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STATE OF MARYLAND
BEFORE THE COMMISSION ON JUDICIAL DISABILITIES

In the Matter of the Honorable Robert C. Nalley
Case No.: CJD 2009-087

The above-entitled matter came on for hearing
before the Commission on Judicial Disabilities on
April 28, 2010, commencing at 10:08 a.m.

PROCEEDINGS

1
2 JUDGE WOODWARD: Please be seated. Good
3 morning, ladies and gentlemen. This is a public
4 hearing of the Maryland Commission on Judicial
5 Disabilities which is called pursuant to Rule
6 16-808 in the Matter of the Honorable Robert C.
7 Nalley, a Judge of the Circuit Court for Charles
8 County.

9 Before we begin, I would like to make a
10 few introductory comments, as well as
11 introductions.

12 The Maryland Commission on Judicial
13 Disabilities is an independent body that is
14 established or was established under the Maryland
15 Constitution in 1966. The Maryland Constitution
16 gives the Commission the following specific
17 powers. It gives the Commission the power to
18 investigate complaints against any judge of any
19 court in this State, to conduct hearings
20 concerning such complaints.

21 After hearing and a consideration of the

1 evidence, the Commission has the authority to
2 issue a reprimand or to recommend more severe
3 discipline to the Court of Appeals.

4 The Commission is composed of eleven
5 persons who are appointed by the governor of
6 Maryland with the advice and consent of the State
7 senate. The Commission is composed of five
8 members from the public at large, three members
9 who are members of the Maryland bar and three
10 judges who currently sit, one on the District
11 Court of Maryland, one on the Circuit Court and
12 one from the Court of Special Appeals.

13 I would now like to introduce the
14 members of the Commission. I start to my far
15 right and moving from my right to my left, to my
16 far right is William Berkshire, who is a member
17 of the Commission as a public member. To his
18 left is Ms. Susan Matlick, who is also a member
19 from the public. To her left is Julie Rubin,
20 Esquire, who is an attorney member of the
21 Commission. To her left is Mr. Samuel Saxton,

1 Sr., who is a public member of the Commission.
2 To his left is Judge Robert Greenberg of the
3 Circuit Court for Montgomery County, a judicial
4 member. To my left is Judge Nancy Shuger, who is
5 a member of the District Court of Maryland for
6 Baltimore City. To her left is Arielle Hinton,
7 Esquire, an attorney member of the Commission.
8 To her left is Ms. Patricia Pender, who is a
9 public member or member from the public at
10 large. To her left is Steven Silverman, Esquire,
11 a member of the Maryland bar. And to his left is
12 Ms. Marcy Canavan, a member of the Commission
13 from the public at large. My name is Patrick
14 Woodward. I am the chair. I'm also a judge of
15 the Court of Special Appeals of Maryland.

16 We will now begin the hearing and we'll
17 hear from investigative counsel, Mr. Lemmey.

18 MR. LEMMEY: Good morning, your Honor.
19 May it please the Commission, first I wish to
20 thank the Commission, all of you for coming here
21 today and being prepared to hear this matter.

1 Before we begin, I need to do a couple
2 of very preliminary matters that I think should
3 be quite helpful. The first is I have twelve
4 sets of additional documents that I would ask the
5 chair's permission to pass up to the Commission.
6 There are eleven plus one for the Executive
7 Secretary.

8 JUDGE WOODWARD: All right, Mr. Brennan,
9 have you seen these documents?

10 MR. BRENNAN: I have, your Honor.

11 MR. LEMMEY: Actually, sir, these are
12 Mr. Brennan's documents.

13 JUDGE WOODWARD: Okay. All right, then
14 do we need to have them marked as Exhibit 2?

15 MR. LEMMEY: No, what I propose to do,
16 subject to the chair is these are additional
17 documents to go behind the last tab, tab D, and
18 if Mr. Brennan needs to further designate them
19 later on, that would be fine with me, but with
20 your permission I would pass them up to the
21 Commission.

1 JUDGE WOODWARD: Okay. These are
2 additional, maybe you can describe what they
3 are. I assume when you say they go behind tab D
4 they are additional letters?

5 MR. LEMMEY: Yes, these are letters, but
6 they are slightly different in that these are
7 letters involving what happened with Judge Nalley
8 serving as administrative judge the day after or
9 two days after the events in question.

10 I have stipulated that I have no problem
11 with the Commission receiving them. They're
12 actually part of the Respondent's exhibits. As I
13 said, we made --

14 JUDGE WOODWARD: Okay. Then we're going
15 to make them part, essentially we're going to
16 make them part of the package that you wish to
17 add.

18 MR. LEMMEY: Yeah, part of D.

19 JUDGE WOODWARD: Part of D of the
20 package.

21 MR. LEMMEY: These would be the last

1 four items in D.

2 JUDGE WOODWARD: All right, well, go
3 ahead and pass them up, if you would.

4 MR. LEMMEY: Thank you, your Honor.

5 JUDGE WOODWARD: All right, Mr. Lemmey?

6 MR. LEMMEY: Thank you. I never had the
7 privilege of doing a hearing this way before.
8 Your Honor, as chair, I would move that you
9 permit the admission of essentially the entire
10 notebooks that are in front of you, including the
11 four additional matters. This is a motion being
12 made by consent. Everything in the notebooks by
13 way of evidence has been stipulated to by both
14 sides.

15 For the record, I would want to state
16 that that comprises Exhibit A is the hearing
17 notice, Exhibit B are the charges, Exhibit C is
18 the Stipulation of Facts, Exhibit 1 attached to
19 the Stipulation is the deposition that was taken
20 of Judge Nalley on February 2nd, 2010, and
21 attached to that deposition are six exhibits

1 itemized as 1 through 6, a statement of Judge
2 Nalley's, the District Court certified docket
3 entries, a transcript of an interview of Judge
4 Nalley of August 21, 2009, and three
5 photographs. They're not great quality but I
6 think they do help you visualize the scene of the
7 event.

8 And then tab D are a group of letters
9 provided to me and the Commission in advance by
10 Mr. Brennan on behalf of Judge Nalley. And then
11 the four additional letters or two letters and
12 two court orders, I think is what it was that we
13 just passed up.

14 It is my understanding that both sides
15 agree to all these items being admitted, am I
16 correct, Mr. Brennan?

17 MR. BRENNAN: That is correct, your
18 Honor, there is no contesting with respect to the
19 facts in this case.

20 JUDGE WOODWARD: All right. For the
21 purpose of the record, Mr. Lemmey, if you would

1 give an official copy of Exhibits A, B, C and D,
2 have it marked and give to the court reporter,
3 I'd appreciate it.

4 MR. LEMMEY: I think we, do you already
5 have one? Okay, I need to give you four
6 additional documents.

7 JUDGE WOODWARD: All right, Exhibits A,
8 B, C and D contained in the booklet that has been
9 provided to the Commission members previously, as
10 well as supplemented today, hereby admitted into
11 evidence.

12 MR. LEMMEY: May it please the
13 Commission, we do not have a protocol for time
14 periods in place today. I do not expect to talk
15 for a long time but I would ask your permission
16 to speak for probably ten to fifteen minutes at
17 this stage, and then I would wish to reserve some
18 time if we get to the disposition stage to speak
19 again.

20 JUDGE WOODWARD: Right. That's the way
21 I would prefer the protocol that we've adopted in

1 the past is we are going to address the liability
2 phase, mainly the facts of this particular case
3 initially, have any comments that you want to
4 make concerning the facts. I will allow
5 Mr. Brennan to make any comments that he wishes
6 to make concerning the facts.

7 I will then ask Judge Nalley to be
8 sworn. And then if there are any questions from
9 the Commission members regarding the facts of the
10 case, I've indicated to the Commission members
11 that they may pose their questions to either
12 counsel or to Judge Nalley.

13 And then once that is completed we will
14 move to the disposition phase given the obvious
15 posture of the case. And then you will be
16 entitled to comment on the disposition,
17 Mr. Brennan will be entitled to comment on the
18 disposition. We will have further questions from
19 the Commission . And then of course at the very
20 end if Judge Nalley wishes to make any comments
21 too, any statement to the Commission he will be

1 permitted to do so. Okay.

2 So you may proceed again on the
3 liability phase only at this particular junction.

4 MR. LEMMEY: We are agreeable to
5 everything your Honor said. I do think you need
6 to know that Mr. Brennan plans to call a couple
7 of live witnesses, so we need to put that in the
8 right place.

9 JUDGE WOODWARD: Yes, I appreciate that.
10 I did leave that out and I should have allowed
11 it, but he would be entitled to make, to indicate
12 any comments he wants regarding disposition and
13 present any evidence that he wishes, okay? All
14 right, go ahead.

15 MR. LEMMEY: Having said that, I wish to
16 start as simply as I can. When you have a
17 chance, which most of you probably have had a
18 chance somewhere during the course of the case to
19 review the evidence, the first issue for today is
20 I believe the evidence clearly proves that Judge
21 Nalley violated Canons 1, 2 and 6 of the Canons

1 of Judicial Conduct.

2 I will say as well if you want to look
3 at it from a lawyerly perspective that the facts
4 and circumstances that are now stipulated to, I
5 don't get to say this very often, but he is
6 charged perfectly in the sense that the conduct
7 he engaged in violated exactly the Canons that
8 are cited.

9 And we only charged him with the two
10 substantive Canons that he violated. Canon 6 as
11 you all know is essentially the enabling clause
12 that says that the Commission can act upon the
13 violation of the Canons.

14 So we're going to talk about Canons 1
15 and 2 today. Judge Nalley has now agreed that on
16 August 10, 2009, he returned to the Charles
17 County courthouse in La Plata, Maryland in the
18 afternoon. He was serving at that time as the
19 Administrative Judge of the Circuit Court for
20 Charles County, and also as a sitting judge for
21 Charles County.

1 I should say by way of a lay person's
2 description the administrative judge in the local
3 circuit court is in effect the highest ranking
4 judge or the boss of the courthouse.

5 When he arrived at the courthouse
6 someone else had parked in the designated parking
7 space that's reserved for Judge Nalley. And
8 you'll see in the deposition exhibits some
9 photographs. It's parking space number 5. I
10 apologize, the quality of the photographs isn't
11 that good. But if you look at the back of the
12 deposition I think you can pretty clearly see,
13 I'll even hold up the page I'm talking about, at
14 the top picture of the page, restricted permit,
15 parking permit required, number 5. That's the
16 parking space in question.

17 The other photographs that are behind
18 that give you a view of the street that that
19 parking space is located on. And if you were to
20 park in that space, there is a church in the
21 building behind the sign, directly behind it. On

1 the other side of the street is where the circuit
2 court building is.

3 When he got there someone else was
4 parked in the space. Judge Nalley agrees he then
5 walked over to the car, he removed a pen from one
6 of his pockets, took the sharp portion or a sharp
7 item part of the pen and let the air out of the
8 tire of the car that was parked in that space.
9 He then drove his car to the public lot, parked
10 his car and went into the courthouse.

11 There were several people who observed
12 Judge Nalley engage in this conduct. As a result
13 of it being reported by those people, Judge
14 Nalley was interviewed by Sergeant Brooks of the
15 local police department. Sergeant Brooks issued
16 a criminal charge against Judge Nalley for the
17 motor vehicle code offense, transportation
18 article offense of tampering with a motor vehicle
19 of another.

20 On October 28th, 2009, Judge Nalley
21 appeared in Charles County District Court, and of

1 course it's important to know, it was before a
2 visiting judge, not a Charles County judge, and
3 he pled guilty to the criminal event of tampering
4 with a motor vehicle.

5 The certified docket entries which are
6 now in evidence before you show that Judge Nalley
7 received a \$500 fine, he received a probation
8 before judgment, and he was required to write a
9 letter of apology to Ms. Jean Washington, the
10 owner of the vehicle.

