any advantage to the McLaren car for 2008, as a result of the matters discussed today. That report will be made available to the World Council. If that report leads the World Council to believe that an advantage has accrued to McLaren for 2008 because of what has taken place, we will invite McLaren to make representations at the relevant World Council meeting before making any decision. That meeting will be the December meeting, for we must give ourselves time. It is a highly complex matter, both to be fair to McLaren and the other competitors.

We will issue a reasoned judgement – a proper account of why we reached this decision. However, considering the late hour, I propose to issue that tomorrow, I hope by the end of the morning. You are entitled to that.

I do not need to remind you of your right to appeal; in this case, the appeal has no suspensive effect. However, as we are doing nothing to prevent you from running in Belgium, that does not matter. That is the decision. Is it reasonably clear?

### **3. Modalities**

#### **Ron DENNIS**

If your investigation conclusively proves to the FIA that there is no Ferrari technology whatsoever in our cars, will this be taken into consideration retrospectively in the 2007 season?

#### **Max MOSLEY**

We do not have in mind to ever revisit what we have done, though you have the right to appeal. We are very concerned, on the one side, that McLaren should not have an unfair advantage in 2008, yet equally do not wish penalise unfairly if no such advantage exists. The flow of information this year is such that it was improper – views vary as to how much advantage there was – not only on the car, but also matters in running the team. We are very concerned about 2008. We do not want to prevent you from running in 2008, but we do not want you to have an advantage that you should not.

#### **Ron DENNIS**

However, your concern about 2008 would be eliminated at the point where the technical inspection is completed.

#### **Max MOSLEY**

Yes. If the car is deemed 20% Ferrari, we would impose some sort of penalty on you. I do not want to speculate about what that might be. In other sports, points deficits can be inflicted. We do not wish to prevent you from running in 2008; we simply do not want you to enjoy an unfair advantage.

#### **Ron DENNIS**

I know this may not be the forum, but it is easier to ask my question now, as we are face-to-face: would you agree that the most likely point at which this sort of data would be present in the company is now?

#### **Max MOSLEY**

Yes.

#### **Ron DENNIS**

We would like the inspection as quickly as possible, subject only to the rules of engagement, so that we can prepare for it, the period of time, etc.

**Max MOSLEY**

It does not actually matter. Suppose you are eliminating large amounts of information. That information would by definition not be used on the car. It would not matter. Nevertheless, we would like to complete this as quickly as we can, but let us not underestimate the magnitude of the task.

**Ron DENNIS**

I do not fear the task at all.

**Max MOSLEY**

We do.

**Ron DENNIS**

I care only about the McLaren name. Once that inspection has been proven to be devoid of anything that could possibly be related to Ferrari intellectual property, I would like that in the public domain as quickly as possible.

**Max MOSLEY**

Let us cross that bridge when we come to it.

**Ian MILL**

One small – or not so small – item is the fine. You suggested that there was no need for any suspension in relation to the appeal. It is not an inconsiderable amount of money.

**Max MOSLEY**

We can calculate fairly quickly the FOM figure. It would only be reasonable to give whatever period. you deem appropriate: one month, two months....

**Ian MILL**

I as going to suggest the following. I am aware that we are in odd territory because we do not fall squarely within the dispositions of the International Sporting Code. However, under Article 152, if we were before the stewards, the lodging of a Notice of Appeal operates as a stay. The figure may be USD 100 million or USD 80 million, but in any case, it is a very large amount of money. We will appeal, in part with regard to the size of that fine.

**Max MOSLEY**

Let us not lose time. The whole thing will be over before you have to pay any money.

**Ian MILL**

I do not accept that, unless it is put off for a long time. If we are to have a report for the December meeting, it will form part of our appeal. We will therefore ask the ICA not to hear the matter until the report has been provided.

**Max MOSLEY**

There are two completely separate decisions. One regards 2007 and if you wish to appeal it, you have a certain timeframe within which you are required to do so.

For 2008, once the technical report is produced – and it can only be with McLaren's consent – the World Council will make a second decision. Perhaps I did not make this clear.

**Ian MILL**

Perhaps I was not clear. When that report exonerates McLaren, that will be part of our evidence in the appeal. I am only asking that this be included in the timing of the appeal. Please make an order that states that payment may occur within four months; if the deadline is two months, the report will not yet exist.

