

Vaccine Debate – Kennedy Jr. vs Dershowitz

Analysis by [Dr. Joseph Mercola](#)

✓ Fact Checked

January 28, 2023

STORY AT-A-GLANCE

- › According to Alan Dershowitz’s interpretation of Constitutional law, you only have the right to refuse to be vaccinated against a disease that would affect only you. You do not have the right to refuse a contagious disease that might spread to others
- › As the basis and justification for his legal orientation on this issue, Dershowitz relies on a 1905 Supreme Court ruling in the matter of *Jacobson v. Massachusetts*
- › According to Robert F. Kennedy, there is a “big Constitutional chasm” between this 1905 case and today’s vaccine mandates. *Jacobson* sued to avoid the vaccine and the fine for refusing the vaccine, which was \$5. When he lost, he paid the fine. There’s a big difference between paying a small fine, and being forcibly injected with a potentially hazardous vaccine, against your will
- › According to a recent poll, about half of Americans say they want to get the COVID-19 vaccine; 27% say they will “definitely” refuse and another 12% say they will “probably” refuse it
- › 1 in 40 people – not 1 in 1 million – are injured by vaccines, and a clinician who administers vaccines will have an average of 1.3 adverse vaccine events per month

From Dr. Joseph Mercola

Since COVID-19 first entered the scene, exchange of ideas has basically been outlawed. By sharing my views and those from various experts throughout the pandemic on COVID treatments and the experimental COVID jabs, I became a main target of the White House, the political establishment and the global cabal.

Propaganda and pervasive censorship have been deployed to seize control over every part of your life, including your health, finances and food supply. The major media are key players and have been instrumental in creating and fueling fear.

I am republishing this article in its original form so that you can see how the progression unfolded.

Originally published: August 22, 2020

The video above features a recent vaccine debate between Robert F. Kennedy Jr., chairman of the World Mercury Project and founder/chief legal counsel for Children's Health Defense, and Alan Dershowitz, a lawyer and legal scholar. Patrick Bet-David, founder of Valuetainment, moderated the event.

Dershowitz may seem like an odd choice for this discussion, but according to Kennedy, no health official has ever agreed to debate him on the issue of vaccine safety.

Bet-David also notes that every doctor invited to discuss the COVID-19 vaccine on his show declined the invitation. So, here, we get the perspectives of two prominent attorneys instead. The discussion initially grew out of a comment made by Dershowitz in another interview, where he said:

"You have no constitutional right to endanger the public and spread the disease. Even if you disagree, you have no right not to be vaccinated. You have no right not to wear a mask. You have no right to open up your business. And if you refuse to be vaccinated, the state has the power to, literally, take you to a doctor's office and plunge a needle into your arm."

Should You Have the Right to Decide Your Medical Treatment?

According to Dershowitz's interpretation of Constitutional law, you only have the right to refuse to be vaccinated against a disease that would affect only you. You do not have the right to refuse a contagious disease that might spread to others.

As far as COVID-19 vaccines are concerned, he does not foresee mandatory vaccinations being an immediate concern, for the simple reason that there won't be enough vaccines to vaccinate everyone.

Listening to the likes of [Bill Gates](#) and others, however, this probably would not be a problem for long, as vaccine manufacturers are fully prepared to go into large-scale manufacturing once a vaccine gets green-lighted by the U.S. Food and Drug Administration.

Interpretation of 1905 Court Ruling Is Not Cut and Dry

As the basis and justification for his legal orientation on this issue, Dershowitz relies on a 1905 Supreme Court ruling in the matter of *Jacobson v. Massachusetts*. In “Don't Relinquish Civil Liberties for False Sense of Security,” Barbara Loe Fisher, co-founder and president of the National Vaccine Information Center, explained:

*“Dershowitz ... was quite reckless in the language he used. He basically said that the Supreme Court in 1905 (*Jacobson v. Massachusetts*), [gives] the right of state governments to come in and forcibly inject you with a vaccine. That's not really what *Jacobson v. Massachusetts* said ...*

In that case, it was smallpox, because that was the only vaccine they had in 1905, but you have to read the Supreme Court decision very carefully to understand everything that the justices said.

They basically concluded – and I think wrongly so, because utilitarianism ... is based on a mathematical equation that some can be inconvenienced or sacrificed for the greater good of a majority of people – that people [who] opposed smallpox vaccination could be required to be vaccinated during epidemics.

Even religious objections could be overridden. But there's also language in that decision that says that the court is not to be interpreted as meaning that if an individual was at risk for being harmed by the vaccination, they were not meant

to [have concluded] that 'cruel and inhuman to the last degree' would be the standard that would be used.

I think Dershowitz overstated the opinion, although it is a utilitarian opinion. It gives authority to the states to mandate vaccines because anything that is not defined in the Constitution as a federal activity is reserved for the states.