11 Subsequently in that courtroom, in the
12 newspapers, in his deposition, which is Exhibit
13 Number 1, Judge Nalley has admitted his conduct,
14 admitted that he committed a crime and has
15 acknowledged that what he did was wrong and
16 inappropriate.

17 Additionally, I would submit to you by
18 stipulation he has agreed he violated Canons 1,
19 2, and 6 of the Canons of Judicial Conduct. It's
20 still your decision, does that conduct violate
21 those Canons. I say yes, clearly yes.

1 The standard for you to make your
2 decision is you need to be convinced by clear and
3 convincing evidence. I would submit to you that
4 his conduct was in violation of those Canons and
5 this evidence is clear and convincing.

6 I believe that evidence should convince
7 you by clear and convincing evidence that taking
8 the main points of those Canons, Judge Nalley
9 failed to observe high standards of conduct.
10 Judge Nalley harmed the integrity of the Maryland
11 judiciary. Judge Nalley did not act honorably
12 that day. He also did not comply with the law,
13 and that would be the criminal law, the
14 transportation code for tampering with the motor
15 vehicle of another.

16 Sadly I believe his conduct undermined
17 the public confidence in the Maryland judiciary
18 and as such, the collection of those things means
19 that his conduct was such that he engaged in
20 conduct that is prejudicial to the proper
21 administration of justice in Maryland.

1 And unfortunately for Judge Nalley, I
2 think the fact that not only is he a sitting
3 judge in that courthouse but he is the
4 administrative judge at that courthouse
5 undermines it even more.

6 For all those reasons, based on the
7 evidence in front of you, we respectfully request
8 that you find that Judge Nalley violated Canon 1,
9 Canon 2A, Canon 6 of the Maryland Canons of
10 Judicial Conduct.

11 The full language that I believe he
12 violated is in under tab B in the charges. What
13 I'm going to turn to, it would be pages, it's
14 really page 4, it goes on to page 5.

15 Again, I don't mean to be presumptuous
16 but I will tell you that this conduct when put up
17 against the Canons it's as clear as can be he
18 violated Canon 1 and Canon 2A from my perspective
19 I believe he is properly, correctly charged with
20 violating those Canons and that you should so
21 find.

1 As to what ought to happen, as the chair
2 knows I wish to reserve on that but at this time
3 having admitted the notebooks into evidence I
4 believe there is well more than sufficient
5 evidence for you to find that he violated those
6 Canons.

7 And I will sit down at this point unless
8 the Commission has any questions for me at this
9 stage.

10 JUDGE WOODWARD: We'll do the questions
11 at the end of Mr. Brennan's, we'll take questions
12 at that time for anybody.

13 All right, Mr. Brennan, we'll hear from
14 you.

15 MR. BRENNAN: Thank you, your Honor.
16 May it please the Commission, my name is William
17 Brennan and I have the honor and responsibility
18 to represent Judge Robert C. Nalley before you
19 all this morning.

20 As Mr. Lemmey indicated, we do not
21 contest the facts, what occurred in this case.

1 Judge Nalley in fact released the air from the
2 tire of the vehicle on August 10, 2009. And
3 using that date as a starting point I think it's
4 important for this Commission to understand and
5 to appreciate that at all times thereafter when
6 Judge Nalley was confronted by either law
7 enforcement, judicial superiors, or indeed the
8 press with his conduct, he at all times candidly
9 admitted what had occurred that day.

10 And the context was the incident
11 occurred on August 10th, 2009. Before the La
12 Plata Police Department had even completed their
13 investigation someone released the facts of this
14 matter to the press.

15 Judge Nalley was confronted by the press
16 the very next day on August 11th of 2009 and said
17 guilty as charged when a reporter said, did you
18 in fact do this. He did not deny it, he in fact
19 admitted it.

20 A story then appeared in the Washington
21 Post the next day, August 12th of 2009 in which

1 again the La Plata Police Department had not
2 completed their investigation, in which it was
3 referenced that this incident had in fact
4 occurred.

5 Judge Nalley then had a conversation
6 with his chief, Judge William Missouri who was
7 the Chief Administrative Judge of the 7th
8 Judicial Circuit which covers Charles County,
9 St. Mary's County, Calvert County and Prince
10 George's County.

11 As a result of that conversation with
12 Judge Missouri it was requested of and agreed by
13 Judge Nalley that he would resign as Charles
14 County Administrative Judge. And one of the
15 documents that was submitted this morning is
16 Judge Nalley's letter dated August 12th, 2009 in
17 which he writes a letter to Judge Bell and says,
18 I herewith tender my resignation as County
19 Administrative Judge for Charles County effective
20 at such time as you deem appropriate. And Judge
21 Bell then by letter dated August 14th, 2009

1 accepted Judge Nalley's resignation as county
2 administrative judge.

3 So Judge Nalley immediately, although he
4 had not been charged, realized that there was
5 press attention to this case, the media and the
6 public had focused on this, and as a result of
7 the conversation with Judge Missouri, Judge
8 Nalley immediately did what he felt was the right
9 thing based on that conversation and submitted
10 his resignation as county administrative judge.

11 Two days later he in fact met personally
12 face-to-face with Judge Missouri, his superior,
13 and again candidly admitted the conduct, did not
14 attempt to deny it, did not attempt to minimize
15 it and candidly told Judge Missouri what had
16 occurred.

17 As a result of that conversation with
18 Judge Missouri, he placed Judge Nalley or took
19 Judge Nalley, excuse me, out of the criminal
20 rotation so that Judge Nalley was no longer
21 sitting on criminal cases.

1 And one of the documents that was
2 submitted this morning is a letter, excuse me, a
3 court order of Judge Missouri dated August 18th,
4 2009 in which Judge Nalley was in fact taken out
5 of criminal rotation.

6 So he gave up his role as County
7 Administrative Judge for Charles County on August
8 12th, two days after the incident, and on August
9 14th, four days after the incident he was taken
10 out of the criminal rotation.

11 It was not until August 21 in which
12 Judge Nalley was actually called by the La Plata
13 Police Department to respond to them because they
14 were still completing their investigation of this
15 incident. At that time Judge Nalley responded to
16 the La Plata Police Department and prepared and
17 submitted to them, again without benefit of
18 counsel, his statement.

19 And it's in the record as tab 1, I
20 believe. Yes, in fact it's tab 1 in which he
21 says that, he says on Monday, August 10th, 2009

1 in mid-afternoon he admits he approached the
2 assigned space, indicates exactly what he did.

3 And in the final paragraph Judge Nalley
4 says my actions were rash and wrong. It has
5 become notorious, brought discredit on my office
6 and caused disruption of court proceedings.

7 These things I regret. I apologize to all
8 affected and to all whom I have disappointed,
9 Robert C. Nalley, August 21, 2009 at 12:00 noon.

10 So again, he also was read his Miranda
11 rights, waived those, submitted and agreed to be
12 interviewed by the La Plata Police Department.
13 Then when he was charged, and that was the actual
14 day that he was charged.

15 Judge Nalley appeared in the District
16 Court for Charles County on October 28th before
17 Judge Wilcox, a visiting judge from Anne Arundel
18 County and admitted his guilt, apologized to the
19 citizens of the state of Maryland and the
20 citizens of Charles County.

21 Probation before judgment was imposed as

1 a sentence which means that Judge Nalley has no
2 criminal conviction on this charge because a
3 probation before judgment was imposed. And
4 indeed Judge Wilcox ruled that upon completion of
5 the conditions, that is payment of the fine and
6 the tender of the letter of apology to
7 Ms. Washington, Judge Nalley would be eligible
8 for immediate expungement in this case.

9 We have chosen not to file expungement
10 until the proceedings for this Commission are
11 completed, but the way the record actually reads
12 he does not have a criminal conviction on this
13 charge, nor more importantly he's eligible to
14 have this expunged from the record immediately
15 but chose not to do so until the proceedings
16 before this Commission are completed.

17 What is important to know throughout,
18 and then when discussions were had between myself
19 and Mr. Lemmey, we immediately wrote a letter to
20 Mr. Lemmey acknowledging what had occurred in
21 this case when the statement of charges came down

1 in this case preferred by the inquiry panel of
2 the Judicial Disabilities Commission we admitted
3 to all of the conduct in the case, and as you now
4 know, this is not a contested hearing. We have
5 stipulated to the facts of this case.

6 So what is important to understand is
7 that although Judge Nalley on August 10th, 2009
8 made a mistake, a human mistake and did what he
9 is charged with here, it is important to note
10 that at no time has Judge Nalley denied his
11 conduct in this case, either to the press, either
12 to law enforcement, either to his judicial
13 superiors, and he has at all times candidly,
14 honestly, forthrightly told people what occurred
15 in this case.

16 He has not raised any technical
17 defenses, saying, oh, I was justified, or I had a
18 bad day, or the car was parked in my space and
19 all the other types of things some lawyers quite
20 frankly have approached me and said well, you
21 know, you've got a justification defense, you've

1 got this, you've got that. My client has
2 instructed me, no, what I did was wrong, I should
3 not have done that and I do not attempt to
4 justify my conduct that day. I'm very sorry for
5 what occurred.

6 And it's important to understand that
7 the conduct that occurred is a misdemeanor
8 violation of the motor vehicle code which refers
9 to tampering with a motor vehicle.

10 It is important to note that it is not a
11 charge of malicious destruction of property,
12 which is a much more serious charge that is found
13 in the misdemeanor, the transportation article as
14 a violation of the transportation code of
15 tampering with a motor vehicle.

16 The only reported case in Maryland on
17 the issue of tampering with a motor vehicle is a
18 reported opinion in 1978 called In re: John R
19 found at 41 Maryland Appeals 22, 394 Atlantic
20 Second 818, an opinion by Judge Thomas Hunter
21 Lowe, Court of Special Appeals.

1 And in that case the defendant tried,
2 the defense was that the crime of tampering
3 required a criminal intent and some damage to a
4 vehicle. And Judge Thomas Hunter Lowe writing
5 for the Court of Special Appeals said the
6 following, a direct quote, "We do not agree that
7 the state must prove any, quote, criminal,
8 unquote, intent on the part of one who tampers
9 with a vehicle, other than that he consciously
10 intended to act in the words of the statute
11 without the consent of the owner." And the court
12 further found that no damage was required.

13 So what the court in effect has said
14 although it is a misdemeanor contained in the
15 motor vehicle code, it is not a crime that
16 requires criminal intent. The only intent that's
17 required is an intent to do the act.

18 And it is also a crime that does not
19 require there be any damage. Had it been a more
20 serious, had there been any damage to the vehicle
21 or had there been criminal intent required the

1 charged crime would have been malicious
2 destruction of property.

3 It's important to note Judge Nalley was
4 never charged with that. His conduct does not
5 amount to that, it amounts to a misdemeanor
6 violation of tampering.

7 Having said that, we have stipulated to
8 the facts, and Judge Nalley is available
9 obviously to respond to any questions that the
10 Commission may have, and obviously if you have
11 any questions about the procedural history I'm
12 more than happy to discuss the procedural history
13 of the case.

14 JUDGE WOODWARD: Okay. All right,
15 before we proceed with questions, I'd like to
16 have Judge Nalley sworn under oath.

17 Whereupon,

18 The Honorable Robert C. Nalley,
19 The witness called for examination, having been
20 first duly sworn, was examined and testified as
21 follows:

1 JUDGE WOODWARD: Okay, thank you. You
2 can have a seat.

3 Again, this is dealing with the facts of
4 this case. Are there any questions from the
5 members of the Commission?

6 Judge Shuger, and just indicate to
7 whom you are addressing your question.

8 JUDGE SHUGER: Good morning. This is a
9 question for Judge Nalley. Judge Nalley, I think
10 that the Commission would be interested in
11 hearing you address in your own words what you
12 were thinking? What made you think at the time
13 when you let the air out of the tire that that
14 was something you were entitled to do?

