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Framing Doug Feith

By [Ron Kampeas](#) · April 14, 2009

My loyal readers (Hi kids!) know I like to back into a blog item, lazily. Not this time. Let's jump in:

What in the name of all that is good is Doug Feith doing [on the list](#) of former U.S. officials facing prosecution in Spain for torture?

Scott Horton has the details here at [the Daily Beast](#).

Here's my problem, which I mentioned in an earlier [blog post](#) (one of those I backed into, with a musing about accuser and accused being Jewish): The basis of the prosecution is, apparently, based on laws making lawyers culpable for advice that allows their clients to commit crimes.

The five others on the list - led by former attorney general, Alberto Gonzales - all gave, indeed, legal counsel to the Bush administration: to the president, the defense secretary, the vice president, for the government. Feith did not. He was undersecretary of defense for policy.

His main accuser is Philippe Sands, a British lawyer who wrote a book, "Torture Team," about how the Bush administration allegedly authorized torture. According to this [New Yorker profile](#), Sands' work provides much of the basis for the Spanish prosecution.

Feith is the only one among the accused who is [talking](#), and often, about the charges. His main points are that a) the law in this case is an ass and would inhibit honest counsel and b) Sands seriously misrepresented him.

On the first point, I'm not sure. Feeling comfortable off the record is one thing, but it's one thing outweighed by accountability. What about the lawyer who sets up the loophole that allows murder? Sands seems fairly grounded here with his examples of Nazi lawyers who went to jail.

On the second, Feith has a very strong case. In one of those instances of the utter lack of self-awareness that comes with ideological tunnel-vision, Sands and his defenders have released the [full transcript](#) of Sands' interview with Feith as proof of Sands' assertions.

(There is the third point Feith does not mention in his Wall Street Journal op-ed: He was not legal counsel. I'd like to ask him why he is not making this point in his current arguments; perhaps he does not want to appear as a "[shtinker](#)" among former colleagues.)

The transcript utterly vindicates Feith, who repeatedly reminds Sands that, a) although trained as a lawyer, he did not act as one for the administration:

I wasn't supposed to be there as a lawyer. I was there as a policy guy

and b) he did not participate in the authorization of interrogation techniques.

Interrogations and stuff like that—I didn't know the names of the people at Gitmo; I didn't see their interrogation reports; I was not asked about their interrogation techniques. I just didn't know ...

In a [rebuttal](#) to Feith's testimony to Congress last year on the matter, Sands says he "will not here deal with each and every assertion he makes, but for the avoidance of doubt I want to make it clear that I reject each and every one of them." (Lack of self-awareness alert - in the *immediately* preceding sentence, Sands mocks Feith for following the "well-trodden path of ignoring his own words where they contradict his claims" and then proceeds to do the same.)

The claims he does deal with are to say that his allegations are not based solely on his interview with Feith (but he does not cite examples in the rebuttal; in an earlier letter, he cites two officials, one named, one not); that there is no record of Feith opposing President Bush's removal of Geneva Convention protections for detainees (it was not Feith's role to support or oppose it, as Feith makes clear); and finally, this:

“[E]ither you are an individual to whom the Geneva Convention doesn't apply, or you are an individual to whom the Geneva Convention applies, but you are not entitled to P.O.W. status. What is the difference in the purpose of interrogation?”

Mr Feith replied:

“It turns out, none. But that's the point.” His answer makes it clear that he believed there was no practical distinction for the purposes of interrogation between an Al Qaeda detainee (for whom he believed Geneva did not apply at all) and a Taleban detainee (for whom he believed Geneva did apply). From this I concluded that Mr Feith did not support rights for any Guantanamo detainees under Common Article 3. Even if Common Article 3 “applied” to some detainees, in Mr Feith's view it apparently provided no protections in relation to interrogations. Mr Feith's words seem to admit of no other interpretation. The formal distinction for which Mr Feith claims to have argued had no practical consequences. The reality was that on his approach no detainee – whether Al Qaeda or Taleban – could derive any real protections from Common Article 3. Hence my conclusion.

But here's another exchange just before the one above:

Sands: Which precludes protections against forms of interrogation?

