

In our criminal justice system, the decision whether to prosecute, and if so on what charges, is a matter ordinarily within the discretion of the duly elected prosecutor. The decision whether to bring charges is at the heart of the prosecutorial function. For this reason, it is the general rule that [a] prosecutor is not subject to judicial supervision in determining what charges to bring and how to draft accusatory pleadings but is protected from judicial oversight by the doctrine of separation of powers. Thus, mandamus will not lie to compel a prosecuting attorney to institute a criminal prosecution, since the acts of a prosecuting attorney are not purely ministerial acts, but involve, in large measure, learning and the exercise of discretion.

. . .a county attorney owes a duty to do justice, not only for the accusers, but also for the accused. Whether there was probable cause to prosecute Gillaspie was a matter for assessment by the prosecutor, not the court. The decision not to go forward, right or wrong, was not appropriate for judicial oversight. *State v State District Court* 568 NW2d 505 (Iowa 1997)

Every county attorney in this State is vested with broad, although not unlimited, discretion as to the manner in and the means by which the laws of the State shall be enforced. This limited discretion extends to the proper institution and termination of investigations. A county attorney may, with the approval of the Court, dismiss a criminal charge or negotiate a plea to a reduced charge. He may, in his discretion, elect not to file a criminal charge. These powers are known in law as prosecutorial discretion. *State v Whitehead* 277 NW2d 887 (Iowa 1979)

For all the foregoing reasons it is manifest that Phillips is entitled to absolute immunity for the decision not to prosecute the class of cases in which Beck would appear as a witness. To hold otherwise would interfere in a prosecutor's exercise of independent judgment.