

Expert warns of similarities in cases of Diab, Arar

Extradition hearing told unsourced 'intelligence' is too unreliable

BY ANDREW SEYMOUR, THE OTTAWA CITIZEN NOVEMBER 25, 2010

It would be "dangerous" to rely on intelligence information used by France to point to Hassan Diab as the suspected bomber of a Paris synagogue 30 years ago, since it appears the "unsourced, uncircumstanced" intelligence they relied on has been manipulated to fit their changing theory of the case, an anti-terrorism expert and law professor testified Wednesday.

Kent Roach also said he sees similarities between the cases of Maher Arar, an Ottawa man wrongly deported to Syria, where he was tortured, and Diab. The 57-year-old former University of Ottawa professor is fighting extradition to France, where he would stand trial on accusations he killed four people during the 1980 attack allegedly carried out by the Popular Front for the Liberation of Palestine.

Roach testified that aspects of the French case set off "alarm bells" for him, particularly intelligence reports in the French record of the case that changed over a one-month period in 2008 to suggest first that Diab entered France from Spain using his own passport, then suggesting Diab had actually entered France using a fake passport.

"It would suggest to me the intelligence record is unreliable because it is malleable enough to fit any or both scenarios. Because it is not sourced, because it is not circumstanced, it is very difficult to go behind their suppositions and to challenge the intelligence," said Roach, who added that relying on the intelligence as evidence to extradite Diab is especially concerning since his liberty is at risk.

Roach worried that French investigators had developed "tunnel vision" -- when investigators interpret ambiguous evidence as evidence of guilt, even when completely different behaviour could also support guilt -- particularly when it came to assessing the stamps, or lack thereof, in Diab's passport.

"The reliance on the passport and basically arguments that the passport, if it contained just Spanish stamps is consistent with guilt and if it contains French stamps it could be consistent with guilt, that raises alarm bells with me," said Roach.

Roach said he saw similarities between Diab's case and that of Arar and others, including Abousfian Abdulrizak, a Canadian who was wrongly included on a UN Security Council list as a person affiliated with al-Qaeda.

"It is easy to assert someone is a member of a terrorist organization. It is an entirely different matter to prove it through evidence," he said, adding much seems to be made in the French case of Diab's alleged associations in the same way as Arar.

Roach, the first defence witness in the extradition hearing, systemically labelled nearly every piece of intelligence in the French case against Diab as unsourced and uncircumstanced. That included the 1999 intelligence report that Diab, using the alias Alexander Panadriyu, bought the motorcycle used in the bombing and built the bomb.

"At first glance you say, 'This is terrible, this is very, very specific,' but there's nothing there to substantiate it," said Roach.

He said the French record of the case also raised concerns for him about "boot-strapping," where one piece of unreliable intelligence is linked to another and considered corroborated, and the "cherry picking" of certain pieces of intelligence that fit the theory of the case while ignoring other unknown intelligence that could help Diab.

Intelligence is different from evidence in that evidence can be tested in court, while intelligence is often secret. Intelligence is usually gathered to provide advance warning of pending security threats and is frequently the subject of analysis and opinion, Roach added.

The problem with unsourced and uncircumstanced intelligence is it could be obtained through torture, he said. That creates two issues.

"One is that obviously the human rights issues of complicity in mistreatment, but even leaving that aside, there is an issue of the reliability of information that is obtained through that method. A person who is tortured or threatened with torture may falsely implicate others or may falsely implicate him or herself," said Roach.

At the time the intelligence used in the French record of the case was gathered, there would be less emphasis placed on assessing where it came from. Even today, it is unlikely intelligence potentially gleaned from torture would be entirely discounted, he said.

"If the Syrians or Egyptians told us something and we think it was obtained by torture, I don't think many intelligence agencies would say, 'Well, that simply goes in the waste-paper basket.'"

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