Feith: Under the Geneva Convention they are not entitled—that's the point. **I didn't want anybody**

saying the Geneva Conventions don't apply. There is an interesting coincidence here, which is: what do the al-Qaeda people get, since they're not covered, their conflict is not covered by the Geneva Conventions, and all the president said, "Humane treatment." And I thought that was O.K., that's a perfectly fine phrase; it needs to be fleshed out, but it's a fine phrase—"humane treatment."

Feith joins the Bush administration argument that Geneva has limited (for the Taliban) or no (for al Qaeda) *legal* application. But he believes they should apply. Feith gets into the issue with Sands because - it is true, in a slightly self-aggrandizing way - he wants to trumpet his role in helping Richard Myers, the then-military chief of staff, make the case that the conventions *should* be applied. He's describing an early Rumsfeld-Feith-Myers meeting:

So those were the two main points that I made. It is the law, so obedience is not optional; and, secondly, to the extent that it's optional—and we said, "It's not"—I said, but if it were optional, the fact is we have a policy interest in upholding ... and I specifically made this argument which tied in directly to that 1985 or whatever article that you read. What I said is: "We have an interest in people respecting the Geneva Convention. How do the bad guys around the world try to worm out of the Geneva Conventions?" What the Vietnamese did to us is they said, "Well, you know, we're criminals, we're not a real government"—in other words, I said, "**If you make the applicability of the Geneva Convention hinge on subjective judgments about the quality of your enemy, nobody will ever reply to the Geneva Conventions—we'll never get the protection of them anywhere.**"

Feith is a wonk. He likes to argue details. The Geneva Conventions did not apply as a matter of law. But - and this is critical - he says he believed they *should* have applied nonetheless as a matter of policy - which was, after all, his bailiwick.

One could argue, of course, that Feith is whitewashing his role - but then, why use anything in the interview against him if you believe the whole thing is a wash. More critically - and this goes to Sands' credibility - Feith clearly does not understand that Sands plans to indict him in his book. Is he self-aggrandizing? Probably. Is he defensive? He doesn't seem to have a reason to believe he needs to defend himself.

When, toward the end of the interview, it dawns on Feith that Sands is analogizing his colleagues to Nazis, Feith begins to object with vehemence - but on his colleagues' behalf; and Sands does nothing to discourage Feith's ignorance of his own status as target.

That's clear from this exchange. (Feith had earlier had referred to his disagreements with "presidentialists," colleagues among Bush's legal counsellors who advocated expanded presidential prerogatives.)

Feith: The point that I would get across is this. When you talk about moral authority, I make the distinction between whether we're entitled to it, and whether we have it. We're entitled to it. All the people involved in this, even the people that I disagreed with, even these presidentialists whose views are, as I said, not my inclination—although, as I said, I doubt my ability to debate them because I think they are more knowledgeable than I am—but my inclinations are very much not theirs. I never for a minute think that they are immoral. They are serious people dealing with serious problems. I disagree with them by inclination, but to say that they lack the moral authority that a decent official is entitled to ...

Sands: Or to suggest that **they**'ve crossed the line into criminality?

Feith: Or to suggest that **they**'ve crossed the line into criminality.

They. Not "you."

I can't begin to describe how dishonest this is. Not telling an interview subject exactly what you are seeking is worse than an ambush; it is a lie. Sands is supposedly a respected human rights lawyer. I'm not a lawyer, but I can give you my professional opinion of Sands as a journalist: He should keep his day job.

Sands says he tried to follow up, but Feith brushed him off. That's really not good enough. How hard is it to fit "Call me - gonna accuse you of counseling torture" into a subject line?

Finally, let me clarify two things:

-I'm no Feith fan. At the very least, the ad-hoc intelligence shop he ran at the Pentagon was amateur hour, and helped gin up support for a failed, misconceived war. (Is Feith's role in the Iraq war - and his past strident pro-Israelism - behind this?)

-I'm no torture fan. The other accused - the actual legal counsels - may genuinely be liable for degeneration of policy that has widespread repercussions. One of my proudest moments as an Israeli was in 1999, when Israel's Supreme Court banned the practice. One of my most depressing moments was in 2002, when a gleeful senior Israeli security official (and former torturer) told me that revelations of U.S. interrogation practices meant that his game was back on.

But that makes Feith's inclusion among the accused even worse. It turns what could be a serious test case into a farce.

Shame.



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