

# Dershowitz v. Desch

In our Dec. 5 issue, *The American Conservative* published a review of Norman Finkelstein's *Beyond Chutzpah* by contributing editor Michael Desch. Alan Dershowitz, whose scholarship was critiqued by Finkelstein's book, objected at length, attacking both the author and our reviewer. His complaint, along with Desch's reply, follows.

## Dershowitz writes:

When a far right-wing magazine embraces an avowed communist, the topic under consideration must be Jews and Israel. It is not surprising, then, that *The American Conservative* has found a kindred spirit in Norman Finkelstein. Both have declared war against "American Jewish elites," and both spout wild conspiracy theories about Jewish influence on America's media, culture, government, and economy.

I am referring to Michael Desch's purported review of Finkelstein's book, *Beyond Chutzpah*. It is only a "purported" review because as the headline suggests ("The Chutzpah of Alan Dershowitz") the majority of the article is devoted to attacking me. Desch makes four accusations against me, all of which are not only false, but so sloppy and implausible that it would have taken only a few minutes of fact-checking to refute them.

(1) Desch parrots Finkelstein's claim that I have turned my back on a career as a civil libertarian by "present[ing] a brief for torture." Had he read my book, *Why Terrorism Works*, instead of relying on Finkelstein's mischaracterization of my position, Desch would know that I am a stalwart opponent of torture, that I have fought hard against torture in both America and Israel, and that my proposals are designed to minimize and hopefully prevent torture.

As I have written: "I am against tor-

ture as a normative matter, and I would like to see its use minimized. I believe that at least moderate forms of non-lethal torture are in fact being used by the United States and some of its allies today. I think that if we ever confronted an actual case of imminent mass terrorism that could be prevented by the infliction of torture, we would use torture (even lethal torture) and the public would favor its use...

"I pose the issue as follows. If torture is, in fact, being used and/or would, in fact, be used in an actual ticking bomb terrorist case, would it be normatively better or worse to have such torture regulated by some kind of warrant, with accountability, recordkeeping, standards and limitations? This is an important debate, and a different one from the old, abstract Benthamite debate over whether torture can ever be justified. It is not so much about the substantive issue of torture as it is about accountability, visibility, and candor in a democracy that is confronting a choice of evils."

(2) Desch accuses me of a "partial reading or misreading" of Benny Morris, whom I cite several times in *The Case for Israel*. Desch concludes that "Finkelstein documents these charges in exhaustive detail in Appendix II of his book and the preponderance of evidence he provides is conclusive."

Finkelstein's "evidence" consists of empty conclusory statements. Finkelstein writes that I "significantly [misrepresent] what Morris writes in *Righteous Victims*." These are easily falsifiable charges. All one has to do is to ask Morris himself what he thinks of my characterization of his scholarship and findings. Martin Solomon, a professor at Florida Atlantic University, wrote to Morris, asking him what are "his feelings concerning the manner in which Alan Dershowitz uses citations from 'Right-

eous Victims' in his 'The Case for Israel'" and whether Morris "still hold[s] the views that Dershowitz attributes to [him]...." Morris replied that Dershowitz was "right about [his] views," even adding that one could "read [Morris's books] and arrive at the same conclusions, bypassing Dershowitz."

(3) Desch writes that Finkelstein proves that I violated "the spirit, if not the exact letter" of Harvard's plagiarism prohibition. Finkelstein first claimed that I did not write *The Case for Israel*. As he had with other Jewish writers, Finkelstein suggested that the Mossad or AIPAC had written my book for me. When I revealed the handwritten manuscript—I do not type or use a computer—Finkelstein changed his story to plagiarism. Finkelstein's accusation boils down to a claim that I "lifted" quotations from Joan Peters. Yet I cite Peters eight times, as anyone perusing my book can easily see. I even stated that "I do not in any way rely on her demographic conclusions or demographic data."

I immediately asked Harvard to investigate Finkelstein's phony charge, and Harvard conducted an independent investigation by former president Derek Bok. Finkelstein acknowledges that "former Harvard president Derek Bok, 'a scholar of unquestioned integrity,' had looked into the charges against Dershowitz and 'found that no plagiarism had occurred.' The matter was 'closed.'" In addition to being fully exonerated by Harvard University, I have been cleared by James Freedman, former president of the American Academy of Arts and Sciences, the *New York Times*, and numerous professors and librarians.

