

## Jewish Law and Our Most Cherished Traditions Require Justice for Hassan Diab

by: **David Mivasair** on July 5th, 2016

Out of the 613 commandments our tradition identifies in the Torah, only two are expressed with the word *tirdof* -pursue it! One is “seek peace and pursue it. “The other famously is “*tzedek, tzedek tirdof* -justice, justice you shall pursue” in the Book of Leviticus. Our sages of old taught that in repeating the word “justice,” the Torah is telling us that we must pursue justice only through just means.

When acts of terror are committed and innocent people are tragically killed, to apprehend the perpetrators and assure they will never kill again is just. However, identifying and apprehending the perpetrators must be done only by just means.

This is why we must not remain silent as Canadian citizen and Ottawa professor Hassan Diab faces conviction in France for a gruesome crime for which no credible evidence against him has been presented.

Mr. Diab is accused of a crime of the most heinous sort: planting a bomb outside a Paris synagogue in 1980, which killed four people and seriously wounded scores of others. Such a crime demands justice for the victims, of course, as well as the family members of those innocent lives stolen on that fateful day.

But justice can only be served – as in any case, regardless of the degree of horror inflicted – if the evidence points clearly to the culprit. Should a man be convicted of a crime for which there is no credible evidence against him?

The evidence presented against Diab that alleges to link him to this crime as the key suspect has been fully discredited in a Canadian court. The Canadian extradition judge found the evidence against Diab to be “very confusing,” “very problematic,” “convoluted,” and with “suspect” conclusions, and stated that “the prospects of conviction in the context of a fair trial seem unlikely.” However, due to Canada’s unfair extradition law, Canada’s judicial system declared its hands were tied, and allowed a Canadian citizen to be extradited to a foreign country in the absence of reliable evidence presented against him.

Diab, who was born in Lebanon, has been a Canadian citizen for decades, having taught at Carleton University and the University of Ottawa before being extradited to France. He was a professor of sociology, and was regarded by his colleagues as a warm and peaceful individual who was devoid of any hate. He has always had a secular and humanist outlook on the world, and there has never been a racist or anti-Semitic bone in his body.

Diab has always maintained his innocence, and his colleagues and thousands of fellow Canadians have

supported his right to a fair process from the start. From national labor unions to civil liberties associations, Diab's presumed innocence has been widely championed throughout Canadian civil society. But the legal and political system in Canada failed him.

As a rabbi, it didn't take long for me to see Diab's treatment as grossly unjust. In the absence of any credible evidence presented against him, he was imprisoned in Canada before being released on strict bail conditions, forcing him to wear a GPS ankle bracelet that cost him about \$2,000 a month. He was barred from working as he battled in the courts for six years before being extradited to France. France does not extradite its own citizens to foreign countries, meanwhile.

Let's take a look at the evidence French authorities instructed Canadian prosecutors to use against Diab. The 'smoking gun' evidence was a piece of handwriting that was written by the suspected bomber on a hotel registration card in 1980. The five block-letter words on the card were compared to handwriting samples the French received from Syracuse University, where Mr. Diab completed his PhD. France alleged with absolute certainty that the samples they had in their possession and the writing on the hotel registration card matched. It appeared they found their man.

As it turns out, many of the handwriting samples they were using did not even belong to Diab – it was the handwriting of his first wife. When the 'smoking gun' evidence in France's case became exposed as false, they instructed the Canadian prosecutors to withdraw the evidence.

Months later, they introduced another handwriting analysis report from a supposed French expert. This report also claimed to implicate Diab as the key suspect. Five of the world's leading handwriting experts – from the U.S., UK, Canada and Switzerland – examined this French report. All of these leading experts in their field independently came to the same conclusion: that the findings of the new handwriting analysis report were biased and completely unreliable due to faulty methodology and that an objective analysis would point to Diab's innocence. Even the Canadian extradition judge concluded that these leading experts "essentially torched" the French report.

Aside from the entirely discredited handwriting reports, the other key evidence presented by the French has been of an unknown source. It is secret intelligence, which Western democratic countries widely consider to be inadmissible as evidence. Nobody knows where this secret information came from – the French don't know, Canada doesn't know, and neither do Hassan and his legal defense. A fundamental basis for any fair trial is that the defendant be allowed to know the evidence presented against him/her so he/she can challenge it. Unfortunately this is not so in Diab's case.

All we know is that the secret 'information' likely came from either a Syrian intelligence agency, or an old discredited East German Stasi file. It is impossible to verify whether or not this secret information was gleaned from torture. In any event, it is wholly unjust to base a charge of such magnitude on evidence whose source is unknown to both the prosecution and the defense. The intelligence was withdrawn from the extradition hearing in Canada in recognition of its extremely problematic nature. However, the intelligence remains in the dossier in France.

Further evidence presented by the French actually exonerates Diab unreservedly. Palm prints were recovered from a car used in the crime, and the key suspect left fingerprints on a police form. These prints conclusively do not belong to Diab.

As it turns out, Diab also doesn't meet the physical description of the man who wrote the hotel registration card which was used in the handwriting analysis. The French evidence described this man as a 40 to 45-year-old European man with a stocky build and who spoke French without an accent. Diab has never had a stocky build, and in 1980 he was 26 years old and didn't speak French well.

Sadly, Canada's unfair extradition law presumes that the evidence presented by the requesting country be regarded as credible. This led to Diab's unjust extradition, in spite of his lawyer's successful efforts to discredit all of the evidence presented in the Canadian extradition court.

Before Diab's extradition, a number of people familiar with the French legal system warned that he may not be subject to a fair trial under France's anti-terrorism laws. Expert reports from the defense are regarded as being much weaker than expert reports commissioned by French authorities. So the five internationally leading handwriting experts, who each independently made damning conclusions regarding the state's handwriting analysis report, would be ignored. Also, France's anti-terrorism laws allow the use of secret, unsourced intelligence as evidence.

Sure enough, on December 17, 2015, Diab lost an appeal to have the discredited handwriting analysis reports and the unsourced intelligence withdrawn from his dossier in France, where he has been in pretrial detention since being extradited on November 14, 2014.

It is clear that Diab is already being subject to an unfair process, since his request to have the discredited handwriting reports and unsourced intelligence removed from his dossier was denied. Even the two handwriting reports that were based on many documents that were not written by him and were withdrawn from the Canadian proceedings remain in the dossier.

Recent developments in Diab's case reinforce the need to end his Kafkaesque nightmare. A French judge [ordered Diab's release on bail](#) due to doubts about the evidence in the case. On May 14, 2016, Hassan was released on bail. The prosecutor appealed the judge's decision and, after spending 10 days out of prison, Hassan was [ordered to return to prison](#). It was an injustice to extradite him in the first place, and it is an injustice to keep him incarcerated while France continues a 35-year investigation.

It has become obvious that broad and sustained pressure in both Canada and France is needed so Diab receives a fair process and is allowed to return to his home and family in Canada. Otherwise, Diab will be wrongfully convicted of a crime to which he has no connection.

The biblical mandate to pursue justice through just means compels us to speak out for justice not only for the victims of the heinous crime committed nearly 36 years ago outside the Paris synagogue, but for Hassan Diab. The peaceful professor from Canada has been unjustly caught up in a very tangled web – not of his own making.

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