Public health laws, by and large in this country, are written by the states, and the federal authority is requiring vaccination for people crossing territorial borders of the United States [and the federal government] could mandate vaccines for interstate travel, crossing state borders.

But most public health laws that legislatures make are for the residents of the states, which is why we have a patchwork of [vaccine] laws in this country ...

I'm very worried that some attorney is going to try to challenge the Jacobson [ruling] in the 21st century. I think that, probably, in any court right now, you're going to get that ruling upheld and you're going to get it strengthened. I would advise against [challenging] that one in the Supreme Court."

Then Versus Now

Kennedy, in turn, points out there is a "big Constitutional chasm" between this 1905 case and today's vaccine mandates. The difference is indeed rather significant. Jacobson, who had been injured by a previous vaccine, took the case to the Supreme Court in an effort to avoid the vaccine — and the fine for refusing the vaccine, which at the time was \$5.

When he lost, he paid the \$5 fine, which Kennedy equates to a traffic ticket by today's standards. There's a big difference between paying a small fine, and being forcibly injected with a potentially hazardous vaccine, against your will. As noted by Fisher above, the judge in that 1905 case did not claim government had the right to go into someone's home and forcibly vaccinate them, Kennedy says.

“ About half of Americans say they want the COVID-19 vaccine; 27% say they will ‘definitely’ refuse and another 12% say they will ‘probably’ refuse it. ”

Dershowitz, in turn, agrees that the 1905 ruling “is not binding on the issue of whether or not you can compel someone to get the vaccine,” but that “the logic of the opinion ... strongly suggests that the courts today would allow some form of compulsion if the conditions that we talked about were met: [the vaccines are] safe, effective, [and] exemptions [given] in appropriate cases.”

Will You Get the COVID-19 Vaccine?

Kennedy and Dershowitz were able to agree that the COVID-19 vaccine should remain voluntary, and only be mandated if the public health threat is truly extreme. One of the problems the vaccine industry has nowadays is that the trust in them has significantly eroded.

According to a recent poll^{1,2} cited by Kennedy, about half of Americans say they want the COVID-19 vaccine; 27% say they will “definitely” refuse and another 12% say they will “probably” refuse it.

“Why do so many Americans no longer trust our regulatory officials and [distrust] this process?” Kennedy asks. “One of the reasons is ... vaccines are a very different kind of medical prerogative.

It is a medical intervention that is being given to perfectly healthy people, to prevent somebody else from getting sick. And it’s the only medicine given to healthy people.

So, you would expect that we would want that particular intervention to have particularly great guarantees that it’s safe. Because we’re saying to an individual, we are going to make you make this sacrifice for the greater good ...

Our side of the bargain should be, we want this to be completely safe. But, in fact, what we know about vaccines ... is that they're unavoidably unsafe."

1 in 40 Are Injured by Vaccines

We often hear that vaccine injuries occur at a rate of 1 in 1 million. This, however, is a gross underestimation. Kennedy discusses an investigation by the U.S. Department of Health and Human Services Agency for Healthcare Research Quality (AHRQ).

They conducted a machine cluster analysis of health data collected from 376,452 individuals who received a total of 1.4 million doses of 45 vaccines. Of these doses, 35,570 vaccine reactions were identified, which means a more accurate estimate of vaccine damage would be 2.6% of all vaccinations.

This means 1 in 40 people – not 1 in 1 million – are injured by vaccines, and a clinician who administers vaccines will have an average of 1.3 adverse vaccine events per month. In other words, we are asking 1 in 40 people to sacrifice their health in order to protect “hypothetical people from catching that particular disease,” Kennedy says.

Importantly, “it’s not hypothetical that vaccines cause injuries,” Kennedy says. The U.S. Vaccine Court has paid out \$4 billion to patients permanently damaged or killed by vaccines, and that’s just a small portion of all the cases filed. According to Kennedy, less than 1% of people who are injured ever get to court, due to the high bar set for proving causation.

Vaccine Makers Have No Liability

Vaccine makers also have no liability for injuries. This worsens risks, as they have no real incentive to make sure their products are safe, not only in the short run, but also long-term.

And, as noted by Kennedy, the reason vaccine manufacturers were given immunity in the first place was because they admitted vaccines are unavoidably unsafe and there’s no

way to make them 100% safe.

They were getting sued for injuries to the point they said they could not continue to manufacture vaccines, which is why the U.S. government in 1986 agreed to indemnify them against lawsuits under the National Childhood Vaccine Injury Act of 1986, and set up a government-run Vaccine Court instead.

So, when you sue for a vaccine injury, you're actually suing the U.S. government, and payouts are paid for by the U.S. public via a small fee tacked on to each vaccine sold.