Desch relies on Finkelstein's accusation that I "direct [my] research assistant to go to certain pages and notes in Peters's book and place them in [my] footnotes directly." As Finkelstein

wrote, “[I]n the [galley] proofs [of *The Case for Israel*], it ... says: Copy from Joan Peters. It does. ... There was no question about it.” He thus alleges that I instructed a research assistant to “copy” from another author without citations. But he simply makes up the word “copy.” The note says precisely the opposite: “cite sources on pp. 160, 485, 486, footnotes 141–145.” The instruction is to be certain that the material is properly cited, as it was to the original source. This is not proof of plagiarism; it is proof of scholarship.

Yet Finkelstein persists in making this charge since it is part of his long pattern of leveling personal attacks against those who support Israel or justice for Holocaust survivors, rather than engaging them on the merits of their views. I fully document this pattern in Chapter 16 of my book, *The Case for Peace*. Desch

that all of my books are written for me by the Israeli Mossad: “[I]t’s sort of like a Hallmark line for Nazis....[T]hey churn them out so fast that he has now reached a point where he doesn’t even read them.”

Finkelstein has attempted to frame *Beyond Chutzpah*’s publication as a triumph for academic freedom. This dispute, though, has never been about academic freedom. Nobody ever tried to prevent Finkelstein from publishing his bigoted falsehoods. The dispute has always been about academic standards. In order to deflect attention away from their lack of academic standards and hard-left anti-Israel bias, Finkelstein and his publisher have lied about the issue of academic freedom.

Nobody has ever tried to censor Finkelstein’s drivel. He can always publish it with presses that acknowledge

The sentence construction is typical of both extremist left-wing (Finkelstein) and right-wing (*The American Conservative*) anti-Israel hatemongers. Even if the facts aren’t true, Desch believes, naked animus toward Israel is sufficient to sustain his arguments. His bigotry is showing.

—Alan Dershowitz

## Desch replies:

Alan Dershowitz calls Norman Finkelstein’s new book *Beyond Chutzpah* “drivel.” But that is hardly a fair assessment. The book was published by the University of California Press—one of the nation’s leading academic publishers—after an exceedingly thorough and scrupulous review process. The manuscript was sent to six external reviewers (most academic presses solicit advice from just one or two), vetted by lawyers in both the United States and Britain (highly unusual for a scholarly book), and then subjected to rigorous fact-checking during the production phase (also atypical). The reason Dershowitz is so hostile is that *Beyond Chutzpah* argues that in *The Case for Israel* he misappropriated and misconstrued other scholars’ work.

On the former charge, Finkelstein identifies at least 20 instances of nearly identical quotes and citations in Dershowitz’s *The Case for Israel* and Joan Peters’s widely discredited *From Time Immemorial* that were not properly attributed (e.g., he directly cited Mark Twain when he should have indicated that he was using Twain as quoted in Peters). In essence, Finkelstein deals Dershowitz a double blow: for inappropriately using another scholar’s work and for doing so from this debunked source.

Dershowitz’s response is first to build a straw man, claiming that Finkelstein contends that he did not write the book. This charge is not made in *Beyond Chutzpah*, but tellingly, Dershowitz nonetheless devotes much effort to

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goes even further, suggesting a Jewish conspiracy involving Harvard’s president Lawrence Summers, the *New York Times*, and other pro-Israel advocates.

(4) Finally, Desch says that I “launched an extraordinary campaign to prevent [Finkelstein’s] book’s publication.” But as I wrote to the University of California Press:

“I have no interest in censoring any publication. But I do insist that a book, ‘a large part of which is devoted to Alan Dershowitz’ has been checked for accuracy and that all appropriate measures have been taken to assure that its biased and defamatory author does not include within it maliciously false information.”

Among Finkelstein’s defamations are his allegations that I “almost certainly didn’t write” *The Case for Israel*, “and perhaps [he] didn’t even read it prior to publication.” Finkelstein even suggests

their anti-Israel bias. The issue is, and has always been, one of academic standards: how could the University of California Press publish a work so lacking in standards, so filled with misquotations, falsifications, and faked data by a failed academic with a well-deserved reputation for the “pure invention” of his sources? No objective university press would have published this sequel to a book the *New York Times* called a “variation on the anti-Semitic forgery, ‘The Protocols of the Elders of Zion.’”

