

homes not bombs

tuesday, july 12, 2011

Despite incredibly "Weak Case," Hassan Diab Forced to Keep Resisting Extradition to France

July 12, 2011 – Dr Hassan Diab is a Canadian university professor fighting for his freedom, and for his life. The French government wants him to face trial for what they allege is Dr. Diab's involvement in a 1980 bombing that killed four people. If convicted, he could spend the rest of his life in prison.

There's only one problem. Dr. Diab's fingerprints don't match the suspect's. His palm prints do not match. The physical description does not match. The handwriting does not match. The allegations against him have been found "weak", "suspect," and "confusing" by a Canadian judge. That same judge concluded June 6 that "the case presented by the Republic of France against Mr. Diab is a weak case; the prospects of conviction in the context of a fair trial, seem unlikely."

With such a strong defence, one would think Dr. Diab would be breathing easy. Instead, he is strapped to a GPS monitoring bracelet for which he must pay \$2,000 a month (a new version of the Dickensian debtors' prison, in which your freedom is now dependent on your ability to pay the state's surveillance costs), barred from leaving his home without a court-approved monitor, and faced with a curfew worse than that imposed on most 10-year-olds. He cannot teach, his home is frequently invaded by RCMP agents, and he lives with the unimaginable stress that he might spend the rest of his life in a small French jail cell.

PRESUMPTION OF GUILT

How could such an outrage occur? Under Canada's extradition law, the duty of a Canadian court and the Minister of Justice is, first and foremost, to the government seeking an individual. That individual no longer enjoys the rights that are supposed to be accorded everyone else in this country facing the deprivation of their liberty. Canadian standards of evidence are thrown out the window. The case against the individual is presumed to be reliable, regardless of how many inaccuracies, errors, omissions, and contradictions are contained within it. One cannot present evidence to show one's innocence, and the requesting state need not present any evidence of that innocence.

The deck is clearly stacked yet, as the Supreme Court of Canada has



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found, extradition is, in the end, not a legal issue, but a political decision: is the government of Canada willing to risk its relations with one of its extradition partners, or is it willing to sacrifice one of its citizens (or a refugee or permanent resident who is also sought) in the name of maintaining happy diplomacy?

In all extradition cases, the argument goes, an individual sought by another country can "sort out the mess" upon their arrival in a foreign jail. It is a process fraught with danger: a foreign government can carry out a persecution by proxy using the extradition law, claiming it has a case against a political pain in the neck living in Canada, presenting what amounts to a "prima facie" case without needing to vouch for the case's accuracy.

In the Diab case, the French government seems intent on "solving" the mystery of the 1980 bombing at any cost, even if that means nabbing someone who appears to be the victim of mistaken identity. Their main piece of evidence is an "expert" handwriting report by someone who has a degree in biology and forensics and who only took 21 hours of training in expert handwriting analysis.

QUESTIONABLE FRENCH METHODS

What was known as the Bisotti report was subject to a great deal of scrutiny during the extradition hearing, including three blistering critiques by internationally renowned handwriting experts. Indeed, the government of Canada declared that the case all came down to the handwriting, though it took numerous kicks at the can in coming to this very weak conclusion. In fact, both France and the Attorney General withdrew previous handwriting reports when it was revealed that they were based on handwriting samples that were not even written by Dr. Diab..

"Although I could not conclude it was manifestly unreliable, it was nonetheless highly susceptible to criticism and impeachment," Judge Maranger wrote of the handwriting evidence. Indeed, he went on, "evidence presented on behalf of the person sought has largely served to substantially undermine the French report; it has been shown to be evidence that is susceptible to a great deal of criticism and attack. "The Bisotti report has been shown to be based on some questionable methods and on an analysis that seems very problematic. The use of two completely separate signatures, i.e. Hassan Diab's and an illegible fictitious signature, as a means of doing handwriting comparison analysis seems illogical...I found the French expert report convoluted, very confusing, with conclusions that are suspect. Despite this view, I cannot say that it is evidence that should be completely rejected as "manifestly unreliable".

It's not just the weak handwriting evidence that is problematic. Maranger wrote that he accepted the Canadian government position that "there is no responsibility upon a requesting state to provide full disclosure of all of its evidence." Hence, 10 witnesses can testify that an individual was not at the scene of the crime, but someone's life in Canada could be uprooted and ruined because of the fact that the French, or any other government, can cook up a case that suits their needs and exclude exonerating evidence.

Maranger also notes that the Record of the case (ROC) as originally presented by France — in French, a language Dr. Diab does not speak — was "replete with seemingly disconnected information....while providing

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some conventional evidence, [it] also contained a great deal of argument, hypothesis, conjecture, and references to information received, without describing the source of that information or the circumstances upon which it was received."

This, in essence, is secret, "unsourced" information. Where did it come from? Was torture involved?

The ROC also includes information that it gleaned from "a series of reports and newspaper articles," hardly the stuff that would normally be accepted in a court (but which is normally included against individuals stigmatized by the Canadian government, such as refugees and, in the past decade, Muslims facing secret hearing security certificates and Tamils fleeing genocide.)

