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If the Spanish court doesn't work, they can always try a Bet Din

By [Ron Kampeas](#) · April 6, 2009

In the New Yorker, Jane Mayer [interviews Philippe Sands](#), the British Lawyer whose book, "Torture Team," apparently provided the basis for a criminal investigation launched last month by a Spanish judge against six former senior Bush administration officials.

At least one of the six targets is Jewish -- Doug Feith, the Bush administration's undersecretary of defense for policy. And so - wouldn't you know it -- is Sands, who cites his mother's experience during the Holocaust as a galvanizing factor in his human rights activism.

The other five on the list are Alberto Gonzales, the former legal counsel to the Bush White House and then the attorney-general; John Yoo, then a Justice Department lawyer whose written opinions allegedly helped green-light torture; Jay Bybee, his superior at Justice's office of legal counsel; David Addington, Vice President Dick Cheney's legal adviser; and William Haynes, legal counsel to the Defense Department.

Feith, writing in the [Wall Street Journal](#), not surprisingly, thinks the Spanish tendency to cast nets wide and far in pursuing human rights abusers, is essentially flawed.

The American people can tolerate this only if they are willing to forfeit the right to make their own laws and policies. This is not a left-versus-right political issue. It is a question of preserving the American constitutional system of government in which U.S. officials are answerable for their opinions and advice to the American people -- but not to foreign criminal courts.

I'm not sure. The same judge, Baltasar Garzon, delivered a measure of justice when he managed to keep Chile's former dictator, Augusto Pinochet, under arrest for 18 months in the late 1990s, although the case never came to trial. Pinochet had until then never answered for a litany of appalling crimes, including his regime's complicity in the [probable 1985 murder](#) of an American Jew, Boris Weisfeiler, at the hands of neo-Nazis. There was an extremely gratifying "You can run but you can't hide" satisfaction to the episode.

That said, Feith is also simply baffled as to why he's on the list, and I can't blame him. Not just because he seems to have a credible case that Sands ripped his quotes from context and otherwise distorted them: Of the six, Feith -- and readers correct me if I'm wrong -- was the only one not in a position to deliver the legal opinions that Sands says make the others culpable.

Feith is a lawyer by training, true, but his Pentagon job was as an analyst and policy adviser, not a lawyer. Even if he did, at some point, say, "Hell yes, torture is great" -- and he makes a convincing case that he did not -- this is not in the realm of, as the [New York Times](#) put it, "providing the legal framework" for torture. Feith's opinion on torture would have been in the realm of intelligence analysis and overall policy; in fact, in defending himself, he says he recommended against it because it was bad *policy*: It would have put U.S. troops at risk and threatened to undermine alliances.

It sounds as if Feith is on this list because of the role his parallel intel ops shop played in ginning up support for the Iraq war. In that case, he may be guilty of torturing the facts, but if the Sands-Garzon initiative is going to accrue credibility, they need a more solid case of his role in enabling the real thing.

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