The most telling sentence in Desch’s article comes near the end, when he concludes: “Even if Finkelstein’s most serious charges are not true, it is nonetheless a scandal that Dershowitz’s sloppy book was widely and favorably reviewed in many prominent places, including the *New York Times*, and became a national bestseller.”

knocking the stuffing out of it. He then invokes testimonials to his scholarly integrity from his ex-boss, former Harvard president and law school dean Derek Bok, and his friend, former Dartmouth president James Freedman, when it would be more convincing if they had provided detailed responses to Finkelstein's specific charges.

Dershowitz also misconstrues the work of Israeli historian Benny Morris. It is irrelevant that the post-al Aksa Intifada Benny Morris, who has publicly broken with his former comrades in the peace camp and now endorses ethnic cleansing, has come around to agree with Dershowitz's position on the Israel-Palestine conflict. Rather, the question is

tions of Morris the "new historian" to fit Dershowitz's own political agenda of defending Israel against all critics, as Finkelstein amply documents.

Unable to win the case against Finkelstein on its intellectual merits, Dershowitz apparently tried to block publication of *Beyond Chutzpah*. Although Dershowitz denies this, he so far has not provided more than selective excerpts from his pre-publication letters to the New Press, the University of California Press, and the governor of California, and those from the New York law firm Cravath, Swaine & Moore acting on his behalf, to buttress his claims that his extensive letter-writing campaign merely sought to ensure that *Beyond Chutzpah*

strategy appears to be to twist the arguments and impugn the motives of anyone who endorses the book.

One example of such twisting is his insinuation that I have not read his book *Why Terrorism Works*. Had I done so, he claims, I would recognize that he is actually an opponent of torture. In fact, I have read it carefully but remain unconvinced that legalizing torture through judicial warrants will reduce its frequency and severity. Even with judicial sanction, any justification for torture still presents a slippery slope, as the famous "ticking bomb" rationale has proven in Israel and the United States in recent years. I also had trouble taking seriously his opposition to torture after reading of his preferred method—sterile needles under fingernails—and his cavalier conclusion that "pain is over-rated."

Not satisfied simply to twist my arguments, Dershowitz then impugns my character and motives for favorably reviewing Finkelstein's book. It is absurd, on the face of it, to attribute anti-Semitism to a gentile who favors the scholarship of one Jew over that of another. But this is par for the course with Dershowitz. In *The Case for Israel*, he equates most criticisms of the Jewish state with anti-Semitism. Now he suggests that criticism of his work is tantamount to anti-Semitism. The fact that Dershowitz must fall back on name calling to defend himself suggests that he knows full well that he cannot win the debate in the scholarly marketplace of ideas.

—Michael Desch

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whether Dershowitz can base his defense of Israel on Morris's earlier scholarly work.

Let me offer one telling example of the incompatibility of their overarching arguments. In *The Case for Israel*, Dershowitz argues that it is "impossible to understand the conflict in the Middle East without accepting the reality that from the very beginning the strategy of the Arab leadership has been to eliminate the existence of the Jewish state, and indeed any substantial Jewish population." In contrast, in his fine book *Righteous Victims*, Morris quotes with approval David Ben-Gurion's 1938 admission, "When we say that the Arabs are the aggressors and we defend ourselves—that is only half the truth. ... the fighting is only one aspect of the conflict, which is in its essence a political one. And politically we are the aggressors and they defend themselves." Dershowitz can only rely on Morris the neo-Likudnik by twisting the evidence and interpreta-

did "not include maliciously false information." Since he has not released the full texts, the best we can do is judge these letters by how they were understood by their recipients.

UC Press Director Lynne Withey, in an interview with *Inside Higher Ed*, characterized them as an effort to "stop publication of the book." In an account of the affair in *The Chronicle of Higher Education*, Finkelstein's editor concluded, "the [legal] threat to the press was real." The *Los Angeles Times* quoted Gov. Arnold Schwarzenegger's legal adviser's reply to one of Dershowitz's letters soliciting "the Governor's assistance in preventing publication of this book." If Dershowitz really wants to clear the air, he should release the full text of these letters and let the rest of us ascertain his intent.

Having failed to prevent publication of *Beyond Chutzpah*, Dershowitz is now fighting a desperate, rear-guard action to discourage people from reading it. His

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*The American Conservative* welcomes letters to the editor. Submit by e-mail to letters@amconmag.com, by fax to 703-875-3350, or by mail to 1300 Wilson Blvd., Suite 120, Arlington, VA 22209. Please include your name, address, and phone number. We reserve the right to edit all correspondence for space and clarity.