15 JUDGE NALLEY: Well, obviously it's not
16 something I was entitled to do and I knew that at
17 the time. It was a rash, foolish and
18 inappropriate thing to do. I think we could fill
19 a couple of pages with adjectives that would all
20 pretty much say the same thing, that it was wrong
21 and inappropriate.

1 But to the precise question, what was I
2 thinking, I attempted to answer that in the
3 interview with Mr. Lemmey. And when I
4 anticipated this question again today, I read
5 that over, and again on page 34, I don't think I
6 can improve on that. As I explained to
7 Mr. Lemmey, and I emphasize explained, not
8 excused, it was rash. I was irritated and I
9 recognize that. I admit that. It was
10 intemperate.

11 Ironically with the benefit of hindsight
12 and from the perspective of any third person,
13 particularly including the owner of the car, it
14 comes across to witnesses as an arrogant act by
15 somebody who, if you will, could do it, and who
16 was proceeding, somebody in power or authority.

17 Ironically I was trying to avoid just
18 that at the same time, trying to in effect show
19 my displeasure with the fact that somebody was
20 parked where they weren't supposed to.

21 I'm not going to sit here and say that

1 it was thoughtless. It was not thoughtless. It
2 was calculated in the sense that I didn't want to
3 make a big deal of it. I did not want to ask
4 that it be towed, I did not want to ask that it
5 be ticketed, but at the same time I think at the
6 time I frankly wanted the person parked there to
7 know that I didn't appreciate it.

8 I have used the word benign a couple of
9 times to people, including Judge Missouri, trying
10 to differentiate that outcome from alternatives
11 that would have been appropriate and legal and in
12 retrospect a lot better.

13 But if there is any explanation it is
14 that, and it's in a little more detail in what I
15 told Mr. Lemmey there in the deposition. The
16 question was what was I thinking.

17 JUDGE WOODWARD: Did you consider, Judge
18 Nalley, placing a note on the windshield advising
19 the driver that the car was parked illegally or
20 improperly?

21 JUDGE NALLEY: Probably. I have done

1 that before in other situations. If I gave it
2 any thought that day it was a rejection of the
3 thought because I didn't have the sense that that
4 had been effective before. I had not, contrary
5 to some misrepresentations, like I said, I had
6 not previously put any notes on that car,
7 although I had seen that car there previously,
8 not in that slot.

9 I had no idea whose car it was. I
10 figured it was somebody because I recognized it,
11 it had been there before, I figured it was
12 somebody with some connection either to the
13 courthouse or possibly to the day care place
14 across the street.

15 I'd never given it any thought at all
16 until I saw it in this particular place that day,
17 and I was irritated and acted rashly. But if I
18 thought about putting a note on it that day, I
19 quickly rejected the thought.

20 JUDGE WOODWARD: Thank you.

21 Ms. Hinton?

1 MS. HINTON: Judge Nalley, I have two
2 questions. Were you aware that there were other
3 people in the area who could have observed you or
4 who actually did see you?

5 JUDGE NALLEY: Yeah, it was broad
6 daylight and people walk up and down that street
7 to gain entry to our building and the one across
8 the street. I was aware that there were people
9 around. This was not done secretively at all.

10 To be honest with you, I'm not sure I
11 gave it a lot of thought, but if I thought about
12 it, I was not at all concerned with being seen.

13 MS. HINTON: And my other question is,
14 how long did you stay there actually depressing
15 your pen, whatever instrument you used?

16 JUDGE NALLEY: I would guess a minute
17 and a half. It was very, very brief, however
18 long it took to use either this pen or a key to
19 depress the valve. Very short.

20 JUDGE WOODWARD: Judge Greenberg.

21 JUDGE GREENBERG: Judge Nalley, you said

1 I think that this was not a completely
2 thoughtless act on your part. What did you
3 expect to happen when the owner of the car got to
4 her car? Did you think she would notice this?
5 Did you think she would get in the car and begin
6 to drive away? Did you think about that?

7 JUDGE NALLEY: I expected that it would
8 be noticed and that they'd have to invoke the
9 services of the gas station that was essentially
10 in sight of it, to get it fixed.

11 JUDGE GREENBERG: Did it occur to you
12 that perhaps she might enter her car from a point
13 where she wouldn't see the tire and begin to
14 drive and perhaps pose a safety hazard to herself
15 or others?

16 JUDGE NALLEY: Actually, it did not. I
17 concede that that's a possibility, but did it
18 occur to me? No, it didn't because I couldn't
19 imagine somebody not realizing that the car was
20 flat as soon as they got into it without trying
21 to drive it.

1 JUDGE WOODWARD: Ms. Rubin.

2 MS. RUBIN: Judge Nalley, is the press
3 accurate in its report that you had engaged in
4 similar conduct prior to this incident?

5 JUDGE NALLEY: They're accurate in that
6 I said that I had done it before. And I had done
7 it before ten years earlier, as it describes in
8 detail in that deposition with Mr. Lemmey where
9 in roughly similar circumstances, not involving
10 that same piece of real estate but one very
11 nearby, at the church lot where a vehicle was
12 blocking access to what was then the
13 church/school property, and I was delivering my
14 children to that grammar school, where I did
15 pretty much the same thing, although the fellow
16 whose vehicle it was walked up as I was doing it
17 and said, what are you doing? And I said, isn't
18 that obvious. And he said, why are you doing
19 it? Isn't that obvious? And he said, well,
20 please don't do it and I said, well, please don't
21 park here anymore.

1 So that was what I had in mind when I
2 said I had done it before. I had on that
3 occasion which I was trying to figure out when my
4 kids were in [inaudible] so at least --

5 JUDGE WOODWARD: Mr. Silverman.

6 MR. SILVERMAN: Thank you, Judge.

7 Judge, did you consider leaving a note
8 on the car advising the driver that you had
9 flattened one of her tires?

10 JUDGE NALLEY: I should have, but did I
11 consider it? Obviously I didn't. I recognize
12 that thinking the thing through I was trying to
13 emphasize to whoever it was that you shouldn't be
14 parking here and that the flat tire was related
15 to that position. It would have made more sense
16 to leave a note. In retrospect I realize that.
17 The short answer to your question is no.

18 MR. SILVERMAN: That would have
19 alleviated any safety issues, I would assume.

20 JUDGE NALLEY: Yes, it would have. It
21 would have.

1 MR. SILVERMAN: But it also would
2 probably identify you as the person that did
3 this in the same breath.

4 JUDGE NALLEY: That's right.

5 MR. SILVERMAN: The tire that you
6 deflated, could you identify which tire it was?

7 JUDGE NALLEY: It was the right rear,
8 the one closest to the curb.

9 MR. SILVERMAN: The right rear tire?

10 JUDGE NALLEY: Right rear.

11 MR. SILVERMAN: So that would be
12 the passenger side rear tire.

13 JUDGE NALLEY: The passenger's side rear
14 tire.

15 MR. SILVERMAN: So when talking about
16 whether you created a safety issue or safety
17 hazard, that would be the least obvious tire that
18 a driver would identify.

19 JUDGE NALLEY: Probably, yeah. I could
20 see that I didn't think when I was -- I didn't
21 think about that in the sense that I couldn't

1 imagine somebody pulling off in a car without
2 realizing that the tire was flat. So to the
3 extent that I considered safety,
4 that [inaudible].

5 MR. SILVERMAN: So you expected the
6 driver would get in the vehicle, start to drive
7 and come to realize --

8 JUDGE NALLEY: Yes.

9 MR. SILVERMAN: That the car was flat.

10 JUDGE NALLEY: Yes.

11 MR. SILVERMAN: But you didn't expect
12 them to be able to see it reasonably when
13 Ms. Washington got in the car before --

14 JUDGE NALLEY: Probably not, but I
15 didn't know frankly from which side of the car
16 the person would be approaching it. They could
17 have been approaching it from the right side. I
18 had no idea whose car it was, how it got there,
19 who put it there, how long it was going to be
20 there. All I can say I had seen it in nearby
21 spots earlier. The only way I know that I had

1 seen it before was it had a vanity tag.

2 MR. SILVERMAN: When did you become
3 aware that a sheriff's deputy had filmed you
4 letting the air out of the tire? Was it the same
5 day, or the next day?

6 JUDGE NALLEY: No, it was at least a
7 couple of days later and I don't remember now how
8 I discovered that. Somebody told me, but I think
9 it was probably later, certainly not that day.

10 I don't think I knew it when I spoke to
11 Judge Missouri on the Wednesday, two days later.
12 I don't remember now how or who told me that.
13 Somebody did after the fact, but.

14 MR. SILVERMAN: But at some point you
15 became aware that you had been filmed doing this
16 act?

17 JUDGE NALLEY: Yeah, at some point I
18 did, but as I say, it was probably later.

19 MR. SILVERMAN: And the only reason I
20 ask is because your counselor eloquently, to your
21 credit stated that you admitted during the course

1 of this investigation and this process.

2 JUDGE NALLEY: I admitted it certainly
3 before. I did admit it long before I knew it was
4 filmed. There was no relationship there at all.

5 MR. SILVERMAN: Well, in the prior
6 instance when you let the air out of the tire,
7 did you turn yourself in or go to the police and
8 admit that conduct as well, that wasn't filmed?

9 JUDGE NALLEY: It wasn't -- no, no.

10 MR. SILVERMAN: And I'm just curious, a
11 man of your age and education, one would think
12 that for you to have the thought of letting the
13 air out of someone's tire that this might be
14 something that you do in the regular course. How
15 does that come, how did that germinate in your
16 mind even as an option in this instance?

17 JUDGE NALLEY: That's a good question.
18 Someone described it as a human moment. I think
19 that's as good an explanation as there is. It
20 was a failure of judgment. It involved not
21 putting enough thought or the right kind of

1 thought into the choice.

2 But as I said a moment ago, I was trying
3 not to come across as somebody who was throwing
4 his weight around. I did give it that thought
5 that this was less troublesome for the person
6 affected than having the car towed, or having it
7 ticketed or something like that. I did go
8 through that kind of rationalization.

9 MR. SILVERMAN: I guess my question is
10 why did the thought of letting air out of the
11 tire, it would seem to me that that would be
12 something that you do over the course of a number
13 of years for that to even pop in your head.

14 JUDGE NALLEY: No, as I said there was
15 the precedent that I mentioned involving the
16 school lot. If you will, a reflection of less
17 deliberation than should have been involved, and
18 rash judgment.

19 MR. SILVERMAN: Okay, thank you, sir

20 JUDGE WOODWARD: Mr. Berkshire.

21 MR. BERKSHIRE: Judge Nalley, when you

1 were engaged in this act, did you feel that it
2 was your goal to do this anonymously or as a
3 person of authority at the time?

4 JUDGE NALLEY: No, I made no effort to
5 do it anonymously. As has been suggested here,
6 with the very question it would have been more
7 logical, the right thing to do if I was
8 determined not to, you know, have it ticketed or
9 something, would have been to put a note on
10 there.

11 I frankly my experience with putting
12 notes on cars hasn't been effective, but the --
13 it would have been much more logical to if I was
14 going to do something like this, to put a note on
15 there and also to say you shouldn't be parking
16 here, here's what could happen. There's a logic
17 to that.

18 JUDGE WOODWARD: Mr. Saxton.

19 JUDGE NALLEY: I was categorically not
20 trying to send a message that somebody in
21 authority, or somebody in power or somebody who

1 had some control over this place was doing it,
2 no.

3 On the other hand, as I said, I wasn't
4 making an effort to disguise the fact that it was
5 me or somebody who worked in the courthouse.

6 MR. SAXTON: Judge, I've read your very
7 impressive recommended letters that have been
8 turned in. But given hindsight if you had
9 someone coming before you that did exactly what
10 you did, what would you do about it?

11 JUDGE NALLEY: Well, I would ask him the
12 question that some of you, have asked me and that
13 Mr. Lemmey asked me, Judge Missouri asked me, and
14 that I have been asking people who come before
15 me, usually in criminal cases, but not
16 exclusively, who've done regrettable things, what
17 were you thinking?

