

## Notes on the abuse of process factum prepared by Hassan Diab's lawyer Donald Bayne

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Summarized by Bob Thomson

The claims and the alleged "confirmation" of intelligence material contained in the summary of evidence from France dated 12 December 2008, i.e. the certified record of the case (ROC - Record of the Case), the French formal evidence against Hassan Diab, as presented to Canadian courts for the purposes of extradition for detention in France, are full of misrepresentations, exaggerations, inaccuracies, omissions and editorial comments which create a misleading, incomplete, unreliable and unfair Record of the Case.

This cherry-picking of the evidence, ad hominem statements, multiple serious misrepresentations, use of unacceptable, unsourced "intelligence" at the heart of ROC, substituted for required evidence, leads one to conclude that France should have been disentitled from pursuing its extradition application before the Canadian Court because of this apparent abusive conduct.

What I have tried to do here is to synthesize the 94 pages and nine themes of legal arguments in the Abuse of Process Factum of October 2010 from counsel for Hassan Diab (the AofP Factum) into a readable summary of the many complex legal facts that are presented therein.

- **1 Changed intelligence story-line when faced with contradictory defense testimonies**
  - (P. 40 of the AofP Factum and Tab 1, Appendix B, paragraph 13 of the ROC)
  - In his international rogatory letter (IRL) of 5 June 2008, the French judge Marc Trévidic said "Hassan Diab entered France with his real passport, returned in the same way, and used the false passport in the name of Alexander Panadriyu to operate on French territory".
  - In the ROC dated 12 December 2008, the magistrate claims the terrorist team used fake passports to enter France from Spain, claiming that this corroborates their unsourced, uncircumstanced "intelligence", which no one can verify or challenge, and which is the subject of much controversy. (P. 45 ROC)
  - The first assertion above was withdrawn by France when it was shown that there were no French entry or exit stamps in his passport, exculpating Hassan Diab.
  - One of these assertions by France is obviously false, but the Canadian extradition judge appears to have been negligent in its duty to resolve this contradiction.
  - *In a newspaper article from October 3 1984, written by Annette Levy Willard, she said that Israel claimed the attack was carried out by Palestinians who returned to Beirut via Germany in a rented car, not to Madrid by train as France claimed in the ROC. (P. 54 AofP Factum)*
  
- **2 Misrepresentation of similarity with the Antwerp bombing of 1981**
  - (Inaccuracy, omission) (p. 47 AofP Factum)
  - France tried to corroborate the accusations against Hassan, saying that the Copernic attack was

similar to another attack in Antwerp, Belgium on October 21, 1981. (p. 45 ROC) To support this corroboration, France listed the ways they claimed that the two incidents were similar.

- France claimed that the Antwerp attack had the same anti-Semitic motive as the Rue Copernic bombing (p. 55-57 ROC) and that, on the basis of "intelligence" of unknown source, Hassan Diab was involved there also.
- But according to a French report (D2328-D2331) Belgian officials believed it was an anti-capitalist attack, was carried out by individuals linked to the IRA, used different explosives and that neither group, the FPLP or the PFLP-CG, claimed responsibility. (P. 49-51 AofP Factum Source: Application Record, Tab 4 (D Documents), p. 90 D2328-2331)
- The lack of inclusion of this Belgian evidence about the bombing at Antwerp actually hides conflicting information by France.

### ● 3 Misleading representation of a PFLP-GC connection

- (Misleading) (Art. 33 Factum AofP p. 52)
- France, in the ROC that they have certified, said the PFLP-GC (Popular Front for the Liberation of Palestine – General Command) was involved. They said Souhaila SAYEH, associated with the PFLP-GC, scouted both the Copernic and Antwerp attacks, and that Hassan had accompanied her in Antwerp in October 1981, based on an unknown "intelligence" source.
- However, according to the French intelligence document D4052, Souhaila Sayeh was in a hospital in Prague for four months until the end of 1979 and could not have carried out the reconnaissance in Paris for the Copernic bombing in 1979, as claimed by France.
- The attempt by France to link Hassan to the Copernic bombing through this third party failed, because their own records prove that SAYEH was not in France in October 1979. France omitted this key evidence to persist in claiming a link that was already known to be impossible."
- In addition, the ROC "says" she was born on January 1954 in Tehran (p. 52) and also in Lebanon on February 28 1953 (p. 53), an obvious impossibility and sloppy "evidence" from France.

