

Testimony of

The Honorable Patrick Leahy

June 5, 2003

Mr. Chairman, I am going to vote against the nomination of David B. Rivkin, Jr. to serve as a member of the Foreign Claims Settlement Commission (FCSC). I am deeply concerned by the nominee's views concerning torture and cruel, inhuman, or degrading treatment.

No one here is saying that the Bush Administration or Mr. Rivkin condones torture and cruel, inhuman, or degrading treatment. However, Mr. Rivkin claims that some forms of "aggressive interrogation" -- which according to him could include deprivation of food and water, mental pain and suffering, and beatings - are legal in certain cases.

Despite the fact that most legal authorities, including the Israeli Supreme Court and the European Court of Human Rights, disagree with Mr. Rivkin's views about what is allowable under the law, I believe that he could make a case as to why he is technically accurate. However, if the United States, the world's greatest democracy, does not take a strong stand against this behavior, we have sent a terrible message to the rest of the world.

More importantly, we run the risk of endangering U.S. citizens overseas. What if an American citizen is detained by the Iranian government, which beats him during captivity? Who determines if this beating or other suffering constitutes torture or cruel, inhuman, or degrading treatment. By subscribing to Mr. Rivkin's view, we open Pandora's Box.

Mr. Rivkin's logic also exposes deep flaws in his ability to be a fair and impartial adjudicator of the claims of U.S. citizens seeking compensation from foreign governments. The issue of torture and cruel, inhuman, or degrading treatment is directly applicable here because the FCSC has jurisdiction over claims filed for maltreatment of U.S. servicemen and civilians held as prisoners of war or interned in Southeast Asia during the Vietnam conflict.

In his responses to questions by Senator Durbin, Mr. Rivkin argues "...it is not any physical or mental pressure that constitutes torture, but only that which rises to the level of severe physical or mental pain or suffering"

In other words, Mr. Rivkin is arguing that the determination must be made on a case-by-case basis.

However, in a Washington Post op-ed, he categorically denies that U.S. military and intelligence services ever tortured al-Qaeda or Taliban operatives. He even uses the phrase "on all counts."

How would he know? Has Mr. Rivkin reviewed every single case, as his own standard compels him to do? Has he talked to all of the U.S. military and intelligence personnel involved in these cases?

Of course not. What Mr. Rivkin did is make up his mind before ever reviewing the facts.

No one is saying that U.S. forces tortured people. But, I would point out that the Department of Defense is conducting a review of two deaths of Afghans at Bagrham Airbase that were ruled homicides by an American pathologist. Apparently, Mr. Rivkin does not need all of the facts compiled by this ongoing investigation to make his own determination.

This is what concerns me - the real possibility of biased judgments in this tribunal or any forum made with less than all of the facts.

I will vote no.