18 I have asked that question hundreds of
19 times. And if I had somebody standing in front
20 of me on a charge like this I'm pretty sure I'd
21 open the conversation with that question. And

1 what so often happens is the answer is I wasn't
2 thinking. And my standard response to that
3 answer is, the comeback to that answer is well, I
4 don't take a lot of consolation in the fact that
5 you weren't thinking. I'd feel better if you
6 told me that you had given it some thought, for
7 that matter you made a calculated choice to do
8 something illegal but it went awry. I would take
9 more comfort in the fact that it was not rash and
10 irrational but it was rather a product of a
11 conscious mistake.

12 And I appreciate the dichotomy in which
13 I find myself here on the wrong end of that
14 question. But as I said here, I gave it some
15 thought and I can't sit here and say I didn't
16 think, I did think. The choice I made was the
17 wrong choice for all of the reasons that we've
18 been talking about.

19 What would I do to that person? I would
20 think that I would do essentially what Judge
21 Wilcox did in my case. If the person had no

1 previous history of criminal behavior, if they
2 were forthcoming in acknowledging that he did
3 something wrong, stupid, or both and was resolved
4 he would not be in this kind of predicament
5 again, I would insist that he apologize to the
6 people affected, I would, depending on the
7 person's situation require him to do some
8 community service or pay a fine.

9 Judge Wilcox hit me with the fine under
10 the statute authorized it and it's certainly
11 appropriate. But I have to say I would think
12 that I would do pretty much the same thing to
13 somebody so situated.

14 JUDGE WOODWARD: Ms. Rubin.

15 MS. RUBIN: Mr. Brennan, I have a
16 question for you and this might in some way
17 betray my memory of the definition of malicious
18 destruction of property, but I understand your
19 argument in part to say that Judge Nalley was
20 charged with tampering with a motor vehicle and
21 not with malicious destruction of property and

1 that that distinction demonstrates that he was
2 not found to have the requisite criminal intent
3 for malicious destruction. Is it not equally
4 likely that he was not charged with malicious
5 destruction because in fact what he engaged in
6 did not necessarily amount to a destruction of
7 property and not because he lacked the requisite
8 intent.

9 MR. BRENNAN: Well, yeah, I think it's
10 clear that Judge Nalley's conduct on that day did
11 not meet any of the elements of malicious
12 destruction of property, and I think that it
13 would require a malicious intent to destroy
14 property and to do damage to property, and
15 neither one of those elements were met.

16 And the reason I mentioned that,
17 Ms. Rubin, is some of the press reports, you
18 know, they said, well, it's the equivalent of
19 keying a car, doing some damage to a car.

20 And they're clearly, if someone for
21 example is parked in someone's space and you

1 said, well, I'm going to get back at them and
2 then key their vehicle, you have a malicious
3 intent to do damage to the vehicle, you have a
4 malicious and in fact damage is done to the
5 vehicle.

6 Some of the press reports were
7 suggesting that this was the functional
8 equivalent of that. And that's why I was making
9 that distinction. There was no malicious intent
10 to harm the vehicle. In fact, there was no
11 damage to the vehicle.

12 The charge is to tamper with, which
13 Judge Thomas Hunter Lowe of this court said does
14 not require the malicious intent, or the criminal
15 intent or the specific intent.

16 MS. RUBIN: So I understand you to say
17 that if Judge Nalley had in fact permanently
18 damaged the tire he would not, he would still
19 not measure up to the malicious destruction?

20 MR. BRENNAN: That's right.

21 MS. RUBIN: But am I also correct that

1 even had Judge Nalley in your argument, even had
2 Judge Nalley acted with the requisite intent that
3 the underlying property damage was not in
4 fact the requisite destruction of property, is
5 that not the case?

6 MR. BRENNAN: Yeah. We at one point had
7 a debate whether or not, you know, letting one's
8 air out of the tire is a damage. And I think
9 that the statute's pretty clear that it is not.

10 But I think the most important thing to
11 remember is that of all the things that could
12 have been done in terms of a criminal nature, the
13 crime that was charged, that is the misdemeanor,
14 the transportation article violation that was
15 charged in this case, it was tampering, which
16 specifically does not require a criminal intent.
17 It requires the intent to do the act and that was
18 my point.

19 I think that's been significantly
20 misconstrued in the press. I mean I think the
21 press at one point, and I mention the press

1 because on the one hand I practice law certainly
2 without a view towards the press, but on the
3 other hand knowing that this Commission is
4 charged with making sure that the people of
5 Maryland have confidence in the judiciary, I have
6 to be concerned with public perception. And
7 that's why I think it's important for the press
8 as well as this Commission to understand that it
9 certainly was not malicious destruction of
10 property, did not meet the elements of that crime
11 and that was not Judge Nalley's intent to do that
12 or commit that crime.

13 It was not charged in the criminal code,
14 it was charged under the transportation article.
15 And I think for the public confidence that this
16 Commission is duty bound to deal with, that's an
17 important distinction to make and that's why I
18 make that distinction.

19 JUDGE WOODWARD: Miss Pender.

20 MS. PENDER: My question is for Judge
21 Nalley. Did at any time you ever -- I wrote my

1 question down. Did at any time you ever want to
2 make an it inconvenience for the person that was
3 in your parking space, did that run across your
4 mind?

5 JUDGE NALLEY: Did I wish to make some
6 inconvenience for the person?

7 MS. PENDER: Right. In other words, I
8 know you said that you wanted to send a warning
9 but through that warning they shouldn't have
10 parked there, did you want at any time to make it
11 difficult for them to leave that particular space
12 or was the tire flattened --

13 JUDGE NALLEY: Inconvenient is the right
14 word, I think, yes. That was certainly the
15 motivation to make it inconvenient for somebody
16 to have parked there and if you will, affect the
17 consequences, rather than other consequences that
18 might have been in some senses more inconvenient
19 with regard to expense and the [inaudible] to
20 have it towed.

21 MS. HINTON: Judge Nalley, you described

1 in the documents I believe that you found your
2 actions would be more of a benign nature or that
3 was your intention.

4 JUDGE NALLEY: I meant benign as
5 compared to having it towed or having it
6 ticketed, which would I think cost money and time
7 in the sense that this particular thing would not
8 have, that's what I meant.

9 MS. HINTON: Would you characterize your
10 conduct as vindictive towards the individual who
11 parked there?

12 JUDGE NALLEY: I don't think it rose to
13 that level, though I confess to it being the
14 product of irritation and a shortness of temper
15 on my part. Vindictive, no, I don't think you
16 can call it that.

17 Related to that, I shouldn't sit here
18 and say I disagree with my lawyer, but in a sense
19 I do. I think the language that Ms. Rubin and
20 Mr. Brennan were, and I'm saying this as a court
21 judge, and I teach a course also, I think the

1 language they were stretching for there is the
2 difference between general intent and specific
3 intent.

4 This statute which I admitted violating,
5 the tampering statute, says thou shalt not. And
6 there is a distinction to be drawn between damage
7 on the one hand and harm on the other. And I
8 think that's the distinction here, and I think
9 it's tampering, even if there's no damage,
10 physical damage that needs repair.

11 But when you're talking about a thou
12 shalt not statute the question is whether the
13 offender or the accused intends to do that which
14 the law says thou shalt not do. And clearly that
15 would apply here.

16 The malicious destruction statute you
17 all were talking about which in my generation it
18 was section 11, I can't remember what the new
19 classification is without looking it up. But
20 that requires a malicious intention to do damage
21 to somebody else's property.

1 MS. RUBIN: My question was not in
2 ignorance of that distinction, my question was
3 more aimed at figuring out whether or not the
4 charge for malicious destruction was not brought
5 really because the conduct, forget the intent,
6 but the actual result of the conduct did not
7 necessarily qualify as a destruction of property.

8 JUDGE NALLEY: I agree with you if
9 that's what you're saying, and to the extent that
10 what Mr. Brennan says was inconsistent with that,
11 I disagree with him.

12 JUDGE GREENBERG: Can I say that the
13 language unless the statute has been changed, and
14 I don't think it has, it doesn't just say
15 destroy, it says molest, injure, deface, so
16 arguably --

17 JUDGE NALLEY: It does. It does, and
18 this would certainly qualify as a molestation of,
19 without actual damage. I agree with that.

20 JUDGE WOODWARD: Judge Shuger?

21 JUDGE SHUGER: This is for Judge Nalley

1 a question and it's a follow up to the question
2 that Mr. Saxton asked a moment ago which is the
3 question about how you would handle a similar
4 situation if a defendant appeared before you
5 charged as you were. And as I understood your
6 answer, Judge, your answer was that you would
7 probably do the same as was done by Judge
8 Wilcox in your case if the person had no history
9 of criminal behavior. I think that was your
10 word, your phrase.

11 So my question is, do you mean by that
12 language to presume that the person had never
13 previously been charged with a crime, and also if
14 that's so, would you have handled the situation
15 differently if you believed it was a subsequent
16 offense, not the first time that a person had
17 been charged with similar conduct or engaged in
18 similar conduct?

19 JUDGE NALLEY: If it was a subsequent
20 offense in the sense that there was information
21 before me suggesting that this was conduct that

1 was not out of character for this individual,
2 yes, I think a different outcome would be
3 appropriate.

4 JUDGE SHUGER: Could you elaborate on
5 that?

6 JUDGE NALLEY: You would deal with it
7 more strenuously, yes.

8 JUDGE SHUGER: Can you elaborate on
9 that?

10 JUDGE NALLEY: Well, the easy case is
11 the one where the guy has two or three, you have
12 documents in front of you that suggests that this
13 fellow has been convicted of this precise offense
14 on prior occasions. That's what judges usually
15 see.

16 And you deal with subsequent violations,
17 whether the statute specifically prescribes a
18 different penalty or not, differently than you do
19 with first offenders.

20 I surmise that you have in mind my
21 acknowledgment that on that occasion ten years

1 earlier I had done something similar without
2 being charged. Yeah, there's situations where
3 that might affect the outcome, yes. It might
4 well. The defense would say well, okay, it all
5 happened so long, the guy's older and more mature
6 now. You weigh those variables certainly.

7 JUDGE WOODWARD: Ms. Canavan.

8 MS. CANAVAN: I think my question is for
9 Mr. Lemmey maybe. What happens if you're
10 ticketed parking in that space? What's the
11 penalty?

12 MR. LEMMEY: What's the penalty for?

13 MS. CANAVAN: For the person who parked
14 in the judge's spot, if they did get a ticket,
15 how much would it be?

16 MR. LEMMEY: I'm embarrassed to tell you
17 I don't know what the Charles County parking
18 violation would be. I do know if it was
19 Baltimore City it would cost them probably a
20 hundred dollars these days. I don't know what
21 the current parking violation rate in Charles

1 County is, but there would be a monetary fine and
2 I think if I remember correctly, give me a second
3 to look at something for you. I do think Judge
4 Nalley has talked about it but I think there is
5 authority on that parking space that the car
6 could have been towed, which of course I don't
7 know what your life experience is, but my life
8 experience is if you get towed, it's expensive.

9 Yeah, it does say unauthorized vehicles
10 will be towed at owner's expense. So there could
11 have been two consequences, either a ticket or
12 actually you could get really bad and get a
13 ticket and get towed. So it could have cost the
14 person I would say a couple hundred dollars.

15 MS. CANAVAN: Was the person ticketed?

16 MR. LEMMEY: Pardon?

17 MS. CANAVAN: Was the person ticketed?

18 MR. LEMMEY: No, not to my knowledge.

19 JUDGE NALLEY: I'm pretty sure not.

20 MR. LEMMEY: The car was gone in five or
21 ten minutes later.

1 MS. CANAVAN: So even though the person
2 was parked there, they didn't get ticketed or
3 towed?

4 MR. LEMMEY: I don't think anyone, once
5 the tire was flattened, I don't think anyone was
6 focused on the parking violation.