### ● 4 Contradictory information on the means of exit from France

- (Contradiction) (p. 54 AofP Factum, p. 42 ROC)
- In a Liberation article of October 3 1984 written by Annette Levy Willard (P. 42 ROC D2950), she said that Israel claimed that the bombing was carried out by Palestinians, whose names were known to Israeli intelligence.
- The document annexed to the ROC, D2950, also says Israel has identified the attackers and said they returned to Beirut via Germany in a rented car, not to Madrid by train as stated by France in the ROC. (P. 45) France omitted this fact in the ROC.
- This destroys the Madrid-Paris theory invoked by France on pages 42, 48, 49, 53, 64 and 71 of the ROC. France refers to these "particularly well informed newspaper articles", but has not included this fact in the ROC as it would destroy their unsourced, uncircumstanced Madrid-Paris false passport case.

- [Note: The following information does not come from the ROC or the AofP Factum] *Mr. Jean Chichizola, who appears to have had privileged access to French files, said in his book "The Copernic Affair" (p. 76) that the BKA, Germany intelligence service, advised the French DST in November 1980 that their informants in the Red Army Faction, with "good" contacts within Palestinian groups, told them that the five commandos left via a Paris airport on October 4, 1980. This may be a part of the record cited by the DST in the ROC (at p. 40-41) but is not listed in the inventory of intelligence documents cited in the French summary of evidence. It may not be included because it contradicts their theory of exit from Madrid.*

- **5 False accusation of belonging to the PFLP-GC**

- (Contradiction) (p. 58 AofP Factum)
- On page 42 of the ROC, 12 December 2008, France says Hassan Diab was known to be a member of the PFLP-GC in 1980
- But France also indicated in its international letters rogatory (CRI) of 5 June 2008, that Hassan was not known for being a member of a Palestinian terrorist group
  - "In 1999, when the DST obtained the names of persons alleged to have participated in some capacity or another in the rue Copernic attack, and for some of them, in the Antwerp attack, Hassan Diab has not was known to be a part of a Palestinian terrorist group." (Paragraph 11, Schedule B, CRI of 12 November 2008, Application of the requesting State, p. 41 AofP Factum, October 15, 2010)
- The name of Hassan appeared by chance in the address book of Youcef El Khalil (interviewed in Nice in 1988 in another completely different matter) along with many other names. The evidence presented by France in D3933-D3951 shows that Khalil was not a member of the PFLP or the PFLP-GC. [See also misrepresentation number 9 below.]

- **6 Misleading citation of elements of the intelligence "evidence"**

- (Misleading, inaccurate) (p. 61 AofP Factum, p. 43 ROC, D2927)
- France says in the ROC (p. 43) that French journalists, in a February 1, 1983 interview on Europe 1 radio, that Palestinian militants had claimed that someone named Hassan, Lebanese, allegedly Panadriyu, bought the motor bike
- The journalist Xaxier COLIN told the French crime squad that they learned that the attack was carried out by two Palestinians. Hassan Diab is not Palestinian
- The information received from the journalists (summarized in D2927) actually designates the person who placed the bomb (Panadriyu) as a Jordanian named Abdallah, member of the PFLP/GC in Kuwait. (P. 46 ROC)
- Thus, document D2927 from France indicates that Panadriyu was known as a Jordanian named Abdullah Abdullah (not Hassan), and the other man, Lebanese, was named Ahmed (not Hassan). Real names were omitted, edited or "buried", perhaps because they exonerated Hassan, conveying a false image of the information received as to the identity of the suspect.

- **7 Deceptive effort to link Hassan Diab's ex-wife with terrorist Zaki Hello**
  - (Misrepresentation) (p. 64 AofP Factum, p. 54 & p. 71 ROC)
  - The ROC was written to give the impression that Nawal Copty, ex-wife of Hassan, had a relationship with a terrorist chief named Zaki Hello, and that she hid the fact that she had an uncle named Zaki Helou (with the false inference Hello and Helou were one and the same).
  - The case file characterizes the "hearing" of Nawal Copty November 24, 2008 in the United States as if she had forgotten or refused to give details about the nature of her relationship with Zaki Helou (or Hello). In fact, Nawal Copty does not have an uncle named Zaki Helou (or Hello), but she has an uncle named Ziki Copty. In the "hearing", Nawal Copty said she has an uncle named Ziki Copty, and did not hide this fact.
  - In French document D4052, a report by the commander of the French DST, Philippe Chicheil, there is no reference to "Zaki HELOU". There is only a reference to "Zaki HELLO". (P. 65 AofP Factum) However, the surname "HELOU" was gratuitously added to the case file (p. 54) to match it or make it "fit" with the fact that Nawal Copty has relatives with surname "Helou."
  - The case file is misleading in that the uncle of Nawal Copty, Ziki Copty, wrongly becomes Zaki Hello the terrorist. This unjustly and incorrectly leaves give the impression that she had a relationship with a terrorist. This is part of the practice of misrepresentations demonstrated throughout the abusive record of the case.
  
