

**State of New York**  
**Commission on Judicial Conduct**

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In the Matter of the Proceeding Pursuant to Section 44,  
subdivision 4, of the Judiciary Law in Relation to

**Determination**

JOHN F. INNES, JR.,

a Justice of the Stafford Town Court,  
Genesee County.

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THE COMMISSION:

Mrs. Gene Robb, Chairwoman  
Honorable Fritz W. Alexander, II  
John J. Bower, Esq.  
David Bromberg, Esq.  
E. Garrett Cleary, Esq.  
Dolores DelBello  
Victor A. Kovner, Esq.  
Honorable William J. Ostrowski  
Honorable Isaac Rubin  
Honorable Felice K. Shea  
John J. Sheehy, Esq.

APPEARANCES:

Gerald Stern (Cody B. Bartlett, Of Counsel) for the  
Commission

Cooney, Fussell and Humphrey (By Robert F. Humphrey)  
for Respondent

The respondent, John F. Innes, Jr., a justice of the  
Stafford Town Court, Genesee County, was served with a Formal  
Written Complaint dated August 3, 1983, alleging that he drove  
an automobile while he was intoxicated and that he was convicted

of Driving While Ability Impaired. Respondent filed an answer dated September 8, 1983.

By order dated November 18, 1983, the Commission designated John J. Darcy, Esq., as referee to hear and report proposed findings of fact and conclusions of law. A hearing was held on December 29, 1983, and the referee filed his report with the Commission on February 29, 1984.

By motion dated April 10, 1984, the administrator of the Commission moved to confirm the referee's report, to adopt additional conclusions of law and for a finding that respondent be admonished. Respondent opposed the motion by letter dated May 2, 1984. Oral argument was waived. On May 10, 1984, the Commission considered the record of the proceeding and made the following findings of fact.

1. Respondent is a justice of the Stafford Town Court and was on October 3, 1981.

2. On October 3, 1981, at about 1:30 A.M., respondent was driving on West Main Street in the Town of Batavia.

3. Ronald P. Merrill, a deputy sheriff in Genesee County, was patrolling West Main Street at the time.

4. Deputy Merrill saw respondent's car tailgating another vehicle.

5. Deputy Merrill followed respondent's car for about a mile and watched it weave within the westbound lane and

at one point cross over into the eastbound lane. Respondent was driving slightly in excess of the posted speed limit.

6. Deputy Merrill stopped respondent's car in a parking lot. After the deputy had parked his patrol car behind respondent's car, respondent backed up and his car struck the patrol car, causing \$79 in damages to the patrol car.

7. Deputy Merrill identified respondent by his driver's license.

8. Respondent left his car. Deputy Merrill smelled a strong odor of alcohol on respondent's breath. Respondent's speech was slurred, and he appeared to Deputy Merrill to be excited and nervous. Respondent's eyes were bloodshot, and he was unsteady on his feet.

9. Deputy Merrill asked respondent to perform two sobriety tests. Respondent was unable to maintain his balance walking heel-to-toe and was unable to touch his finger to his nose.

10. Deputy Merrill took respondent to the Genesee County Sheriff's Department, where he was given a breathalyzer test at 2:01 A.M.

11. The test indicated that respondent had .18% blood alcohol content.

12. A person with .06% blood alcohol content is deemed to be under the influence of alcohol, and a person with .10% blood alcohol content is deemed to be intoxicated.

13. Throughout his contact with the sheriff's department, respondent was civil and told Deputy Merrill, "Do what you have to do, and I don't want any special favors."

14. Respondent was charged with Driving While Intoxicated and Failure To Keep Right.

15. On October 15, 1981, respondent pleaded guilty in Batavia Town Court to Driving While Ability Impaired and Failure To Keep Right. He paid a \$20 fine and agreed to attend a Department of Motor Vehicles drinking driver school.

16. Respondent subsequently attended and completed the drinking driver school.

Upon the foregoing findings of fact, the Commission concludes as a matter of law that respondent violated Sections 100.1 and 100.2(a) of the Rules Governing Judicial Conduct and Canons 1 and 2A of the Code of Judicial Conduct. The charge in the Formal Written Complaint is sustained, and respondent's misconduct is established.

A judge is expected to adhere to the highest standards of conduct, both on and off the bench. Matter of Kuehnel v. State Commission on Judicial Conduct, 49 NY2d 465, 469 (1980). A judge who drinks and drives violates the law and endangers public welfare. When a judge's drinking leads to repeated public incidents and is accompanied by attempts to win favored

treatment because of his position, severe sanction is warranted. Matter of Quinn v. State Commission on Judicial Conduct, 54 NY2d 386 (1981); Matter of Barr, unreported (Com. on Jud. Conduct, Oct. 3, 1980).

Even without such exacerbating circumstances, public sanction has been held to be appropriate. In Matter of Killam, 388 Mass. 619, 447 NE2d 1233 (Mass. 1983), a judge was censured for a single incident of driving while under the influence of alcohol, notwithstanding his unblemished record on the bench.

Unlike the situation in Quinn and Barr, here, there is but a single incident of drunken driving. Furthermore, respondent cooperated with the police and the court that sentenced him and in no way sought favor because of his judicial office.

By reason of the foregoing, the Commission determines that the appropriate sanction is admonition.

Mrs. Robb, Judge Alexander, Mr. Bromberg, Mrs. DelBello, Judge Ostrowski, Judge Rubin, Judge Shea and Mr. Sheehy concur.

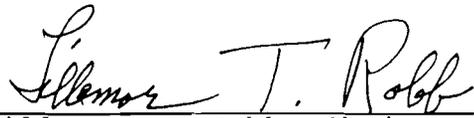
Mr. Cleary dissents as to sanction only and votes that the appropriate disposition would be to issue a confidential letter of dismissal and caution.

Mr. Bower and Mr. Kovner were not present.

CERTIFICATION

It is certified that the foregoing is the determination of the State Commission on Judicial Conduct, containing the findings of fact and conclusions of law required by Section 44, subdivision 7, of the Judiciary Law.

Dated: July 6, 1984



Lillemor T. Robb  
Lillemor T. Robb, Chairwoman  
New York State  
Commission on Judicial Conduct

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In the Matter of the Proceeding Pursuant to Section 44,  
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JOHN F. INNES, JR.,

DISSENTING OPINION  
BY MR. CLEARY

a Justice of the Stafford Town Court,  
Genesee County.

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I concur in the majority's finding of misconduct. However, I feel that the sanction of public admonition is unnecessary under the circumstances.

The respondent did not profit by his misconduct, did not injure or destroy anyone's rights or property, nor did he seek any preferential treatment. He entered a plea of guilty, attended a "drinking driver" school, and of greatest importance, both his arrest and conviction have already received publicity in the local press. As a result, he has been punished for his behavior and there is no reason to fear that the public will perceive he is going unpunished or that the matter was suppressed.

I do not feel it is necessary to republicize this subject, some 32 months later, and would issue a confidential letter of dismissal and caution.

Dated: July 6, 1984

  
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E. Garrett Cleary, Esq. Member  
New York State Commission on  
Judicial Conduct