

RUSH LIMBAUGH HAS RIGHTS TOO

A prosecution, or a smear campaign?

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At what point does a prosecutor's investigation of a possible crime cross the line from legitimate inquiry to smear campaign? My interest in the question is not entirely academic. I'm Rush Limbaugh's attorney, and as anyone who has been following my client's situation is probably aware, the local prosecutor (or state attorney, as we call them in Florida) has been having a field day at Rush's expense ever since Rush announced last October that he'd become dependent on prescription pain medication and was entering a rehab clinic to deal with the problem.

Over the past six months, Palm Beach County State Attorney Barry Krischer has: raided drugstores near Rush's home; seized his medical records without going through the required process enacted by the Florida legislature to protect medical privacy; leaked false information to the media that he was about to plead guilty to a felony; threatened to make his medical records public unless he pled guilty to a felony he didn't commit; released to the media confidential letters regarding Rush's situation that he received from my office; and falsely claimed that the Florida Bar and attorney general's office approved of the release.

Normally, people with drug dependencies who acknowledge their problems and seek treatment are lauded for their courage, not prosecuted. So am I wrong to wonder if something is out of whack when the Palm Beach County State Attorney pulls out all the stops in an effort to nail Rush, while giving immunity to the traffickers who supposedly kept him supplied with painkillers, and who, as a result of a deal with the prosecutor, were able to make a six-figure killing selling their "story" to a tabloid?

There are lots of theories about why the prosecutor is doing what he's doing (he's an elected Democrat, Rush is a big fish, etc.), none of which matter. What does matter is that the prosecutorial abuse to which Rush is being subjected has ramifications for every doctor and patient in Florida--and throughout the U.S. As Howard Simon, executive director of the ACLU Florida Chapter stated recently, "The outcome of this case is going to affect the privacy of everybody in the state of Florida." There is also concern about prosecutors who use their office not to enforce law but to pursue a personal agenda. Texas Congressman Ron Paul, who also happens to be a doctor, put his finger on the problem last month, telling the House of Representatives: "Under the guise of prosecuting the drug war, law enforcement officials can rummage through patients' personal medical records and, as may be the case with Mr. Limbaugh, use information uncovered to settle personal or political scores."

Rush's situation should trouble everyone who believes in the principle of equal treatment under the law. Even if you subscribe to the dubious notion that public figures should be made an example of, contrast the way Rush's case is being handled with treatment similarly afflicted celebrities have received at the hands of law enforcement. Do you recall Ozzy Osbourne or Elizabeth Taylor ever being singled out for criminal investigation after they

publicly acknowledged their drug dependencies? You don't, because they weren't. Nor should they have been.

The improper seizure of Rush's medical records is now before an appeals court. And the Florida Bar is conducting an inquiry into why a Krischer deputy falsely claimed in a memo, initialed by Mr. Krischer himself, that ethics experts at the Bar and in the state attorney general's office had advised prosecutors that they had no choice but to make copies of our confidential correspondence available to the press. The Bar and the attorney general's office have publicly stated that they never gave this advice to Mr. Krischer or his deputy.

Undeterred, Mr. Krischer and his staff, who have yet to charge Rush with anything, continue to mutter darkly that Rush is a "suspect" for this or that crime. First it was drug trafficking, then money laundering; most recently, it's doctor shopping. For his part, Rush tries to get on with his life. But he, and I, worry about the precedent that's being set in this case. So should you.

Mr. Black is a lawyer in Florida.