- **8 Change of passport stamps from "unreadable" to "readable"**
  - (Contradiction) (p. 67 AofP Factum, pp. 50-51 ROC)
  - In the document D3978 dated 15 February 2008, the months of two exits stamps from Lebanon on p. 60 of Hassan's passport (which was issued on May 10, 1980), were said to be illegible i.e. - 22 (*illegible*) 1980 and 8 (*illegible*) 1981. (p. 69 AofP Factum)
  - The ROC certified by France on December 11, 2008 (p. 48) states that the dates were for exits on 22 August 1980 and 8 October 1980. (p. 51 ROC)
  - The months illegible on February 15, 2008 in D3978 became "legible" nine months later, in the ROC certified by France on 12 December 2008.
  - It is also mentioned that the number of the passport of Dr. Diab presented by France was 807 433 on page 48 of the ROC and 807 533 on page 49 of ROC
  - It is also interesting that the Turkish visa on page 16 was delivered May 24, 1981, a Sunday (p. 51 ROC), while the hours of the Turkish embassy in Beirut are from Monday to Friday only.
  - In addition, Spanish authorities have indicated that they have no records for Visa #5314 issued September 17, 1980 to Hassan, making it quite possible this too was one of the several obviously fake passport entries made after he lost the passport in April 1981 in Beirut.
  
- **9 Misrepresentation of declarations by Youcef El Khalil**
  - Misrepresentation (p. 70 AofP Factum, p. 59 ROC)
  - The name of Hassan Diab was found in the address book of Youcef El Khalil, who was interviewed in Nice in 1988, in a case that did not concern the PFLP and the PFLP / OS but

rather threats in 1988 from a "support committee for Arab Political Prisoners".

- Hassan Diab and Youcef El Khalil were university friends and associates, and had worked together with the Bank of Lebanon. Hassan was one of the many names from A to Z in the address book.
- France claims (p .63 ROC) that Youcef El Khalil said that his interrogation 12-15 March 1988 in Nice was focused on Hassan Diab.
  - He was interrogated under conditions that suggest severe sensory deprivation. (See p. 71 of the Abuse of Process Factum for schedules of long interrogations under custody, many in the early hours of the morning.)
- But in Annex B of the ex parte application by France of 12 November 2008 and in the documentation D3933 - D3951, it is shown that the interrogation of El Khalil was related to terrorist threats in 1988 and the name of Hassan Diab only "appeared incidentally", i.e. in El Khalil's address book. (p. 73 AofP Factum)
- Furthermore, the evidence in D3933-D3951 indicates that El Khalil was not even a non-dissident PFLP member, let alone a member of the dissident PFLP-GC. (P. 74 AofP Factum) He seems to have known or have met many people associated with the PFLP, but was not himself a member.
- It seems that France has manipulated the folder to give the impression that there was a link between Hasan and the PFLP.

#### **End of the summary of the Abuse of Procedure Factum of 15 October 2010 by Donald Bayne**

- **Unmatched palm and fingerprints** (p. 74 AofP Factum)
  - Car palm print
    - France undoubtedly has compared the imprint of the palm on the window of the car that was rented by the bomber with the imprint of the palm of Hassan Diab. It is inconceivable that they did not. But they have not put this scientific information in the ROC, probably because they did not find a match and therefore this was detrimental to the cause of France.
    - In any case, an RCMP report on the palm print of Hassan Diab shows that it was not his palm print in the car.
  - Fingerprint of the shoplifter
    - The alleged bomber, Alexander Panadriyu, was arrested for shoplifting a pair of pliers on September 27 1980. France asked the Canadian judge for the fingerprints of Hassan Diab to compare them with the fingerprints on Panadriyu's police statement.
    - France confirmed in April 2015 that the fingerprint(s) on the police report are not Hassan's.
  - France has confirmed that the fingerprint(s) on the Hotel Celtic registration card are not Hassan's.
- **Drawings / sketches used to identify the suspect** (p. 9 AofP Factum)
  - The French police had made sketches which are supposed to represent a composite image of the buyer of the bike, the thief, and the tenant of the car, but not of the man who registered at the

Hotel Celtic, whose 5 printed words on the hotel registration card are now the only non “intelligence” evidence against Hassan Diab.

