

SHELDON WHITEHOUSE DESTROYS DAVID RIVKIN'S "GALLERY OF HORRIBLES"

As I liveblogged here, the Republican response to Pat Leahy's proposal to have a Truth Commission on Bush era crimes is to establish a set of straw men and then shoot them down, without ever addressing the problem that a number of high level Administration officials broke the law.

This exchange between Sheldon Whitehouse and designated Republican shill David Rivkin gets to the key aspects of tactic. Rivkin repeatedly introduced his own assumptions into what the Commission would do, all so he point to the constitutional challenges that only his imagined committee would have. And repeatedly during the hearing, Rivkin claimed the whole point of the commission was to select 12 to 13 high level officials and lay out the evidence of their criminal culpability.

I'm curious, though. If Rivkin has such an exact number of Bush Administration officials who broke the law, why hasn't he called them out himself as prosecution targets? Or has he simply put his Republican affiliation before our Constitution?

And isn't it charming that Rivkin is so concerned about the civil liberties of those who in 37 pages claimed to eliminate both the First and Fourth Amendment?

Here's my liveblogged transcript (with all the errors that implies):

Whitehouse: Rivkin. You raise the gallery of horrors that might go wrong. If you assume that the purpose is advisory in policy only. If you assume that criminal law enforcement is

properly cabined in Exec as it should be. If you assume coordination on issues like immunity. And if it is set up not as private entity but as delegated Congressional oversight authority. Still oppose, even in the absence of parade of horrors.

Rivkin: This assumes too much. To me law enforcement function has variety of aspects. Ultimate decision to proceed with prosecution.

Whitehouse: no one is suggesting otherwise.

Rivkin: Deciding as threshold determination whom to investigate.

Whitehouse: We do that in COngress every moment.

Rivkin: RIght in Congress.

Whitehouse: Right to delegate.

Rivkin: I do not beleve it is readily delegable.

Whitehouse: Now you use another hedge word. Properly appointed commission.

Rivkin: Appointments clause? If you could configure commission that makes it an extension of Article I branch. I don't see how you can delegate oversight responsibility. If it walks like a duck and talks like a duck. WE've heard today about criminal investigation, PIN does, on 12 or 14 people, then passes the buck to PIN in public spotlight. If this were contemplated in different context, every law professor would be screaming about it.

Whitehouse: **Every** law professor? I'm trying to get an unhedged phrase out of you.

Rivkin: If Bush Administration had done an investigation on charitable

organizations?

Whitehouse: organized criticism is an offense against their civil liberties.

Rivkin: Looking at individual criminal liability.

Whitehouse: nonono.

Rivkin: there's no way to cabin this. How are you going to come up with analysis of two or three members of Administration. If you said Mr A committed torture, that reads like doc that AUSA sends to his boss.

Whitehouse; My time has expired. **Until you know and we all know what was actually done, do not be so quick to throw other generations under the bus and assume they did worse.**

The best part of his video, though, are two small details. In the background is the other witness (is that Admiral Gunn?) cracking up every time Whitehouse corners Rivkin behind the hedge of his own making. I do hope Rivkin noticed.

And then, at the very end, you've got someone responding to Whitehouse's slapdown of Rivkin's claim that prior generations have done worse in war than ours. You can hear someone say, "Ooh."