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THE BENCH

## THE BUSH SIX

by Jane Mayer

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Philippe Sands

About a year ago, a book came out in England that made a fascinating prediction: at some point in the future, the author wrote, six top officials in the Bush Administration would get a tap on the shoulder announcing that they were being arrested on international charges of torture.

If the prediction seemed improbable, the background of the book's author was even more so. Philippe Sands is neither a journalist nor an American but a law professor and a certified Queen's Counsel (the kind of barrister who on occasion wears a powdered horsehair wig) who works at the same law practice as Cherie Blair. Sands's book, "Torture Team," offers a scathing critique of officials in the Bush Administration, accusing them of complicity in acts of torture. When the book appeared, some scoffed. Douglas Feith, a former Pentagon official, dismissed Sands as "a British lawyer" who "wrote an extremely dishonest book."

Last week, Sands's accusations suddenly did not seem so outlandish. A Spanish court took the first steps toward starting a criminal investigation of the same six former Bush Administration officials he had named, weighing charges that they had enabled and abetted torture by justifying the abuse of terrorism suspects. Among those whom the court singled out was Feith, the former Under-Secretary of Defense for Policy, along with former Attorney General Alberto Gonzales; John Yoo, a former Justice Department lawyer; and David Addington, the chief of staff and the principal legal adviser to Vice-President Dick Cheney.

In Washington the other night, over a cup of camomile tea, Sands described the behind-the-scenes role he played in

spurring the Spanish court to action. He paced his hotel room, seeming by turns proud and stunned at what he had done. “This is the end of these people’s professional reputations!” he said. “This is no joke. We’re talking about the serious potential deprivation of liberty.”

Sands said that he had “no personal vendetta” against the Bush Administration, but he does see a link between his family history and his chosen profession. His mother and her parents were Viennese Jews who barely survived the Holocaust; his mother spent the first seven years of her life in hiding, away from her family. “It inculcated a burning sense of being aggrieved at wrongdoing, and at the failure of people to take responsibility for their actions,” Sands said.

Sands got his first chance to demonstrate his convictions professionally in 1998. He was in Paris, for the unveiling of his grandfather’s gravestone, when he received a call asking him to represent Augusto Pinochet, the former Chilean dictator. He told his wife, Natalia Schiffrin, about the offer. “Philippe, if you do,” Sands recalls her saying, “I will divorce you!” (She is American, and the daughter of the book publisher André Schiffrin, a founder of Students for a Democratic Society.) Sands declined the case. Instead, he signed on to represent the other side, and helped pursue Pinochet for violations of international law. The case became a turning point in international law, establishing the principle that there is no immunity even for the highest-ranking former government officials when they are accused of torture. Pinochet spent some sixteen months under house arrest. A decade later, the same Spanish judge who initiated the legal proceedings against Pinochet, Baltasar Garzón, has been assigned to the case against the Bush Administration officials.

The current torture case began in the spring of 2004, when photographs of abused prisoners at Abu Ghraib surfaced. Sands said that he read the protestations of innocence from Bush Administration officials, who blamed a few “bad apples” for the incidents, with the eye of a barrister. He recalled, “I could spot right away that they were speaking as advocates of a cause. So I decided to find out what really happened.” While keeping up his busy law practice, he travelled to America to interview the key players in what he described as “a writing project I am engaged in on international law and the war on terror.” Many Bush officials, including Feith and William J. Haynes II, the former Pentagon general counsel, who was also named in the Spanish lawsuit, agreed to meet with Sands, perhaps expecting a friendly chat. “I spent two years trekking around the country, finding out that they were manifestly untruthful,” Sands said. “I’ve got a particular bugbear about lawyers,” he added. “If not for lawyers, none of these abuses would have ever occurred.”

As Sands went about his research, he conferred with human-rights experts all over Europe on his findings. Word spread that he had the makings of a high-level war-crimes case. Sands won’t reveal exactly which human-rights authorities he consulted. But, in recent months, one of them was Gonzalo Boye, the Chilean-born Spanish lawyer who last week filed the criminal complaint against the Bush officials, on behalf of five former prisoners who were, they allege, tortured in the U.S. military prison at Guantánamo Bay. Boye said last week of Sands, “Let me just say that he played a very big role in my thinking. His book showed me who the targets were.” Feith, reached on the phone, called Sands’s book “wildly inaccurate.” He said, “It’s not a happy thing for the Spanish Court to think of prosecuting Americans for advice they gave to the President of the United States!”

It is hard to predict what will happen next, but, if arrest warrants are issued, the Obama Administration may be forced either to extradite the former officials or to start its own investigation. Sands, who admires Obama, said, “I regret that I have added to his in-box when he has so much else to sort out. But I hope he does the right thing. There’s not much dispute anymore: torture happened, and the law is clear—torture must be punished.”

Meanwhile, Sands reiterated a warning that he made in his book. “If I were they,” he said, referring to the former officials in question, “I would think carefully before setting foot outside the United States. They are now, and forever in the future, at risk of arrest. Until this is sorted out, they are in their own legal black hole.” ♦

ILLUSTRATION: TOM BACHTELL

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