- The analysis of the French writing of this card has been described in Canadian courts as doomed to failure by many international handwriting experts and by the Canadian judge.
- The sketch of a man aged 40 to 45 years of medium build with short brown hair, no glasses and no mustache does not match that of a very thin Hassan of 25-30 years with long blond hair and a thin mustache that went around his mouth to his chin (p. 78 of AofP Factum)
- The prostitute who slept with the tenant of the hotel room, whose writing is now the only evidence against Hassan, said he did not resemble the sketches of the buyer of the bike or the thief. (P 78 AofP Factum and Application Record, Tab 3, pp 20-21; 23, 34; Appendices 5, 6, 7)
- In preparing the sketch, French police showed the store clerk 53 photographs in which there were 33 photos of 18 different men. Nine of the 33 were of Hassan Diab. The French showed only 10 of these 33 photos to the Canadian authorities, 9 of Hassan Diab and one of a woman. Dr. Diab and Canadian authorities were denied access to all 53 pictures, and are therefore unable to determine the methodology used to produce an identification and therefore whether this was a fair test.

## ● Handwriting Analyses

- The five words on a registration card from the hotel Celtic, which are printed in capital letters, are now the only “scientific” evidence against Hassan Diab.
- The first two analyzes of writing comparing five words printed in capital letters of the suspect on a hotel registration card in September 1980, were carried out by two French experts, one of which refused to confirm a match, while saying there were similarities. The second said definitively that the 5 words of the suspect printed in block letters were a match for the submitted writing, even claiming that the writer had attempted to conceal his "writing". (P. 59 of D3720 and D3862 ROC)
- The problem with these tests is that they were conducted on writing samples provided by the University of Syracuse which included writing that does not belong to Hassan Diab. (P. 88 of AofP Factum, D3440 to D3595, Maranger 6june2011 p. 26)
  - "Above all, they conclude that the factual basis on which the French reports were based may have been partly or entirely incorrect; the specific error being that a part of the writing samples used to compare to the registration card of the hotel Hassan were actually written by someone else." (Canada (AG) v. Diab, [2010] OJ No. 298, Maranger 6june2011 p. 26)
  - France was forced to recognize this "error" and removed these analyzes from their extradition evidence.
- However, the French authorities used these unacceptable analyzes against Mr. Diab in his bail hearing on April 3, 2015 in Paris! (From the extract of minutes of the Secretariat-Registry of the Court of Appeal of Paris, FILE NO 2015/01940 No. Parquet: P810410092 / 1, Judgment of April 3, 2015, C / DIAB Hassan Naim, p. 10)
  - It should be noted that the extract of the minutes of the bail hearing of April 3 2015 cannot be

strictly called a "record". Of the 14 pages, 8 are a summary of "evidence" drawn from "intelligence" information and interviews. No mention is made of the presentations by council for Dr. Diab or presentations made by lawyers representing the victims.

- A second analysis of handwriting (this time) of the writing of Hassan and the five words printed in blocks on the registration card was produced by Anne Bisotti. Five international handwriting experts, two with French experience, testified that the methodology used by Ms. Bisotti was flawed, did not follow international (or French) standards and was therefore not reliable. Judge Maranger of the Superior Court of Ontario noted in February 2011 that he found it "very problematic", "very confused" and with "suspect conclusions." (P. 30) He added that "the prospects of a conviction in a fair trial appears unlikely". (Maranger 6juin2011, p. 48)
- It should be noted that this erroneous handwriting analysis is now essentially the only evidence against Mr. Diab.

- **Refusal to interview Hassan in Canada**

- The French said that Hassan was only wanted for questioning and had not been "indicted", that is to say, not charged. (Para.165, p. 61, the Ontario Court of Appeal 4-5 November 2013)
- However, even if he was in the United States to interview Nawal Coptly November 24, 2008, the investigating judge did not attempt to interview Hassan in Ottawa after his arrest on 13 November 2008. Why not?