



Written by [Steve Byas](#) on November 21, 2017

## Dershowitz: Mueller “Going Way Beyond His Authority”

Special Counsel Robert Mueller, appointed to investigate the Trump campaign’s alleged connections to Russia, is “going well beyond his authority as a prosecutor,” Alan Dershowitz (shown), highly-regarded retired Harvard Law professor, told Fox News during the *Outnumbered Overtime* program on Monday.



Dershowitz is a well-known Democrat, so his comments cannot be seen as a mere partisan defense of Republican President Donald Trump.

Mueller is turning constitutional actions by the Trump White House into crimes, Dershowitz lamented. Dershowitz’s remarks were in response to Mueller’s request of documents from the Justice Department that concern Trump’s firing of FBI Director James Comey and the recusal of Attorney General Jeff Sessions from the Russia probe.

“The president is entitled to fire the head of the FBI. The president is entitled to direct his attorney general to investigate, who not to,” Dershowitz asserted. “That’s what the law has been since Thomas Jefferson,” he added, alluding to the famous case in which President Jefferson made a strong effort to get his former vice president, Aaron Burr, convicted of treason.

Dershowitz argued that if we, as a nation, want that changed, there is a legislative process to get that done. It should not be done via a special prosecutor making a perfectly legal action a crime. “I don’t see that the prosecutor should have a right to turn a constitutionally protected act of the president into a crime by speculating on what his motive might have been.” Some have speculated that Trump fired Comey to keep then-FBI Director Comey from investigating Trump’s alleged collusion with the Russians to affect the outcome of the 2016 presidential election.

“These are political sins if they are sins at all. They are not crimes,” Dershowitz added.

Dershowitz explained how prosecutors who cannot find evidence of a crime pressure others besides the actual target of the investigation. “He’s going to do the domino game,” he said of Mueller. Dershowitz predicted that he will indict someone close to the president on something that has nothing to do with the investigation itself and then offer a plea deal in exchange for information about Trump and Russia. He will get them for “failing to complete a form,” or a similar trivial thing, Dershowitz explained.

Dershowitz said that the danger is that those thus targeted have a tendency to exaggerate, because “the better the evidence, the sweeter the [plea] deal.”

Instead of a criminal investigation into either Trump or Democrat foe Hillary Clinton, Dershowitz advocated the creation of a bipartisan commission to investigate if and how much Russian influence there actually was in the past election, with the goal of preventing such influence in the future.

An indictment, even if there is no conviction, often destroys a person’s reputation. In 1987, President Ronald Reagan’s secretary of labor, Raymond Donovan, was indicted in Bronx County, New York, in connection with a construction project involving a new line for the New York subway. After he and all



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other defendants were acquitted, Donovan was impoverished and felt his reputation was shredded. He famously asked, “Which office do I go to to get my reputation back?”

With independent counsels such as Mueller, the chances of prosecutorial overreach, are, if anything, much greater. The late Supreme Court Justice Antonin Scalia was troubled by the law that created the office of independent counsel (popularly referred to as “special prosecutor”). He believed it both dangerous and unconstitutional, and was the lone dissent in the case involving the legality of the creation of independent counsels. He argued that the statute was a dangerous limitation on the executive power that would lead to prosecutors bringing politically motivated cases.

Harry Silverglate, a criminal defense attorney and First Amendment lawyer, also has written an article, questioning the integrity of Mueller himself. Silverglate’s book, *Three Felonies a Day: How the Feds Target the Innocent*, published in 2009, explained how federal “fraud” statutes are so vague that just about any action in the daily life of a typically busy professional “might be squeezed into the elastic definition of some kind of felony.”

This is the danger of the Mueller investigation. Silverglate’s concerns are similar to those of Dershowitz: “Mueller’s demonstrated zeal and ample resources virtually assure that indictments will come, even in the absence of actual crimes rather than behavior that is simply ‘politics as usual.’ If Mueller claims that Trump or members of his entourage committed crimes, it doesn’t mean that it’s necessarily so.”

Robert Jackson, speaking when he was U.S. attorney general in 1940, said, “The citizen’s safety lies in the prosecutor ... who seeks truth and not victims.” Yet since the creation of these independent counsels, what we have seen stands that wise statement on its head. These “special prosecutors” are determined to indict someone — for something — at some point.

Hopefully, Congress will wake up to this problem, and deal with this issue sooner rather than later.

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