7 MS. CANAVAN: Judge Nalley, do you know
8 what the fine is?

9 JUDGE NALLEY: I don't know. I can't
10 cite you chapter, verse. I would guess, you
11 know, it's a maximum of \$500. I suspect that's a
12 payable ticket probably with \$50 or \$75 on it.
13 Personally, I have not myself gotten a La Plata
14 parking ticket ever, I think.

15 As a prosecutor I dealt with a few but
16 I'm not sure that I ever knew what the penalty,
17 ultimate penalty was. I don't think anybody ever
18 was assessed that. But typically these statutes
19 say maximum \$500 fine.

20 But in this instance I was told and I
21 think I read that a policeman was among the

1 people who saw what was going on and/or
2 someone working [inaudible]. And secondly, that
3 a police officer had a handy pump available and
4 inflated the tire for Ms. Washington.

5 MS. CANAVAN: Has there been any contact
6 from Ms. Washington to you since the incident? I
7 know you sent her a letter.

8 JUDGE NALLEY: I spoke to her at the
9 courtroom the day I was there in October. I did
10 write the letter that was mentioned and I did not
11 hand it to her, I handed it to a mutual friend
12 who handed it to her.

13 MS. CANAVAN: She has not contacted you?

14 JUDGE NALLEY: I have not had contact
15 with her, no.

16 JUDGE WOODWARD: Ms. Matlick.

17 MS. MATLICK: I have a question for
18 Judge Nalley. I just want to clarify you
19 discussed what you had done prior to seeing the
20 article in the newspaper?

21 JUDGE NALLEY: Yes. As it turns out I

1 did not know whose car this was and I had no idea
2 whether the person was connected to the courts or
3 to the facility next door, but I got a call later
4 that afternoon, Monday the 10th from the court
5 administrator, who had gotten a call from
6 somebody in the county government for whom it
7 turns out Ms. Washington worked, basically saying
8 did you know that Judge Nalley did this. The
9 administrator of course comes to me, did you do
10 that? And I said yes.

11 Yes, I had that conversation. And then
12 the next day the newspaper lady called me and
13 basically said I'm investigating a report the La
14 Plata police are investigating you for deflating
15 a tire yesterday, and I think you know the rest.

16 JUDGE WOODWARD: Okay, I think any --

17 MS. CANAVAN: I just have one last
18 question for Mr. Lemmey. Your photos are kind of
19 unclear but it looked to me and if I remember the
20 courthouse correctly, the signs are pretty clear
21 about no parking. Is there any chance it was

1 a mistake by the way, the woman parking in this
2 space.

3 MR. LEMMEY: Actually Judge Nalley might
4 be able to give you more information than I can.
5 At the time of this event and I think even
6 currently there's a lot of construction going on
7 at this Charles County Circuit Court. So where
8 the photograph shows the side of the street that
9 he was supposed to park, the other side of the
10 street I think had a fence around the courthouse
11 at that point or was in the construction type of
12 phase, and members of the public had to park
13 about half a block to a block further back
14 because of the construction work going on. This
15 street is clearly marked that these are reserved
16 spaces and there are not very many of them.

17 MS. CANAVAN: So if the person, and the
18 person worked in that area, the person's tire's
19 deflated worked in that area daily?

20 JUDGE NALLEY: We now know that, yeah.

21 MR. LEMMEY: Ms. Washington actually

1 works a late in the day into early evening shift
2 at the courthouse and I believe she parked there
3 so she would be close to the courthouse when she
4 left work early in the evening.

5 MS. CANAVAN: Okay. I'm just
6 asking because some issues have been made about
7 whether a letter should have been left but it was
8 clear that she shouldn't have parked there,
9 correct?

10 MR. LEMMEY: It was clear that she's not
11 supposed to park there?

12 MS. CANAVAN: Yeah.

13 MR. LEMMEY: Well, I think the best way
14 to answer that question is to look at exhibit, I
15 think it's Exhibit 4 to the deposition.

16 MR. BRENNAN: If I could expand on that,
17 what has happened is it is Exhibit 4, and Judge
18 Nalley, the sheriff's department for security
19 reasons does not put the name Judge Nalley's
20 space on that for security reasons so that people
21 would be able to identify his vehicle. So he's

1 assigned space 5. He has a parking permit for
2 space 5, and he parks there. It's clear that
3 Ms. Washington did not have any permit that
4 allowed her to park in a restricted space.

5 MS. CANAVAN: So it would be fair to say
6 that there's no question she knew she shouldn't
7 have parked there but she didn't know it was
8 Judge Nalley's space?

9 MR. BRENNAN: That's correct. She knew
10 she was not supposed to park there but she only
11 knew the person who was entitled to that space
12 had parking permit number 5. Number 5. They did
13 not know it was Judge Nalley.

14 And I guess it's obvious, although the
15 sheriff as we've discussed did take photographs
16 of Judge Nalley doing this, but even though
17 Ms. Washington was not allowed to park there
18 never issued a ticket, never had the car towed.
19 So that's clear that that's what occurred.

20 JUDGE WOODWARD: Any other questions?
21 Seeing that there are no further questions from

1 the members of the Commission, Mr. Lemmey, we
2 will now proceed to the disposition phase.

3 MR. LEMMEY: May it please the
4 Commission, before I start, I think I need to be
5 for a moment a little bit lawyerly. I am not
6 comfortable, I would respectfully submit,
7 although it's stipulated and in evidence that
8 they agree he violated the Canons and I would
9 argue too that he violated the Canons, if we were
10 to analogize this to a criminal case it might be
11 more appropriate for the Commission to decide
12 whether he violated the Canons before we argue
13 disposition. I don't know how you want to handle
14 that procedurally. I'm willing to argue it as a
15 hypothetical, but.

16 JUDGE WOODWARD: I think we would like
17 to have it as a hypothetical.

18 MR. LEMMEY: Okay. I'll work from the
19 assumption that based upon the evidence the
20 Commission is going to find there's some
21 violation of the Canons. I don't know if you'll

1 find exactly what I might find, but I will work
2 from the position that there is a finding that at
3 least one of the Canons of Judicial Conduct has
4 been violated.

5 Having said that, I would submit to you
6 that the Commission should conclude this case at
7 a minimum by issuing a public reprimand to Judge
8 Nalley.

9 One of the reasons that you listened
10 carefully today and listened to Judge Nalley is
11 you may decide that a public reprimand is not
12 sufficient under these circumstances, but I would
13 argue to you at the very minimum this case should
14 result in a public reprimand for a number of
15 reasons, primarily the conduct that I believe is
16 proven justifies it.

17 I think you need to assure the Maryland
18 public that this kind of conduct by a judge is
19 not acceptable and that this kind of conduct by a
20 judge requires public discipline. And what I'm
21 focusing on there is that this should not be some

1 form of discipline, as the Commission knows there
2 are sometimes minor things that come before the
3 Commission where some nonpublic disposition is
4 appropriate.

5 I do not believe that you should reach
6 any of those conclusions here. I think your
7 conclusion, whatever it is, should be public. My
8 view is it should be a public reprimand or
9 something more if you think that's appropriate.

10 This may strike you as odd but at the
11 beginning of my proposed disposition phase I
12 would like to direct your attention to a letter
13 that Judge Nalley and his counsel put into
14 evidence from Judge Kenneth Talley, a district
15 court judge for Charles County, Maryland.

16 Before we added the four documents it
17 was the third to last thing behind tab D. I
18 think it's a little further back now that we
19 added four more documents.

20 It is a letter dated November 16th, 2009
21 addressed to Judge Woodward as chair of the

1 Commission. And I'm only going to read one or
2 two paragraphs from it. This judge writes to
3 you saying, I'm writing this letter on behalf of
4 Judge Robert C. Nalley and requesting that he
5 receive discipline in the form of a public
6 reprimand for the incident in question.

7 "First, let me indicate that I do not
8 believe this incident or his conduct should be
9 condoned or minimized. I firmly believe that his
10 actions that day are inexcusable and are not only
11 outrageous but also an extreme embarrassment, not
12 only to himself but also to this county and the
13 entire judiciary. Moreover, I understand that
14 this affair has caused great distress to a
15 decent, hardworking woman who neither asked for
16 or deserved to have this happen to her. I
17 believe the memory of this conduct will not soon
18 fade and will continue to reverberate long after
19 a decision is reached on his ultimate fate here
20 and are now inexorably intertwined in his
21 legacy."

1 I read you that for two reasons. One, I
2 agree with the sentiment being expressed about
3 the conduct.

4 And two, I'm sure you understand this is
5 a letter from a colleague in support of Judge
6 Nalley. The rest of his letter is supportive of
7 Judge Nalley. I have no disagreement about the
8 fine public service career that Judge Nalley has
9 generally had.

10 I also want to give you some information
11 to work with at least as to how I think you ought
12 to think about a disposition in the case. In a
13 case that many of you are familiar with which
14 involved a judge from Baltimore County, Maryland
15 before this Commission, the citation of the case,
16 it's a published case is 404 Maryland 631. Judge
17 Raker writing for the Maryland Court of Appeals
18 talking about appropriate dispositions said, and
19 she's talking about the court, but the court was
20 following up on the actions of a prior hearing of
21 this Commission for another judge. "It is the

1 constitutional responsibility of this court,"
2 referring to the Court of Appeals, "to fashion
3 judicial discipline in a manner that preserves
4 the integrity and independence of the judiciary
5 and reaffirms, maintains and," most important to
6 me, "restores public confidence in the
7 administration of justice. Any sanction must be
8 designed to discourage others from engaging in
9 similar conduct and to assure the public that the
10 judiciary will not condone judicial misconduct."

11 Later Judge Raker says, "Our
12 considerations are the maintenance of the honor
13 and dignity of the judiciary and the proper
14 administration of justice..." She also says,
15 "The sanction must inform the public that we
16 recognize that there has been judicial misconduct
17 and it must be sufficient to deter the offending
18 judge from repeating the conduct in the future,
19 and must be sufficient to deter others from
20 engaging in similar conduct."

21 And the reason I chose out of all of

1 these, there are many, many judicial discipline
2 cases around the country, I thought the most
3 appropriate thing to talk to you about would be
4 what our Court of Appeals says because ultimately
5 when you make a decision, whatever decision you
6 make is reviewable by that court. I thought you
7 should, many of you have read this opinion
8 before, but I just wanted to point out to you the
9 parts I thought were relevant to today's
10 consideration.

11 I also want to tell you about, it's
12 almost amazing to me, recently it was brought to
13 my attention that in September of 1993 the
14 Commission on Judicial Performance in California,
15 the part that I find amazing is, issued what is
16 the equivalent of a public reprimand to a judge
17 who in 1993 arrived at his reserved parking
18 space, found that parking space to be occupied by
19 an unauthorized car and he proceeded to deflate
20 the tires of the car. And he was charged in
21 California, you'll like this part, with violating

1 Canons 1 and 2A. It sounds familiar.

2 I had to go look it up because in
3 California sometimes I think they make up their
4 own words. That judge, Judge Slater on September
5 13th, 1993 was issued a public reproof. And I'm
6 embarrassed to tell you I'd never heard the word
7 reproof used that way. So according to our law
8 library that would mean conduct that merits a
9 censure.

10 So I would say that the California
11 Commission came to the conclusion that a public
12 censure or public reprimand was what they thought
13 was appropriate for this kind of conduct back in
14 1993.

15 I also want to make reference for you in
16 your decisions as to what ought to happen. Judge
17 Nalley has had a long, good career as a public
18 servant. I think you should take that into
19 account. You also should take into account what
20 he said before you today.

21 I agree with Judge Nalley this was a

1 failure in judgment on his part. Those are his
2 words today. I do not agree that it was benign.
3 I do think there was, I don't want to get into a
4 tangle about destruction of property or
5 tampering. The behavior was harmful to the owner
6 of the car, whether there was physical damage to
7 it or not, and had the potential to be more
8 harmful to her than it was.