**Max MOSLEY**

If you wish to appeal, you have every right to do so with regard to 2007. At present, we have not taken a decision about 2008.

**Ian MILL**

I understand that.

**Max MOSLEY**

Then you should wait until there is a decision that you do not like, before appealing against the second decision.

**Ian MILL**

I am not explaining myself at all well. I am sorry.

The report exonerating us will be the grounds for appealing the decision on 2007, for part of our grounds will be that you acted prematurely: you should have conducted the inspection before you

made the decision. If the decision from the report is that there is no inclusion of confidential information, we will use that to support our submissions that the decision was disproportionate. That is why we will ask the ICA to delay the appeal until such time as that report is available.

**Max MOSLEY**

You may make any request you wish of the ICA, but I would recommend two things: first, do not fall behind the schedule; secondly, bear in mind that they may not agree that the circumstances were exceptional.

**Ian MILL**

I accept that. I am sorry we are having this lengthy debate. I am only asking that, when you set the payment date for the fine, in order to avoid any debate over the stay of the operation, we set a time that would take into account the point I have just made.

**Ron DENNIS**

I was going to suggest a constructive way forward: a Grand Prix event is scheduled this weekend, and another three weeks thereafter, in Japan. It would be eminently practical – and I hope this will not affect us in the racing – to avoid having the appeal between the Japanese and Chinese Grand Prix. Could we synchronise the two processes so as to submit the report, whether accepted by the ICA or not, so that the report does form part of our evidence. If we can complete this process prior to Japan, we will do so. If not, could we do it afterwards?

**Max MOSLEY**

Are you referring to the inspection?

**Ron DENNIS**

I am talking about the inspection being completed and the report being ready before we go to appeal.

**Max MOSLEY**

I think this is quite impractical, at least if you have any hope of winning the appeal in 2007. The inspection, if you agree to it, will require several weeks of people poring over all sorts of documents from McLaren, agreeing who the parties should be, etc. It is quite sensitive: on the one side, you cannot have experts, on the other, they cannot be people who may work for your competitor in the future. It would be a great mistake to muddle the two up. It may be that the Appeals Court might change our decision and it would be a pity if this did not occur until the end of the year.

**Ron DENNIS**

We have to appeal in 48 hours. The point at which the appeal begins is up to you. I ask that you make the appeal process effectively open after the Chinese Grand Prix. I am only looking for practical solutions.

**Max MOSLEY**

You will almost certainly appeal, for one reason or another.

**Ron DENNIS**

To avoid the fine, for instance!

**Max MOSLEY**

I suggest that you write a letter when everyone is calm and relaxed, setting out your request, and address it to the Court of Appeal. It will respond, and perhaps hold a preliminary hearing. It is not my decision to make.

**Ron DENNIS**

How do we determine the process of inspection and with whom?

**Max MOSLEY**

We will make a proposal, to which you will have to respond. It may turn out to be less practical than we think.

**Ron DENNIS**

I presume that this will involve looking at data, drawings, working practices, etc. It will obviously be very time-consuming for my staff.

**Max MOSLEY**

It is so much more complex than when I was directly involved in Formula 1, that I am perhaps not the person to ask about this.

**Ron DENNIS**

As this will involve a large portion of my staff, I would simply like to have an understanding so as to be able to prepare for it.

**Nigel TOZZI**

I am slightly concerned and would like to have some clarification. The 2008 Inspection relates to the 2008 car; you will not inspect the 2007 car.

**Max MOSLEY**

That is correct.

As I understood it, Mr Mill thought that if the inspection exonerated the 2008 car, it might be, in some way, relevant and hence he might bring that into his appeal. That is a matter for him to decide. There will be a 2008 decision. However, in order to make it, we will need this inspection.

**Nigel TOZZI**

We understood that. I was concerned that there may have been a blurring of that decision, but you have clarified it.

**Ian MILL**

The decision will presumably include a time for payment of the fine, after the appeal hearing. Is that correct?

**Max MOSLEY**

It would perhaps not be appropriate for me to ask you to make a proposal about that. I suggest three months.

**Ian MILL**

Three months is acceptable. Thank you.

**Max MOSLEY**

That will take you to early December.