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Secrecy in Extradition Case Threatens Hassan Diab

Ottawa Man Fights Forced Removal from Canada Based on Secret Intelligence

By Matthew Behrens

Like a number of Muslim men in Canada, Ottawa's Dr. Hassan Diab is forced to wear the ultimate symbol of state control: a GPS monitoring unit. This tracking device, for which the impoverished and currently unemployed university professor was forced to pay \$30,000 for the first year (and now \$1,500 monthly), is permanently affixed to his leg, tracking his every move under strict house arrest.

Diab bears this burden because the French government, which is attempting to have him forcibly removed from Canada, accuses him of involvement in a 1980 bombing on Paris' Rue Copernic that killed four people. But in an unprecedented move, his extradition is being sought on the basis of secret "intelligence," the source of which even French officials are unaware, with the possibility that it was extracted under torture.

Starting Monday, November 8, Diab will appear in an Ottawa courtroom in an effort to end a Kafkaesque nightmare that began with his arrest two years earlier. Jailed under Canada's notoriously weak extradition law, Diab endured over four months of detention before transfer to draconian house arrest, only allowed to leave his residence with one of the five sureties who posted his \$290,000 bail.

Because Hassan Diab is a common Middle Eastern name, Dr. Diab chose not to respond with alarm when, while working in 2007 as a University of Ottawa sociology professor, he was approached by a *Le Figaro* reporter asking him whether he knew French authorities were claiming he had been involved in the 1980 bombing.

But what Diab could not so easily dismiss were the unidentified individuals and vehicles that began following him, and the attempted break-in at his residence. Although he filed numerous reports with Ottawa police, the intensive surveillance (which he later found out was conducted by RCMP agents) continued, culminating in his 2008 arrest.

Since then, Diab has been involved in protracted court proceedings challenging weaknesses in the French case. It's been a frustrating process, in large measure due to the low threshold French authorities are required to meet in order to extradite him. Indeed, as Manitoba Judge Freda Steel wrote in a 1999 extradition case, "evidence at an extradition hearing should be accepted even if the judge feels it is manifestly unreliable, incomplete, false, misleading, contradictory of other evidence or the judge feels the witness may have perjured themselves."

Those subject to extradition under such maddening conditions are reassured that they can work things out in the requesting country after they have been uprooted from Canada and jailed overseas. But critics note such a process easily undermines human rights protections, including the right to be free from arbitrary arrest and persecution based on ethnicity or religion. "All too often," writes University of Alberta law professor Joanna Harrington, "extradition is seen as a matter of comity or respect for Canada's international relations, but without recognition that this respect should also extend to Canada's treaty engagements with the international community in the field of human rights."

Diab's supporters point out that even when pieces of evidence alleged to be "smoking guns" have been withdrawn from the case for what some experts have deemed "appalling unreliability," the case remarkably goes on, with the French cooking up new assertions that they try to mold in a manner that they fervently hope will stick.

Indeed, a 94-page factum filed by Diab's lawyer, Donald Bayne, declares the case is replete with "misrepresentations, overstatements, misstatements, omissions, inaccuracies and editing that create a misleading, incomplete, unreliable and unfair Record of the Case."

The Ontario Superior Court judge presiding over the extradition on November 8 will hear about a litany of problems, including the fact that Diab's finger and palm prints do not match those offered by the French. In addition, key pieces of evidence appear to have been tampered with, possibly amounting to fraud, and information that would exonerate Diab has been buried in the record, with lawyers representing the Canadian government having argued the French are under no obligation to present information in their hands that would cast a positive light on Dr. Diab. Indeed, French documents cited by Bayne state Diab's only potential link to this case is "incidental" because, in a remarkable leap of illogic, that common name happened to be in the phone book of an individual who was interrogated, but never charged, in a case completely unrelated to the 1980 bombing. They also concede that Diab was "not known to be part of any" terrorist group.

Despite what would appear to be an open-and-shut case in Diab's favour, the French have refused to correct any misrepresentations, contradictions, and inaccuracies in their alleged case, despite having had 10 months to do so.

But why? Perhaps, given a war-on-terror climate that automatically assumes guilt when a Muslim is suspect, bedrock rule-of-law details fall prey to fear and profiling. That's certainly the case in the French context. Internationally respected Human Rights Watch has produced two separate reports condemning the French government's broadly defined and applied counterterrorism laws and procedures for failing to live up to fair trial standards. Equally of concern is the French judiciary's acceptance of evidence derived from torture.

Last month, the BC Civil Liberties Association wrote a letter to Justice Minister Rob Nicholson outlining its concerns that the use of the unsourced, secret French intelligence in the Diab case, possibly derived from torture, "would put this country in breach of the universal prohibition against torture."

With his life in limbo, Diab will enter the Ottawa Courthouse November 8 hoping the rule of law prevails, and that, even with the low extradition standards, the sheer weight of the facts will tilt the case in his favour. But he and supporters are not resting easy. They are asking that individuals and groups across Canada add their name to a statement calling for his extradition to be stopped and for the process to be brought in line with Canada's human rights obligations. That statement, and further background, are at <http://www.justiceforhassandiab.org/>

Posted by TASC at 6:11AM



Labels: Hassan Diab