9 I agree with the Commission that one of
10 the questions that you asked, I asked, several of
11 you asked and was appropriately along the lines
12 of what were you thinking at the time this
13 occurred. And I agree with Judge Nalley what he
14 was thinking was bad judgment.

15 It's in that context that I would urge
16 you to at the minimum I believe it's appropriate
17 for you to issue some form of a public reprimand
18 or a public censure.

19 I strongly prefer and recommend as has
20 been the practice of the Commission for years, I
21 think the public should hear from you in a

1 written opinion that tells the public and other
2 judges why this concerned the Commission, why
3 it's appropriate for some judicial discipline.

4 I know many of you are familiar with the
5 fact that the cases on this topic tell us that
6 judicial discipline is about these factors I've
7 been talking about. It's not about punishment
8 but it's about promoting confidence in the
9 judiciary. It's about preserving the integrity
10 of the judiciary, and very important that the
11 public know, number one, that judges shouldn't
12 act this way, and number two, if they do they
13 know that there's a response and that other
14 judges know they should not engage in any
15 inappropriate behavior, they should use good
16 judgment, both in their personal and their
17 professional lives.

18 And I would submit to you that as I said
19 at a minimum there should be some public finding,
20 either reprimand, censure, however you choose to
21 term it, or if you based upon your questions and

1 answers and what you heard today, or some other
2 result that you fashion that you think is
3 appropriate under these circumstances.

4 My main concern is this should, we've
5 done this publicly, it should finish publicly and
6 I would encourage you to craft an opinion that
7 provides the public and the judiciary with the
8 information as to what's wrong here and why it
9 should result in judicial discipline. Thank you.

10 JUDGE WOODWARD: Thank you, Mr. Lemmey.
11 Mr. Brennan.

12 MR. BRENNAN: Thank you. Let me if I
13 may say, I do have a couple of witnesses I would
14 like the Commission to hear from very briefly, if
15 I may.

16 But before I do that I would just like
17 to read the, which I know the Commission will
18 review the rest of Judge Talley's letter.

19 As Mr. Lemmey points out Judge Talley
20 did not minimize Judge Nalley's conduct in this
21 case and certainly gave his very clear, candid

1 thoughts as to what occurred here.

2 But most importantly Judge Talley goes
3 on to say, I have known Judge Nalley for about
4 ten years in several capacities. I was an
5 assistant public defender, a private attorney, an
6 assistant state's attorney, and now a fellow
7 jurist. He said he's participated in a number of
8 professional activities with him. And Judge
9 Talley says, during those encounters, and
10 remembering now as a public defender, private
11 attorney, state's attorney and a jurist I have
12 always found Judge Nalley to be fair if not a
13 stern man, passionate. What has always stood out
14 to me beyond all of this is his tireless work
15 ethic, his focus on service, and it's for these
16 reasons I think he should be given another
17 opportunity.

18 After this incident I saw another side
19 of the judge and the man that I've known for the
20 past decade. I saw a person who is humble,
21 contrite and motivated to introspective. I

1 believe that the impact of this incident will
2 have on him will be a net positive in reshaping
3 his outlook and giving him an opportunity to be a
4 better judge. I think it would be extremely
5 unfortunate if this were the final chapter in
6 Judge Nalley's tenure on the bench.

7 I think he was given a public censure,
8 if he's given a public censure he will be able to
9 better himself, learn from this experience, he
10 would be enriched as a judge, but the people who
11 come before him in the community as a whole would
12 benefit.

13 So Judge Talley does not sugarcoat it,
14 understands it, doesn't approve of it but
15 acknowledges that Judge Nalley's hard work, his
16 service to the community, Judge Talley believes
17 my client will be a better judge for that.

18 So having said that though I would like
19 to call a number of brief witnesses to further
20 talk about Judge Nalley's service and his
21 character if I may do so.

1 JUDGE WOODWARD: Yes, you may.

2 MR. BRENNAN: I would like to call
3 Leonard Collins please.

4 Whereupon,

5 Leonard Collins, Esq.,

6 The witness called for examination, having been
7 first duly sworn, was examined and testified as
8 follows:

9 MR. COLLINS: Your Honor, members of the
10 Commission, my name is Leonard Collins, I'm the
11 State's Attorney for Charles County. More
12 importantly, I have practiced in Charles County
13 as a prosecutor for 30 years and I've known Judge
14 Nalley for those 30 years.

15 I grew up in Montgomery County and I
16 have to say that when I first went down to
17 Charles County to work, it was a culture shock.
18 The courthouse, there were three judges in the
19 courthouse. It was something I wasn't quite used
20 to, and I was from Montgomery County, I was not
21 from Charles County.

1 The more important culture was it was a
2 great place to be a prosecutor. The police that
3 I met wanted to do the right thing and Judge
4 Nalley was one of the judges who always wanted to
5 do the right thing. I can say that was the case
6 in 1980 and that's the case in 2010.

7 As Judge Talley indicated in his letter,
8 there is no one who is harder working in that
9 courthouse than Judge Nalley is. And there's
10 also no one in the courthouse who as Judge Talley
11 mentioned being humble. There is nobody else in
12 the courthouse who is willing to roll up his
13 sleeves and do the little things, what some of us
14 might consider the little things that are
15 important in a courthouse.

16 When Judge Nalley was in district court
17 in the 1980s, district court can be tedious. The
18 dockets are large. He gave everyone their day in
19 court, whether we were there until 6:00 or 7:00
20 or 8:00 o'clock at night, everyone got their
21 hearing, everyone got their day in court. He

1 treated everyone as individuals and he worked
2 hard to get it right.

3 And that's what I'm going to say about
4 Judge Nalley now is that he worked hard and he
5 worked hard to get it right.

6 In the circuit court, among the duties
7 of the circuit court judges we have child
8 support. It's not the most glamorous part of the
9 circuit court judge's duties. It's something
10 that needs to be done. And in Charles County the
11 states attorney's office handles the child
12 support cases. And I'll tell you the reason we
13 do it is because Judge Nalley asked me to have us
14 continue to handle the cases because he wanted,
15 he had an interest in making sure that the child
16 support cases were handled appropriately.
17 Although he's the administrative judge and he
18 might have assigned child support to other
19 judges, he does the lion's share of child support
20 cases.

21 And the dockets are big, and I can tell

1 you that Judge Nalley comes into court, he's got
2 40 child support cases, he has read those files,
3 he understands the history in those files, what
4 the payment records are, what the recommendations
5 done by the masters, we have masters who hear the
6 child support cases. He's familiar with the
7 cases. He's done all the little, unglamorous
8 work because he wants to get them their child
9 support, and nobody's watching, and he wants to
10 get it right. And that's really what I can say
11 about him to this day.

12 I think he loves his work the same way
13 he did back in 1980 and he works hard and he's a
14 good judge.

15 JUDGE WOODWARD: Any questions for
16 Mr. Collins? Mr. Brennan?

17 MR. BRENNAN: Thank you. Your Honor,
18 we'd call --

19 JUDGE WOODWARD: You have a question?

20 MR. LEMMEY: Your Honor, I was simply
21 going to tell Mr. Collins despite the fact that

1 the criminal bar might like me to ask him some
2 questions, I have no questions.

3 MR. BRENNAN: And I'll say I was sorely
4 tempted when I have a state's attorney under oath
5 by the way to ask him some questions, but I'm
6 going to refrain from doing that.

7 Mr. John Mudd I think is a lifelong
8 friend of Judge Nalley and would like to say a
9 few words on his behalf.

10 Whereupon,

11 John Mudd, Esq.,
12 the witness called for examination, having been
13 first duly sworn, was examined and testified as
14 follows:

15 MR. BRENNAN: Mr. Mudd, would you state
16 your name and occupation, please.

17 MR. MUDD: John Francis Mudd, attorney.

18 MR. BRENNAN: Okay. And how long have
19 you been an attorney, Mr. Mudd?

20 MR. MUDD: This November it will be 42
21 years.

1 MR. BRENNAN: Okay. And tell the
2 Commission if you would, sir, in what capacity do
3 you know my client, Judge Nalley?

4 MR. MUDD: He's a lot older than I am,
5 about seven months older, but other than that
6 seven months, I think I've known him for about 66
7 years.

8 His father built the first house my
9 father ever owned. And we were classmates and
10 schoolmates ands playmates. His mother was my
11 den mother when I was in Cub Scouts and his
12 father was a very accomplished woodworker. Judge
13 Nalley kind of inherited that. We were in the
14 same school at [inaudible] school for many
15 years. He went off to Gonzaga High School, and
16 the next time I actually saw him up close and
17 personal was the bar exam.

18 We both sat for the bar exam in 1969,
19 and he then went off to Vietnam. He was a
20 Captain in the Judge Advocate General Corps.

21 [Inaudible] my wife was having the first

1 of our eight children. But the next time I saw
2 him, we were both giving blood in 1971 at the
3 blood mobile and he was looking for a job and I
4 suggested he go see the state's attorney, John C.
5 Hancock had a long time deputy Louis Jenkins.
6 Louis Jenkins was leaving, and I suggested he
7 apply for that job.

8 He applied for that job, and he and I
9 were adversaries for ten years in the circuit
10 court, in the district court. He was always
11 prepared. Most of the time I saw him more than I
12 saw my wife and children.

13 He was a bachelor then and he would come
14 to my house for dinner. My wife is a very good
15 cook. But all we ever talked about was law. His
16 life was the law. And even today he can tell you
17 the whole story about this case or that case.

18 When we had the opening for the
19 judgeship and we had a rather dramatic
20 controversy over that, I asked Judge Nalley to
21 consider leaving the job at the state's attorney

1 and becoming a judge and seeking that judgeship,
2 and he did.

3 He lost in a contested election in the
4 primary by 17 votes. Then he was appointed to
5 the district court and came back to the circuit
6 court.

7 So I've known him for all my life as a
8 friend, I've known him as a prosecutor for ten
9 years when I practiced primarily criminal law,
10 and I've known him for the last 30 years on the
11 bench.

12 MR. BRENNAN: And with respect to his
13 work ethic that's been referred to, in terms of
14 his work ethic as a judge and the time and effort
15 that he puts into it, Mr. Mudd, what have you
16 observed over this lifetime?

17 MR. MUDD: We have a lot more security
18 at the courthouse now than we used to have in the
19 early days. Judge Nalley, I practice every
20 Thursday night, he is there, he's prepared. It's
21 all this chamber work and he's prepared for his

1 cases.

2 And if you go before Judge Nalley on a
3 motion today, you better expect that he has read
4 the motions and he's familiar with the cases
5 and he gets to the heart of it very quickly.
6 When he gets a criminal case he moves it along
7 and gives everybody their day in court. But he
8 is prepared. That's the biggest thing is he's
9 prepared and you better know that he's prepared
10 because otherwise you're going to miss out and
11 he's going to point out the weaknesses in your
12 position pretty quickly.

13 But he, when he was a state's attorney
14 he was a bachelor, I mean he would, he had no
15 problem trying cases until 10:00 or 11:00 o'clock
16 at night. [Inaudible] all the judges, Judge
17 Nalley was there, even when he had as a judge,
18 all these support staff and doesn't want to put
19 them out. He's required to do more work. I mean
20 he's there. There's no counties that have,
21 follow a docket [inaudible]. If there's a case

1 on the docket that day, he's going to stay there
2 until the job is done and it's going to be a
3 first class job because he's prepared.

4 MR. BRENNAN: And what is Judge Nalley's
5 reputation among local lawyers with respect to
6 his integrity?

7 MR. MUDD: I believe that on a scale of
8 1 to 10 it's a 10, integrity, it's a 10 on his
9 work ethic, it's a 10 on his compassion, it's a
10 10 on his decisiveness. I mean that's the other
11 thing, he will make a decision. He will not pass
12 the buck, he will not pass it off.

