

SPEAKING OF YOUR PRIVATES ...

By Michael Ventura

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President George W. Bush has been skipping around the country accusing Sen. John Kerry of "flip-flops." Well ... I gotchyer flip-flop right here. It's a doozy. And it threatens not only the privacy but also, in a quite direct way, the privates of the citizens of these United States.

In 2000, Bush ran on a platform that loudly supported medical privacy. He has said, "I believe privacy is a fundamental right." In April 2001, he promised to protect, he said, "the right of every American to have confidence that his or her personal medical records would remain private." Tommy G. Thompson, secretary of health and human services, chimed in: "We are giving patients peace of mind in knowing that their medical records are confidential and their privacy is not vulnerable to intrusion."

That promise has been broken. On March 6, The New York Times ran a polite headline on page eight: "Administration Sets Forth a Limited View on Privacy." Decide for yourself the extent of the flip-flop -- and whether the story didn't call for starker headlines on page one.

The Bush-Ashcroft Justice Department is attempting to force hospitals and clinics to turn over medical records on *thousands* of abortions. More than 2,700 files have been demanded in the San Francisco area alone. Files are also being sought from Kansas, Missouri, Pennsylvania, and Washington, D.C., as well as the cities of L.A., Philly, Pittsburgh, New York City and still counting. Ashcroft claims these records will help him defend a new law prohibiting partial-birth abortions. Doctors are challenging the law on the ground that it prevents certain abortions even when they're medically necessary.

Fundamentally, Bush's claim is that the government can instruct doctors on the needs and treatment of their patients. One function of law is to set precedents. If the government has the right to dictate one aspect of medicine, and if that right is unchallenged and/or upheld, then a precedent has been set for government to dictate other medical priorities. There are honorable arguments for and against abortion, but it is difficult to imagine an honorable argument for the government's right to dictate specific medical care. If government can dictate something so intimate and personal then what, according to that precedent, can it *not* dictate?

Flip-flopping drastically on his 2001 promise, Bush's Justice Department now states that patients "no longer possess a reasonable expectation that their histories will remain completely confidential," adding that federal law "does not recognize a physician-patient privilege." Do not overlook a point that should be as alarming to conservatives as to progressives: These sweeping statements do not single out abortion cases; they cover *all* medical practice. The government is claiming the right to pry into any medical records -- psychiatric, for instance, or records of substance-abuse treatment, AIDS, rape, incest, anything at all. Your privates, in short.

That is a radical reversal of two centuries of American legal practice. It is also a reversal and denial of what every American expects and assumes when in need of a doctor's help. When is anyone more vulnerable than when they need a doctor? The Bush administration is claiming the right to intrude upon that vulnerability.

This point was not lost on federal District Judge Phyllis J. Hamilton, who denied the Justice Department access to abortion records from San Francisco area hospitals and Planned Parenthood clinics. The Times reported her stand that "forcing the providers to turn over records would undermine the privacy rights of patients and could dissuade some from seeking treatment." Judge Hamilton said, "There is no question that the patient is entitled to privacy and protection. Women are entitled to not have the government looking at their records."

When put that baldly, it's astonishing we're even having the argument. Of course people are entitled to not have the government snoop on their medical treatment. Bush doesn't agree, but, this being an election year, he's been forced to flip-flop back slightly. On March 9, Justice withdrew subpoenas from Planned Parenthood clinics, stating that "we will not move at this time" but might "renew our requests if necessary." For "if necessary" read "if re-elected." As of this writing, hospitals are still being harassed.

A Justice Department sop to privacy has been that names would be deleted from the records. But note: That nicety is not in their basic contention that people "no longer possess a reasonable expectation" of patient privacy and that federal law "does not recognize a physician-patient privilege." Judge Hamilton said the records the government is demanding contain "potentially identifying information of an extreme personal and intimate nature," including the age of first sexual experience, types of contraception used, details of abuse and of sexually transmitted diseases. Bush doesn't say why he needs those details, but he claims the right to know them.

The Times summarizes other critiques of his efforts: "If patients have no reasonable expectation of privacy ... the government may be more aggressive in seeking records from hospitals, insurance companies, and other businesses in criminal, civil, and administrative cases." That's putting it mildly. The only possible motivation for claiming such sweeping rights is to assemble dossiers of intimate material that, if Bush wins this issue, can then be used against dissenters of all kinds. (Remember that under the USA PATRIOT Act, many forms of dissent can be classed as "terrorism" at the president's whim.)

As is Bush's usual practice, he sent a small fry to publicly defend these drastic subpoenas, a spokesman named Trent D. Duffy (where does the far right get these names?!), who assured us all that this president is "strongly committed to medical privacy." The Bush White House does not answer questions. Instead it issues sweeping statements and is unconcerned that its statements arrogantly contradict its actions. Trent D. Duffy did not mention that the government has not informed any of the patients concerned that it wants their records. Nor did he comment on what else the government is demanding. This is the Times' summary of the government's demands:

The government also seeks these materials for the last three years:

Records of any second-trimester abortion in which the patient suffered a medical complication, regardless of the technique.

Records in any case in which a doctor caused a fetus' death by injecting chemical agents in the womb in the second or third trimester.

Documents related to any medical malpractice claims arising from certain abortions.

The names of all doctors who have performed any type of abortion.

The last item is especially chilling. All but "partial-birth" abortions are legal. So why is Bush demanding the names of *all* doctors who've performed a legal procedure? Obvious answer: a list for a witch-hunt. Those doctors can expect excessive, harassing scrutiny of their taxes, insurance forms, Medicare and Medicaid forms, etc. A president who breaks his promise to protect "the right of every American to have confidence that his or her medical records will remain private" (his own flip-flopping words), is easily capable of such harassment.

Remember that the Bill of Rights includes articles 9 and 10 of the Constitution: "9) The enumeration in the Constitution of certain rights *shall not be construed to deny or disparage others retained by the people.* 10) The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the States respectively, *or to the people.*" Strict constructionists lie when they claim that if a right is not in the Constitution it doesn't exist. The Bill of Rights insists, twice, that not only the states but also the people have rights that are not enumerated in the Constitution but that nevertheless must not be disparaged or denied. To deny that an inalienable right of privacy is assumed in the Bill of Rights is to deny the Bill of Rights.

If Bush doesn't consider even your medical records private (as he promised he would), he must assume that your privacy itself is government property.

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