100% of Moderna Vaccine Participants Suffered Side Effects

Kennedy goes on to discuss some of the disturbing preliminary results emerging from current COVID-19 trials. In the case of Moderna, its mRNA vaccine (mRNA-1273) was found to cause systemic side effects in 80% of Phase 1 participants receiving the 100 microgram (mcg) dose.^{3,4}

Side effects ranged from fatigue (80%), chills (80%), headache (60%) and myalgia or muscle pain (53%). After the second dose, 100% of participants in the 100-mcg group experienced side effects. This is important to note as, unlike the flu vaccine, the coronavirus vaccine will be a two-dose regimen and most likely recommended to be repeated annually, just like the flu vaccine.

The 45 volunteers were divided into three dosage groups – 25 mcg, 100 mcg and 250 mcg – with 15 participants in each. Even in the low-dose group, one participant got so sick he required emergency medical care. “That’s 6%,” Kennedy says.

In the high-dose (250 mcg) group, 100% of participants suffered side effects after both the first and second doses, and three of the participants suffered “one or more severe events.”

Keep in mind, the participants in Moderna’s Phase 1 trial were healthy individuals between the ages of 18 and 55.⁵ Kennedy recites some of the exclusionary criteria of these trials, such as you cannot be overweight, you must be a lifelong nonsmoker, you

cannot have a family history of respiratory problems or seizures, you cannot have asthma, diabetes, rheumatoid arthritis or other autoimmune disease.

“These are the people they’re testing the vaccine on, but that’s not who they’re going to give the vaccine to,” Kennedy says. Indeed, over 90% of Americans are metabolically unhealthy and struggle with chronic health conditions that can make them more prone to vaccine complications, yet these, and frail elderly, are most vulnerable to COVID-19 and would theoretically stand to benefit from the vaccine most.

If the vaccine causes severe side effects in young, healthy individuals, what will the results be in those who are old, frail and/or have underlying conditions or compromised immune systems?

“You’re going to see a lot of people dropping dead,” Kennedy predicts. “The problem is, Anthony Fauci put \$500 million of our [tax] dollars into that vaccine. He owns half the patents. He has five guys working for him [who are] entitled to collect royalties.

So, you have a corrupt system, and now they’ve got a vaccine that is too big to fail. They’re not saying this was a terrible, terrible mistake. They’re saying, ‘We’re going to order 2 million doses of this [vaccine]’ ... And, they have no liability ... No medical product in the world would be able to go forward with a [safety] profile like Moderna has.”

Trust Is Earned

Admittedly, the interview is a rather long one – an hour and 20 minutes – but if you have the time, I encourage you to listen to it in its entirety, as Kennedy and Dershowitz cover far more than some of the key highlights I’ve summarized here. You could speed it up to 1.5 to 2 times, which is my approach for most videos now as there is so much video content to consume.

I would not be surprised if Kennedy’s prediction that the COVID-19 vaccine or vaccines will cause severe harm to a great number of people. I also disagree with Dershowitz’s

position that anyone involved in medical manufacturing “obviously” has a keen interest in not hurting people.

Kennedy correctly points out that’s clearly not the case, seeing how drug companies have repeatedly been found to knowingly commit fraud in the name of profit. The opioid epidemic is but one glaring example where company executives knew they were causing harm and chose to do it anyway. Trust is earned, and the drug industry has, as Kennedy points out, eroded the public’s trust by their own malfeasance.

The drug industry and government health officials expect us to simply trust that a safe and effective COVID-19 vaccine will be produced in record time. From my perspective, such trust would be misplaced. Their history simply doesn’t warrant it.

I’ve reviewed the historical failures of coronavirus vaccines in previous articles, as well as the potential hazards associated with mRNA vaccines. Importantly, we do not yet know what injecting mRNA to reprogram our DNA might actually do in the long run, since no mRNA vaccine has ever been licensed, but there’s reason to suspect it won’t be entirely beneficial.

The good news is that we probably will not even need a vaccine against COVID-19. As I have previously reviewed, there are loads of strategies to improve your immune system.

Other treatments like [nebulized peroxide](#) are really effective if you are already sick. And, as a foundational prophylactic, remember to optimize your vitamin D level, as vitamin D appears to significantly lower your risk, both of contracting the infection and developing severe symptoms, as reviewed in [“Vitamin D in the Prevention of COVID-19.”](#)

I’ve put together a comprehensive report on the topic of vitamin D for COVID-19 prevention, which you can download here.

[Access Free Report](#)

Sources and References

- ¹ [CBS News May 27, 2020](#)
- ² [ABC News June 2, 2020](#)
- ³ [NEJM July 14, 2020 DOI: 10.1056/NEJMoa2022483](#)
- ^{4, 5} [Reporter.am July 14, 2020](#)