13 You're going to get a good trial, you're
14 going to get a thoughtful opinion, and when he
15 gives you an opinion it's not going to be six
16 months. That opinion is going to come out in a
17 timely manner. He does not mail it in and he
18 does all of his own research.

19 MR. BRENNAN: Any questions that the
20 Commission may have of Mr. Mudd? Mr. Lemmey?
21 Thank you, Mr. Mudd.

1 The final witness, your Honor, I would
2 like to call is Anthony Covington.

3 Whereupon,

4 Anthony Covington, Esq.,

5 The witness called for examination, having been
6 first duly sworn, was examined and testified as
7 follows:

8 MR. BRENNAN: Mr. Covington, would you
9 state your name and current occupation, please.

10 MR. COVINGTON: I'm Anthony P.
11 Covington. I'm the Deputy State's Attorney for
12 Charles County. Everybody calls me Tony.

13 MR. BRENNAN: Okay. Prior to becoming
14 Deputy State's Attorney can you tell the
15 Commission when you became a member of the bar
16 and what your background is?

17 MR. COVINGTON: I became a member of the
18 bar in 1991 and was sworn in here in this august
19 building. Prior to that, spending time with
20 Judge Nalley, I was in the military in the United
21 States Air Force. I grew up here in Anne Arundel

1 County and of course going to the Air Force to
2 see the world, they stationed me at Fort Meade
3 for eight years.

4 At that time I went to law school. I
5 got out, passed law school, passed the bar, went
6 to start prosecuting in Prince George's County
7 States Attorney's office, Mr. Collins recruited
8 me down to the Charles County State's Attorneys
9 office in 1993.

10 In 1997 I left there and went into
11 private practice, did that for about six years in
12 Baltimore and also down in Waldorf, Charles
13 County, and in fact in 2003 I went back to the
14 Charles County State's Attorney office and became
15 its deputy shortly thereafter.

16 MR. BRENNAN: Now Mr. Covington, in your
17 capacity focusing on the period of time when you
18 were in private practice, did you have occasion
19 to travel around the state of Maryland and indeed
20 the nation and observe other judges?

21 MR. COVINGTON: I have been in every

1 courthouse in this state trying cases with the
2 exception of Garrett County. I have come across
3 all sorts of judges. I've also been in districts
4 in New York, Delaware, Pennsylvania, Kentucky,
5 North Carolina, so I've been around, yeah.

6 MR. BRENNAN: So using your extensive
7 experience as a frame of reference, what can you
8 tell the Commission here this morning,
9 Mr. Covington, with respect to Judge Nalley's
10 work ethic and knowledge of the law?

11 MR. COVINGTON: The only person in the
12 courthouse longer or as long as me is Judge
13 Nalley. I live close to the courthouse now so I
14 prefer to do all my work at the courthouse, that
15 means on weekends, et cetera. It is not unusual
16 for me to see his car over there seven days out
17 of the week, even after he's been married.

18 As Mr. Collins said earlier, no one
19 works harder and I don't think there's a judge
20 that I have come across in all the years that
21 I've been doing this who cares more about getting

1 it right, but also cares about the people
2 involved, that's the lawyers, as well as the
3 participants, whether it's the defendant or those
4 people in civil cases. I've been on both sides,
5 criminal and civil, and I can say that without
6 really any reservation, nobody cares more.

7 I mean is Judge Nalley a passionate
8 person? Sometimes, but he cares. He cares.

9 And if I can say one more thing.

10 MR. BRENNAN: Sure, sure.

11 MR. COVINGTON: Any notion that somehow
12 Judge Nalley has some vindictiveness, let me give
13 you a quick anecdote. I was in private practice
14 at the time sitting in Judge Nalley's courtroom
15 waiting to have a case called. He was sentencing
16 someone in the nine o'clock docket. He gave this
17 man, I don't know how much time, 20, 30 years, a
18 significant amount of his life was gone.

19 After giving the sentence I go back in
20 chambers so we could talk in chambers to other
21 attorneys. And as Judge Nalley opens the door to

1 come into chambers you hear every name thrown at
2 him in the book, everything but the child of God,
3 this defendant just got 20 or 30 years is calling
4 Judge Nalley.

5 Judge Nalley closes the door, the
6 bailiff comes in right after, Judge Nalley, did
7 you hear what this guy said to you, you know,
8 we're going to hold him in contempt, we're going
9 to have a contempt hearing? Judge Nalley says
10 no. The bailiffs like, why not? I just the man
11 30 years, he's entitled.

12 Judge Nalley is not vindictive. He's
13 not a bully. He treats everybody with dignity
14 and respect. I think that is by far the most
15 important ingredient for any judge,
16 notwithstanding the intelligence, and you've
17 heard Judge Nalley speak today, no question he's
18 an intelligent man, but treating people properly
19 when they're standing in front of you, when
20 you're in the hallways, whatever it is, to me as
21 a trial attorney I want to know I'm not going to

1 get chewed out for nothing. I want to know that
2 I'm not going to be jerked around. As a
3 defendant you want to know that as well. And
4 Judge Nalley treats people with dignity and
5 respect, at all times, at all times no matter
6 what they may have done.

7 MR. BRENNAN: Thank you, Mr. Covington.
8 Does the Commission have any questions?
9 Mr. Lemmey?

10 MR. LEMMEY: Only if he wants to talk
11 about Mr. Collins. I have no questions.

12 MR. BRENNAN: Thank you. That would be
13 the, in addition to the character letters that
14 have been submitted with our, at tab D, that
15 would be the testimony we would have with respect
16 to Judge Nalley's work ethic and character.

17 I would just say I certainly understand
18 lawyers are not supposed to be both advocates and
19 witnesses and I certainly understand that, but as
20 an a point of I guess privilege, if you will, as
21 a criminal defense attorney I've never had the

1 privilege of appearing in front of Judge Nalley
2 as a state's attorney, I've always been a
3 criminal defense attorney when I've appeared in
4 front of Judge Nalley. And I will say that the
5 one thing that has always impressed me about
6 Judge Nalley is that unlike a lot, well, I
7 shouldn't say that, unlike some jurists Judge
8 Nalley has always read the papers that I have
9 submitted, has always reviewed the file, has
10 always been impeccably prepared and our
11 relationship over the years, as you may have seen
12 in this courtroom today has always been some
13 slight disagreement as to the interpretation of
14 the law, and there's certainly been no change in
15 that today as we've had the discussion about
16 malicious destruction and specific intent. But
17 I've always been impressed with Judge Nalley's
18 work ethic and the fact that if you go to Charles
19 County and you draw Judge Nalley you are going to
20 get a fair trial from a judge whose read the file
21 and knows the law.

1 But having said that, I would like to
2 now before Judge Nalley if you wish to say
3 something at the end, I think that what has been
4 so important about what occurred in this case is
5 you have heard Judge Nalley say what he did.

6 Well, when confronted by someone at the
7 courthouse that very day, not knowing that
8 there's this tape out there, Judge Nalley didn't
9 lie, didn't misdirect, didn't conceal, said yes,
10 that was me.

11 When the press contacted Judge Nalley
12 later that day or the next day, again, Judge
13 Nalley did not deny, did not misdirect, did not
14 lie, did not keep his mouth shut, to use a
15 colloquial expression, he said yes, guilty as
16 charged.

17 And when he had the phone call with
18 Judge Missouri, requested to step down as the
19 county administrative judge, did not complain,
20 took his punishment, wrote the letter to Judge
21 Bell. Met with Judge Missouri two days later on

1 August 14th, candidly again said what had
2 occurred.

3 And I think you've heard from the
4 character letters that are in the file, you've
5 heard from the witnesses here today his candid,
6 honest statements to law enforcement, to judicial
7 superiors, even to the press are classic Judge
8 Nalley, an honest, hardworking jurist who made a
9 single mistake on August 10, 2009.

10 And as this Commission looks at what to
11 do, I would certainly endorse Mr. Lemmey's
12 suggestion that the appropriate sanction is a
13 reprimand. Judge Nalley has been embarrassed
14 among his colleagues at the judiciary by stepping
15 down as county administrative judge. He's had to
16 inconvenience some of his colleagues because he's
17 now out of the criminal rotation and doing hard
18 work in the civil arena.

19 So he knows what he has done has caused
20 him public embarrassment, but the man has served
21 the citizens of the state of Maryland for 38

1 years. He served his country in Vietnam, he
2 served the citizens of Charles County as an
3 assistant state's attorney for eight years, he
4 served on the District Court for Charles County
5 without incident. He has served on the Circuit
6 Court for Charles County. He has devoted 38
7 years to public service.

8 As you have seen from letters written by
9 his fellow judges and by lawyers who appear in
10 front of him, hardworking, conscientious, reads
11 the file, understands the law, willing to debate
12 that with lawyers.

13 And I ask this Commission as we go
14 forward what more can we ask of our judges than
15 judges who care, judges who read the file, who
16 understand the law and bring that work ethic into
17 the courtroom.

18 Judge Nalley as you've heard doesn't
19 phone it in. After 30 plus years as a jurist at
20 age 66, why does he do the child support docket,
21 why does he stay late on Thursday nights to read

1 the civil files of what's going to appear in
2 front of him the next day? Because he cares.

3 Judge Nalley is a fine jurist who made a
4 human mistake that day, a mistake that he has
5 never denied and I suggest to this Commission and
6 a mistake that warrants at most a public
7 reprimand and no more. Thank you.

8 JUDGE WOODWARD: Questions from members
9 of the Commission to Mr. Lemmey, to Mr. Brennan
10 or to Judge Nalley on the disposition phase?
11 Mr. Silverman.

12 MR. SILVERMAN: Mr. Brennan, your client
13 is not here today to face criminal charges. He
14 clearly based on the consequences of his criminal
15 actions got the appropriate sanction which was
16 probation before judgment, unsupervised
17 probation, deferred conviction in this case.

18 But we're here to deal with the Canons
19 and violations of the Canons. And let me sort of
20 explain what I'm thinking, using his criminal act
21 for instance there are foreseeable consequences

1 that may be unintended that can change the
2 penalty.

3 For instance, fortunately in this case
4 no one was injured. Ms. Washington did not drive
5 off, try to beat traffic, lose control of her
6 vehicle and get injured or injure someone else.
7 Had that occurred the penalty may have been, the
8 criminal penalty may have been much more severe.

9 Let's put that to the side. That's
10 done. Now we're talking about a violation of the
11 Canons. We're talking about the harm that Judge
12 Nalley's done to the integrity of the judiciary,
13 the bar and the citizens of Maryland, the injury
14 of affecting the public's confidence in our
15 judiciary, and the unintended consequences of his
16 actions was that this became national news.

17 You, yourself recognized in your opening
18 that this became a huge media case, that this was
19 widespread amongst the public of Maryland and the
20 public, I believe it is fair to say has lost
21 significant confidence in our judiciary.

1 And I understand everything that you're
2 saying about Judge Nalley's record, respectable
3 record, character, history of public service, but
4 if we only give him a public reprimand is that
5 enough in light of the amount of people that have
6 lost faith in the Maryland judiciary, is that
7 enough to restore that confidence? And I'd like
8 to hear your thoughts on that.

9 MR. BRENNAN: Well, at the risk of
10 becoming quarrelsome I quite frankly would
11 respectfully disagree that the public at large
12 has lost faith in the Maryland judiciary.

13 The case has received media attention
14 which we have acknowledged, and not to resurrect
15 the colloquy about you know the intent and
16 malicious destruction and all the rest that we
17 discussed here this morning, I think the fact of
18 the matter is, is that Judge Nalley committed a
19 motor vehicle misdemeanor, violation of the
20 transportation code. He has acknowledged that,
21 he has not denied that.

