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Friday, April 17, 2009

Spain's AG: Torture Complaint against Yoo, Feith, et al 'Fraudulent' [[Mario Loyola](#)]

Friday, Spanish press [reported](#) that Spain's attorney general, Cándido Conde Pumpido, called the complaint filed against John Yoo, Douglas Feith, and four Bush officials "fraudulent" and he warned that he won't allow Spanish courts to become "a toy" to be played with. The chief prosecutor of Spain's national trial court, Javier Zaragosa, responded to Judge Garzón's referral a few weeks ago by advising him that the case should not proceed, and in any case should not proceed before Garzón.

As Jeremy Rabkin and I explained in a [Weekly Standard](#) article a few weeks ago, the complaint, which was drafted by a convicted terrorist who studied for the Spanish bar in prison, is basically just the invented narrative of Phillippe Sands's book [Torture Team](#) quickly recast as a legal complaint. The Sands book has already been demonstrated to be fraudulent in material respects, most recently [here](#).

What is so obscene about this whole episode is that the authors of the complaint — and Sands, who we now know was their éminence grise — were not really bothered by the fact that the complaint might go nowhere. They have discovered that they can use the threat of indictments to intimidate, harass, and smear Bush officials today. That was clear in a mildly horrifying [missive](#) by Jane Mayer in *The New Yorker* last week. Mayer quotes Douglas Feith as saying that Sands's book is "wildly inaccurate" as if Feith's contention were just a trivial fact, and without any explanation of the boring details. It's obvious from her article that neither she nor Sands could care less whether the allegations are accurate or not. For them, the Bush officials deserve it already. Without a hint of disapproval she describes this encounter with Sands:

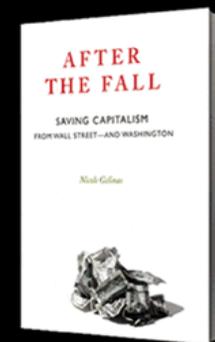
In Washington the other night, over a cup of camomile tea, Sands described the behind-the-scenes role he played in spurring the Spanish court to action. He paced his hotel room, seeming by turns proud and stunned at what he had done. "This is the end of these people's professional reputations!" he said. "This is no joke. We're talking about the serious potential deprivation of liberty." . . . "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."

In the same vein has been the "reporting" by Scott Horton of the *Daily Beast*. On April 13, 2009, in a [blog entry](#) titled "The Bush Six to Be Indicted," Horton wrote:

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Spanish prosecutors have decided to press forward with a criminal investigation targeting former U.S. Attorney General Alberto Gonzales and five top associates over their role in the torture of five Spanish citizens held at Guantánamo, several reliable sources close to the investigation have told The Daily Beast.

This turned out to be totally false. Today's *El País*, Spain's most important newspaper, reported that the Spanish prosecutors had decided exactly the opposite of what Horton claimed. The headline was this:

La Fiscalía de la Audiencia se opone a abrir una causa general contra Guantánamo. Javier Zaragoza presenta un escrito ante Garzón para que no instruya la querrela contra los responsables jurídicos del centro de detención.

What this means is that the chief prosecutor of the national trial court **opposes** pressing forward with the case, and advised Garzón not to proceed on the basis of the complaint.

Despite the fact that Horton was wrong, and probably lying, thousands of news sources picked it up as authoritative (including NPR) and, in the pattern that has become so familiar in recent years, the "fact," though false, became true through repetition.

But the ultimate truth of these allegations doesn't matter to those who make them, any more than the truth mattered for Joe McCarthy 60 years ago. Horton, Sands, Mayer, and the rest have succeeded in hurting their targets, even if the case is now deemed "fraudulent" by Spain's chief prosecutor. It's worth it for them, you see, because the number of people who will find out the truth is so much smaller than the number of people who heard and believed the lies. And in the process they get to become more famous. The Internet often helps the truth come to light. But sometimes, the truth gets submerged beneath a mountain of viral falsehoods.

— *Mario Loyola, a former adviser at the Pentagon and in the U.S. Senate, is a visiting fellow at the [Foundation for Defense of Democracies](#).*

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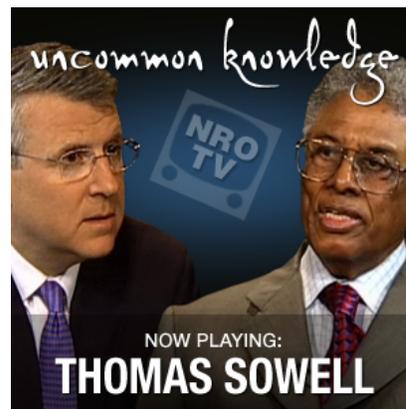
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