



Written by [Steve Byas](#) on December 19, 2017

Dershowitz Slams Mueller's Capture of Trump Transition E-mails as Foolish

"I can imagine a court saying a transition is different from a sitting president," Alan Dershowitz, Harvard Law professor emeritus, said Monday in questioning the seizure of e-mails from the Trump transition team by Special Counsel Robert Mueller (shown).



"You just don't want to open up every single email sent by transition members to each other to be able to be reviewed by a prosecutor without something of any degree of probable cause. I think it was foolish for Mueller not to take the precautionary step of seeking a warrant which he easily would have obtained."

Dershowitz has been a frequent critic of the tactics employed by Mueller's investigation, including the hiring of staff that are known enemies of President Donald Trump. "I'm not a Republican, I'm a Democrat," Dershowitz said, explaining that his criticisms of Mueller were not those of a partisan Republican. "I think he [Mueller] has a credibility problem. He should have been more careful about who he hired. He should have disclosed he had taken that FBI agent off the case after his messages came out."

And now, Dershowitz is strongly criticizing Mueller for violating the Constitution. "I think he has a credibility problem on these emails without a warrant."

It has been reported that Mueller's investigation obtained "tens of thousands" of transition e-mails, without a warrant, and without providing any probable cause. Instead of obtaining a warrant, or asking the Trump transition team (which has been in the process of closing down its operations) for selected e-mails, the Mueller investigation simply obtained them from the General Services Administration (GSA). The GSA, as is usual, provided the Trump for America (the nonprofit organization that handled the transition for Trump with the outgoing Obama administration) with office space, and importantly for this episode, hosted its e-mail servers.

In addition to e-mails, the GSA turned over laptops, cellphones, and an iPad to Mueller's office. It is a good example of what is sometimes called "a fishing expedition." While the Constitution requires law enforcement to be specific in what it is looking for, simply taking every single e-mail from the Trump transition team clearly violates that provision of the Fourth Amendment.

The Special Counsel's Office is arguing that they have done nothing illegal. Spokesman Peter Carr argued that the e-mails were obtained "in the course of our ongoing criminal investigation," and that they had been taken with "either the owner's consent or appropriate criminal process."

But Trump for America officials think differently, arguing that Mueller has violated the Fourth



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Amendment's protections against unreasonable search and seizure. They also argue that the e-mails contain exchanges on matters such as potential appointments, comments on the views of certain senators and what they might do in the confirmation process, potential vulnerabilities of the nominees, and various policy ideas. Particularly upsetting to the Trump camp is that it appears some of the material has been leaked to the press, and that some of the e-mails included confidential attorney-client communications.

The GSA "did not own or control the records in question," contended Kory Langhofer, the lawyer for Trump for America. Langhofer also believes that the GSA's releasing the records to the Special Counsel, without any warrant, will "impair the ability of future presidential transition teams to candidly discuss policy and internal matters that benefit the country as a whole."

Despite what he regards as misbehavior by the Special Counsel, Dershowitz argues it would be a mistake for Trump to fire Mueller. "It is a legal possibility [but] it would be foolish to do so," Dershowitz told Fox News' Bill Hemmer. "A lot of the American public thinks [Mueller] is biased against Trump and it may lead him to lean over backwards in favor of Trump. So if I were Trump, I wouldn't try to fire him."

Dershowitz predicted that Mueller's failure to get warrants for the e-mails could give the defense an opportunity to challenge it in court.

Another concern Dershowitz raised was the use of the "salacious dossier" about Trump — which is now known to have been a fabrication created by associates of the Democratic National Committee and the campaign of Hillary Clinton — to obtain national security wiretaps. "He has been conducting a sloppy investigation," Dershowitz said. "I'm surprised. When you are going after the president you have to be Caesar's wife. You have to be above reproach. You can't give the other side any ammunition and he has given the other side plenty of ammunition."

This latest abuse from the Special Counsel's office is yet another example of why the very existence of such an office is questionable under our system of checks and balances and separation of powers. The Office of Independent Counsel is a repudiation of both the doctrine of separation of powers and the principle of limited government. This seizure of Trump for America e-mails without any warrant, as required by the Constitution, is a powerful example of the dangers of allowing such an office to exist. The Special Counsel is not elected by anyone, and even though President Trump could, in theory, fire him, such an act would be portrayed in the liberal media as somehow illegal.

Photo of Robert Mueller: [FBI](#)



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