Commonwealth’s attorney should use restraint in discretionary exercise of governmental power, such as in selection of cases to prosecute.

The Honorable Jay K. Katzen
Member, House of Delegates
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You ask whether the nature and severity of a felony have any weight or significance with regard to whether a Commonwealth’s attorney should prosecute.

Commonwealth’s attorneys are independently elected constitutional officers responsible directly to the voters of their localities. They may be removed from office only by the procedures detailed in §§ 24.2-230 through 24.2-238 of the Code of Virginia for removal of elected officers. The Supreme Court of Virginia has been clear that Commonwealth’s attorneys prosecuting violations of the law enjoy discretion in the selection of cases for prosecution. As the Court has noted a prosecutor’s "duty to administer the criminal law impartially, in the interest of justice, is essentially a judicial one." A prosecutor has the responsibility of a minister of justice, and not simply that of an advocate." Such responsibility obligates him to see that the party charged with an offense "is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence."

The prosecuting attorney, therefore, has the authority and the responsibility not only to ensure that the criminal process is not abused, but also to ensure that criminal prosecutions are pursued only to seek justice. Consequently, the Commonwealth’s attorney should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute.


4Va. Sup. Ct. pt. 6, § II, R. 3.8 cmt. [1].

5Id.; see also Va. Sup. Ct. pt. 6, § II, R. 3.8.


7See Glidewell, 124 Va. at 575, 98 S.E. at 669 (stating that concealing crimes or stifling prosecutions to defeat ends of justice is not permitted).