



Report on Hassan Diab Extradition Hearings.

by Randal Marlin, Academic Director

**For: Civil Liberties Association Executive Meeting
National Capital Region, January 10, 2011**

As much as my other commitments have allowed, I have attended the hearings on Hassan Diab, perhaps a third, including some of the most important proceedings.

He is facing extradition to France to stand trial for a bomb attack that took place outside a Paris synagogue in 1980, killing four people and injuring dozens. A sociology professor, Dr. Diab was arrested by RCMP in November 2008, confined for over four months and released only under very strict conditions including the wearing of a GPS tracking instrument that he has had to pay for himself at \$30,000 each year on top of his legal fees. In the summer of 2009 he was abruptly fired from a teaching position at Carleton University following protests from B'nai B'rith.

Canadian extradition law has a very low bar when it comes to the evidence necessary to have a person extradited. Only if the evidence presented is “manifestly unreliable” will the accused’s right not to be extradited be upheld.

Nevertheless, Diab’s lawyer, Donald Bayne, has argued that the evidence used to support Diab’s extradition has indeed been “manifestly unreliable.”

The evidence in question, key to the whole case, is based on alleged similarities between handwriting appearing on a Paris hotel registration card and samples of Diab’s own handwriting. Whoever signed the false name “Alexander Panadriyu” is considered by French investigators to be the one who planted the bomb in a motorcycle saddlebag outside a synagogue on Rue Copernic

A major break for Diab came when Ontario Supreme Court Justice Robert Maranger ruled that he would be willing to hear evidence from three handwriting experts concerning the methodology used in a report by Ann Bisotti, purportedly a handwriting expert, for the French authorities.

All three expert witnesses for the defence were critical of the terms of reference for the Bisotti report. She was asked by the prosecuting magistrate, Marc Trévidic, to look for similarities between the two writing specimens and to report on whether these similarities showed either that Diab was “probably,” or “possibly,” the signer of the hotel registration card. She was not asked to look for differences in the light of which a judgement “probably not,” might be made. In other words, the experts testified, there was bias in the direction given to the handwriting analyst.

The strongest language was used by British forensic document examiner Robert Radley, as reported by Chris Cobb in the *Ottawa Citizen* January 5, page C4. The main conclusions of the Bisotti Report, Radley said, were “frankly absurd – totally misguided and totally incorrect.” The report was made in apparent ignorance of standards developed by the European Network of Forensic Handwriting experts and was “fatally flawed” as a result. In Radley’s view Bisotti’s methodology contradicted those standards, and her qualifications and professional development were “sadly lacking.”

What was clearly emphasized by all three experts was that a handwriting analysis looking to identify two samples as written by the same person must look not only at similarities but also differences. As Radley pointed out, the majority of people will begin the letter “o” somewhere between 10 a.m. and 12 on a clock dial. Finding similarities of that sort, of which there are many, don’t identify a person as the author of both samples. You need to look for personal characteristics in the writing samples, and then you also have to look at differences. Failure to look at differences undermines the reliability of an analysis.

As Radley said, this is true not only of handwriting analysis but of forensic identification generally. You can have information about a killer that matches a suspect in a great many ways: height 5 feet six inches, black hair, a scar under the left eye, etc. You can accumulate many similarities that seem to provide overwhelming positive identification. But only one difference can be enough to invalidate the identification, if, say the killer is known to be a Jamaican black person and the suspect is Chinese. Credible forensic analysis must look at differences and not just similarities. Her apparent dismissal of differences in the handwriting specimens as simply natural variations, and her failure to recognize other differences, simply did not conform to acceptable standards for handwriting analysis.

Radley said that Madame Bisotti, to be properly scientific and objective in her analysis should have rejected the terms on which she was asked to present her report. In not doing so, she was “not showing any objectivity,” he said.

The Crown prosecutor, Claude LeFrancois, countered Radley’s claims by suggesting that his lack of expert knowledge of the French justice system and the standards acceptable in that system might detract from the authoritativeness of his judgement. I was not present at that particular part of the proceedings, but my own view is that science is universal, that there is not a “French science” as distinct from “German science,” and that the arguments made by the expert handwriting witnesses for the defence were compelling.

Canadian extradition law has made it clear that there must be prima facie evidence sufficient to a Canadian court that would support proceeding to trial. Lacking such evidence, and being presented with “manifestly unreliable” evidence, would fall short of the necessary level to justify extradition.

In all the days I spent in court, I was impressed by Justice Maranger’s fairness in upholding or rejecting both prosecution and defence lawyer’s objections. His fluency in French was a great asset when it came to dealing with challenges to the English translation of the French documents.

Civil liberties for persons with Middle Eastern names have been greatly jeopardized since 9/11. I see a similarity between the Bush administration’s directions to the CIA to come up with evidence showing Iraqi involvement in 9/11, while ignoring contrary evidence, and the direction to Bisotti to look only at similarities to establish a possible or probable link between Hassan Diab and the hotel registry handwriting.

If extradited, Diab would enter a criminal justice system that has been condemned by rights groups for

the latitude of its acceptance of evidence, including that obtained under torture. We have seen how Maher Arar was grossly mistreated on the basis of such testimony. There is only the very thin layer of protection of the “manifest unreliability” test to protect Hassan Diab’s rights as a Canadian citizen not to be extradited to face such a system. Defence lawyer Donald Bayne’s attempts to give effect to that thin protection are highly commendable.