MAJOR MISREPRESENTATIONS

Diab's lawyers raised nine specific issues of misrepresentations including omissions, inaccuracies, and contradictions in the French case, all of which they said amounted to an abuse of process. Maranger found there was an "air of reality" to the arguments put forward by Diab's legal team, but in the end, he again dismissed them.

Indeed, Maranager bends over backwards to honour the French case, despite making statements such as "Although it was a blatant error requiring an explanation, I cannot find that it constitutes a complete failure of due diligence," and concluding elsewhere that a problem in the record "was an inadvertent error." How would he know? And more importantly, how can such problems be so easily dismissed in favour of the requesting state? In another instance, Maranger says "this was clearly a mistake on the part of the requesting authority that should have been corrected." But it wasn't. Verbal slap on the wrist to the French, an extra set of leg irons for Dr. Diab.

Under extradition law, Maranger says, there is "a presumption that evidence contained in the ROC is reliable." So much for the presumption of innocence that is supposed to belong to the person sought.

Maranager found Diab's defence was "compelling, and forcefully argued," but that in the end, this did not matter, adding "to use standards of admissibility derived from Canadian criminal law...runs afoul of the governing statute."

And so, like an Alabama judge convicting Rosa Parks for sitting in the front of the bus (the old "the law is the law and we cannot stray from it" approach that has sustained too many injustices to recount here), Judge Maranger offered up Hassan Diab as a sacrificial lamb on the altar of good relations with the French government. While washing his hands of any responsibility for this decision, he attempted to temper the view of him as a rubber stamp by stating that although he believes that the case was weak, "it matters not that I hold this view. The law is clear that in such circumstances a committal order is mandated."

But Maranager's bold statement is not backed up by the facts or the law, and contradicts the quotation he borrows from the Chief Justice of Canada's Supreme Court, who wrote in the leading extradition case: "I take it as axiomatic that a person could not be committed for trial for an offence in Canada if the evidence is so manifestly unreliable that it would be unsafe to rest a verdict upon it. It follows that if a judge on an

extradition hearing concludes that the evidence is manifestly unreliable, the judge should not order extradition.”

Hence, Maranger on the one hand says there is a strong likelihood that the French, in a fair trial, would not secure a conviction given a fair trial – and there is clearly no guarantee of a fair French trial for Dr. Diab – but on the other, draws a conclusion that is completely opposite to a higher court judge’s direction in extradition cases. If the case for “manifest unreliability” is that a conviction would likely not be registered, it is difficult to understand how Maranger can say that the case against Dr. Diab – which he admits is too weak for a conviction – is not manifestly unreliable.

UNEVEN CANADIAN STANDARDS

In addition, as Diab’s lawyer, Donald Bayne, pointed out subsequent to the ruling, if the case had been heard in British Columbia, Diab would be a free man today, for their courts rule differently than Ontario courts on extradition cases.

“The British Columbia Court of Appeal decided there ought not to be an extradition if that is the nature of the extradition case, so Dr. Diab today would be walking a free man in Vancouver had this case been conducted there and in Ontario he is behind bars,” Bayne said. “That is a situation that is simply untenable in Canada, that Canadians are subjected to totally different standards depending on where they live. I would suspect that would attract the attention of the Supreme Court of Canada.”

While some have asked why Dr. Diab doesn’t simply throw in the towel and go to France and “sort out the mess,” the answer is simple: France has been criticized by the international community and is currently before the European Court of Human Rights for violating Article 6 of the European Convention on Human Rights – the fair trial right –for running terrorist trials based on secret, anonymous intelligence.” In addition, why should someone give up their life in Canada and risk spending years fighting in another country, especially given the slipshod “case” against them?

The Diab case is a wake-up call for everyone in Canada, for the ease with which an everyday regular life can be disrupted by such a case is frightening. While Dr. Diab is launching an appeal that could very well go to the Supreme Court, he and his partner, Rania Tfaily, have a long struggle ahead of them.

Individuals concerned about the ease with which basic human rights can so suddenly disappear in these cases can get involved on many levels:

WHAT YOU CAN DO:

1. Write to the Minister of Justice, Robert Nicholson, and urge him to stop Dr. Diab's extradition. Email: rob.nicholson@parl.gc.ca

2. Help ease the huge financial burden carried by Hassan and Rania. We are seeking 100 individuals who can pledge \$20 or more a month for the rest of the year to help pay the cost of the GPS monitoring. If you are willing to be a proud supporter of Hassan's right not to be subject to detention if he cannot afford the cost of state surveillance, please email us at diabsupport@gmail.com OR visit <http://www.justiceforhassandiab.org/donate>

3. Sign the statement "A Shock to Our Conscience and an Affront to Liberty" (located at <http://stopextradition.diabpetition.org/>)

To sign, simply send an email to diabsupport@gmail.com letting us know that you wish to sign


4. Help organize an event in your community about Hassan's case and the extradition law.

5. Post details about the injustices in Hassan's case on your facebook or myspace

6. Write to newspapers and to journalists about Hassan's case and the unfairness of Canada's extradition law

More info: Justice for Hassan Diab committee

(report from Matthew Behrens of the Campaign to Stop Secret Trials in Canada, tasc@web.ca)

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