1 Had he tried to deny it, had he tried to
2 misdirect, had he tried to justify his conduct in
3 some fashion then I think it would be a fair
4 comment that the public may have lost faith in
5 the judiciary. But Judge Nalley did none of
6 those things. I mean had he come in and said,
7 oh, it's not me, you can't prove it, I didn't do
8 it, then the citizens may in fact have the right
9 to say, well, who is this guy?

10 Or if he came in before this panel and
11 said you know, she was parked in the spot that
12 clearly said reserved, should have been towed, I
13 had the right to do something to this car because
14 it parked in my spot. He has not said that. So
15 the public does not see a man here who lies, who
16 misdirects, who denies.

17 And if you're a citizen you say this is
18 a judge that tells the truth. This is a judge
19 that steps up to the plate and says yes, I made a
20 mistake, I had a human moment. And I think the
21 public has to have confidence in judges who will

1 acknowledge that they're human and not lie, not
2 misdirect.

3 So I think that if this Commission takes
4 into consideration his honesty, his integrity,
5 his acknowledgment that he made a mistake, and
6 fortunately nothing bad happened. The tire was
7 pumped back up, there was no terrible unintended
8 consequences that you're referring to.

9 But I do disagree, I think that this
10 Commission by issuing a public reprimand would
11 send a message to the citizens of the state of
12 Maryland that this conduct is not to be
13 tolerated, the judge has been reprimanded for
14 that but also acknowledge the judge's honesty,
15 the judge's integrity, the judge's work ethic,
16 and I think that's the appropriate thing for the
17 Commission to do. I really do.

18 I mean had he lied, had he misdirected,
19 had he raised some technical defenses, had he
20 played all those games that lawyers are wont to
21 do, then the public may say something, but here's

1 a man who stepped up, who said yes. Honest,
2 hardworking, an acknowledgment of a human moment
3 that we all have from time to time, and that no
4 one is perfect and it's a tampering case and I
5 honestly think that the Commission would well
6 serve the citizens of Maryland by issuing a
7 public reprimand in this case.

8 JUDGE WOODWARD: Judge Shuger.

9 JUDGE SHUGER: For you, Mr. Brennan.
10 This is really a follow up to the last question.
11 Can you address how you believe a public
12 reprimand would address one of the concerns that
13 Judge Raker addressed in the decision in which
14 she discussed factors relevant to sanctions? Can
15 you address how you believe a public reprimand
16 would deter Judge Nalley from and give the
17 Commission confidence that he would not engage in
18 such conduct a third time.

19 MR. BRENNAN: And I would say that if
20 you would look at the context of Judge Talley's
21 letter. Judge Talley said to this Commission

1 that, in Judge Talley's words, Judge Nalley has
2 become, let me flip through it, I'm sorry.

3 The person I saw was humble, contrite,
4 motivated to introspection. I sincerely believe
5 that the impact that this incident will have on
6 him will be a net positive in reshaping his
7 outlook.

8 However I think if he was given a public
9 censure he is able to better himself as I believe
10 he would from his experience and not only would
11 he be enriched as a judge but the people who come
12 before him in the community as a whole would
13 benefit.

14 And I think that says it all. I think
15 that this Commission can say this man came in
16 here, acknowledged his mistakes, has learned from
17 them, has been humbled by them, and given a
18 public reprimand and a censure such as Judge
19 Talley suggests will in fact make him a better
20 jurist.

21 And this is from Judge Talley who did

1 not sugarcoat what occurred. But here is a man
2 who from everything we've heard learns from his
3 experiences, learns from his mistakes and doesn't
4 brush it off and says yes, I did it, don't
5 contest it, Mr. Brennan.

6 And I think the public will be served by
7 issuing a reprimand to a proud, hardworking
8 jurist who has been humbled and embarrassed by
9 this experience but whose fellow jurists believe
10 he will be a better judge because of it.

11 JUDGE WOODWARD: Other questions?

12 JUDGE SHUGER: This is sort of
13 housekeeping I suppose but I didn't want
14 to forget and I almost did, Mr. Brennan. The
15 letter of apology that was part of the
16 disposition in your case before Judge Wilcox --

17 MR. BRENNAN: Yes.

18 JUDGE SHUGER: I don't believe it's part
19 of the record.

20 MR. BRENNAN: It is not. I have a
21 copy. I have a copy.

1 JUDGE SHUGER: Could you make it
2 available to the Commission?

3 MR. BRENNAN: I will make it available.
4 I have it somewhere on my desk.

5 JUDGE WOODWARD: If you could see that
6 it's given to the secretary, to the Commission
7 before you leave today because we will be
8 adjourning to decide this matter and we'd like to
9 see that.

10 MR. BRENNAN: That's fine. I will sort
11 of address the procedural part of what happened.
12 We pled guilty in front of Judge Wilcox that day,
13 went immediately to Judge Nalley's chambers, he
14 crafted the letter, drafted the letter, signed
15 it, and it was ultimately delivered to
16 Ms. Washington, and that was confirmed by
17 Assistant State's Attorney John Maloney who was
18 over from Montgomery County. But that letter is
19 the very one that we have and I'll make that
20 available.

21 JUDGE WOODWARD: Mr. Brennan, I have a

1 question to follow up on Judge Shuger's
2 question. The disposition that this Commission
3 must consider is, as has been stated that is one
4 which we reasonably believe would deter Judge
5 Nalley from doing this again, to deter any other
6 judge from engaging in similar conduct, but also
7 to give the public the assurance that the
8 integrity of the judiciary is being upheld.

9 Could you address that aspect of the
10 proposed disposition, because even if we are
11 confident that Judge Nalley has gotten the
12 message that because of the media frenzy, because
13 of the public nature of the charges and this
14 hearing that other judges would be shall we say
15 cognizant of the consequences of acts that would
16 be of a similar nature. But how do we, how can
17 you convince us that a public reprimand would
18 address the concerns of the public in its view of
19 the judiciary?

20 MR. BRENNAN: The very fact that I am
21 standing here before you today and that my client

1 is seated here today I think directly addresses
2 this Commission's role in establishing public
3 confidence in what this Commission does.

4 I have represented other judges whose
5 cases are confidential who may have done similar,
6 if more severe things and for whatever reason did
7 not reach this stage where there's a public
8 hearing.

9 I think the fact that this Commission
10 saw fit to hold this hearing to give
11 investigative counsel the opportunity to present
12 its case, to put Judge Nalley on the hot seat and
13 to have him respond publicly to this Commission
14 for his conduct is not a pleasant experience. It
15 shows that this Commission is a watchdog over
16 judges in Maryland. It shows that this
17 Commission does not simply dismiss things with a
18 private reprimand. It shows that other judges
19 who have come up to me and said, well you know,
20 that's just worth a private reprimand, we don't
21 think that should do anything more than that. I

1 think the fact that we're here and that each one
2 of you is saying, Judge Nalley explain yourself.
3 Judge Nalley, tell us what you were thinking and
4 that he has to sit here, having been a judge for
5 30 years has to answer all your questions and has
6 to be responsible to this Commission and
7 responsive to this Commission speaks volumes
8 about the effort the Maryland judiciary to police
9 its own, to examine the conduct of judges.

10 And I think that the public should
11 understand that no judge in the state of Maryland
12 ever wants to sit before this Commission and
13 answer publicly for what they have done. And the
14 fact that the Commission chose to have a public
15 hearing in this case I think should restore the
16 public's confidence in what this Commission does
17 and what the judiciary thinks about its judges in
18 Maryland because it didn't simply sweep it under
19 the table or whitewash it. It saw fit to have
20 this hearing and I think that speaks volumes.

21 JUDGE WOODWARD: Thank you. Other

1 questions for counsel or Judge Nalley on
2 disposition phase?

3 Ms. Hinton.

4 MS. HINTON: Thank you. Judge Nalley,
5 I'm curious as how you feel as to whether this
6 incident and the fallout that's come from it, if
7 it's affected the way you feel you'll deal with
8 defendants in the future as they come into your
9 courtroom.

10 JUDGE NALLEY: If it doesn't or if it
11 hasn't, there's something wrong with me. It
12 certainly puts things into context. I never
13 expected to experience a couple people here and
14 Ken Tally brought back to memory when I was, the
15 day I was sworn in as a judge in March of 1980, I
16 believe Judge Lawless was presiding, and he looks
17 at me and, you know, we'll now hear from the new
18 judge.

19 And you try to prepare for something
20 intelligent to say in that situation or any
21 situation, particularly something like that, and

1 I remember very vividly what came out of my mouth
2 almost spontaneously was, words fail, period. I
3 am humbled at being here and being asked to
4 address this panel in this capacity, a verbatim
5 quote I think from 30 years ago.

6 That word humble has cropped up in some
7 of the letters and it's already cropped up in
8 testimony here today, it's cropped up in
9 allocution of counsel. And this experience as
10 Mr. Brennan points out has given a new meaning to
11 that word in my vocabulary. It is humbling to be
12 here.

13 The process from August 10th on has been
14 humbling. It's been a lot of other things. Bill
15 Missouri used the word chagrined to describe to
16 somebody his sense of my demeanor when he spoke
17 to me a couple of days afterwards face-to-face.

18 But it is humbling to be on the wrong
19 side of accusations, on the wrong side of
20 accurate accusations of bad behavior. It's also
21 humbling to have good and decent people like the

1 ones you've heard from in person here today sit
2 here three feet from me and say the kind of
3 frankly heartwarming things they have been called
4 upon to say about me. That's a humbling
5 experience too. They found it necessary to do
6 something like that.

7 So if as Judge Talley says he's
8 confident it will make me better and more
9 reflective, it certainly should. I have said to
10 people occasionally, people in court proceedings
11 more often than not, but not exclusively, where
12 the outcome was something less than it might have
13 been to where there was not either a sanction or
14 as bad a sanction that might have been available,
15 you know the fact of this experience ought to
16 make you think twice before you put yourself in
17 that predicament again.

18 More often than not by the time you get
19 to the courtroom whatever goes on in the
20 courtroom can be anticlimactic. If your
21 attitude, or your approach, or your thinking

1 hasn't been altered by the time you get here,
2 maybe all is lost and there's no hope.

3 But I, that's the best way I can answer
4 that question. If this hasn't made me a more, I
5 don't want to use the word compassionate,
6 somebody else used it. I frankly was
7 complimented by the suggestion that I
8 demonstrated it sometimes, maybe frequently, but
9 if it doesn't make me more cautious and less
10 rash, there's something wrong. Thank you.

11 JUDGE WOODWARD: Other questions?
12 Mr. Brennan, does Judge Nalley wish to make any
13 further comments in the form of allocution,
14 analogously allocution?

15 MR. BRENNAN: Thank you, Judge, but he
16 does not.

17 JUDGE WOODWARD: Anything else from the
18 members of the Commission? Mr. Lemmey, anything
19 else before we --

20 MR. LEMMEY: I simply want to thank the
21 Commission for the courtesy, and the dignity and

1 the professional manner in which you conducted
2 this hearing.

3 JUDGE WOODWARD: I want to let everybody
4 to know that this matter will be taken under
5 advisement by the Commission and as we have done
6 in the past, the decision of the Commission will
7 be issued in due course in the form of a written
8 opinion.

9 There will be no decision today. It
10 will be in the form of an oral opinion, and we'll
11 have an opinion in due course. I'm sorry, in a
12 written opinion. In a written opinion. If I
13 said oral I mispoke. In a written opinion in due
14 course.

15 So we just need Mr. Brennan's just a
16 copy of that letter, if you have it get it to the
17 secretary.

18 MR. BRENNAN: I have it.

19 MR. LEMMEY: Your Honor, with your
20 permission I'm going to ask Ms. Zinkand if she
21 can make the appropriate number of copies and

1 provide it to the Commission.

2 JUDGE WOODWARD: Okay, and she can bring
3 it back to the members of the Commission. All
4 right, if there's nothing else then we will stand
5 adjourned.

6 MR. LEMMEY: Thank you.

7 (Whereupon, the hearing was concluded at
8 12:09 p.m.)

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