

# DR. ROBERT A. VERRY

Chief of Police<sup>^</sup>

Licensed Private Detective, License No.9629

Certificated Freelance Paralegal

Post Office Box 47 | SBB | NJ | 08880-0047

732.302.9520

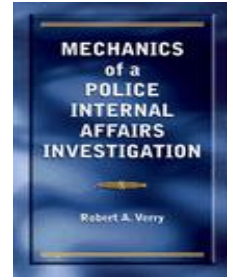
DrVerry@Verry-Shea.com | [www.VerryShea.com](http://www.VerryShea.com)

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## In Defense of Discretion: A Law Enforcement Perspective on Courtesy By Dr. Robert A. Verry Chief of Police (ret.)

### Introduction

The NJ Office of the State Comptroller's December 2024 report, "Use and Abuse of Officer Discretion in Declining to Enforce Motor Vehicle Violations," presents a sweeping indictment of the discretionary authority held by New Jersey's heroic State Troopers. It criticizes the use of courtesy cards and alleged preferential treatment shown to individuals with law enforcement ties. From the vantage point of a career law enforcement officer, this report reflects a narrow and overly legalistic interpretation of discretion that fails to account for the human elements of judgment, professional courtesy, and community trust integral to effective policing. In reality, discretion is a vital tool that fosters fairness, efficiency, and respect in law enforcement, just as in many other professions.

### Difference Between an On and Off-Duty Police Officer

- **On-Duty Officers** are actively working typically in uniform driving marked/unmarked vehicle during their scheduled shifts and operate under the full authority and responsibilities of the department. Their actions are considered those of the state, and the department may be held liable for misconduct (e.g., *Monell v. Department of Social Services*, 436 U.S. 658).
- **Off-Duty Officers** are not on shift but may still retain law enforcement authority in certain situations. Their ability to act depends on state laws and department policies. If they exercise police powers, they may be treated as "on-duty" for that specific action. However, if they act outside the scope of their official duties, liability may not extend to the department (e.g., under *Color of Law*, 42 U.S.C. § 1983). Off-duty officers drive their personal vehicles and wear civilian clothes.

Simply put, on-duty officers are actively engaged in their official duties during scheduled shifts, typically in uniform and operating department vehicles, with full authority and the potential for departmental liability. In contrast, off-duty officers—who are in civilian attire and using personal vehicles—may retain limited law enforcement authority based on state laws and departmental policies, and the department's liability is generally reduced. In essence, the distinctions are not substantial.

## Discretion is Integral to Policing

Police officers are not automatons programmed to enforce every infraction with mechanical rigidity. Discretion allows officers to assess the context of a situation—intent, danger, and community relationships—and respond in a just and proportionate manner. As the Supreme Courts have long recognized, discretion is inherent in nearly every aspect of police work. Town of Castle Rock v. Gonzales, 545 U.S. 748 (2005); State v. Sutherland, 231 N.J. 429 (2018). The ability to issue a warning instead of a citation is not an abuse; it is a recognition that justice sometimes means leniency. Police officers in both New Jersey and across the United States have considerable discretion in deciding whether to issue traffic citations. However, officers understand this discretion is bounded by constitutional protections, ensuring that decisions made during traffic stops, including searches and detentions, adhere to the Fourth Amendment's reasonableness standard.

The Comptroller's report overlooks the long-standing role of professional courtesy in public service. While it rightly demands fairness and transparency, it ignores that discretion is not synonymous with favoritism. For example, issuing a verbal warning to an off-duty officer or family member displaying a courtesy card is not evidence of corruption. Instead, it reflects a culture of mutual respect among public servants who understand the challenges and sacrifices of law enforcement. Moreover, police officers regularly exercise discretion when stopping motorists, even when the individual does not present a courtesy card or disclose a family connection to law enforcement. Should that discretion be eliminated?

## Courtesy Exists Across Professions

The report singles out law enforcement for offering informal courtesies but fails to acknowledge how widespread this practice is across other industries. Many businesses and professions routinely offer perks, discounts, and exemptions to colleagues, employees, and their families:

- **Airline employees** often receive flight benefits, including deeply discounted or free travel for themselves and their families.
- **Retail workers** frequently enjoy employee discounts that they can extend to friends and family members.
- **Healthcare professionals** sometimes waive consultation fees or provide discounted services to fellow healthcare workers or relatives.
- **Basketball & Baseball player's families and friends get access to free tickets and even get to sit on the bench or courtside with the players.**
- **Hotels provide substantial discounts on room rates for their employees and, sometimes, their families and friends.**

These courtesies are not deemed unethical because they are grounded in shared professional identity, recognition, and respect. To single out police officers for similar gestures without contextual nuance implies a double standard.

## Public Perception vs. Practical Reality

The report expresses concern about disparities in traffic stops and discretionary outcomes. While these concerns merit serious examination and corrective action where warranted, blanketly attributing these disparities primarily to courtesy card use lacks evidentiary support.

Additionally, the report's heavy reliance on body-worn camera footage and statistical inferences may tell an incomplete story. Cameras capture behavior but not intent, and correlation does not prove causation. An officer's decision not to enforce a violation may stem from many factors, including the seriousness of the offense, driver cooperation, and overall traffic conditions.

## **Conclusion**

The Comptroller's report raises valid concerns but ultimately risks undermining a cornerstone of professional judgment: discretion. Like doctors, teachers, and judges, police officers must be trusted to apply their knowledge, experience, and humanity in the field. When used responsibly, discretion is not abuse—it is the essence of justice. As long as it is accompanied by transparency and integrity, discretion should remain a respected and essential part of law enforcement.

## **Brief Bio (for this article)**

Bob served as a **Lead Recruit Traffic Training Instructor** (1990–1997) and **Recruit Traffic Training Coordinator** (1993–1997) at the **Somerset County Police Academy**, where he was responsible for training and curriculum development in traffic enforcement. Additionally, Bob is a **founding member and past President** of the **Traffic Officers' Association of Central/West Jersey**, serving from 1993 to 2001.