

The Honourable Arif Virani
Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, ON
October 15, 2024

Dear Minister,

I write to you again after more than a year. I confess that my patience is wearing thin. But I have not given up, for I deem it your duty to respond to my fervent appeal (and that of so many other Canadians) **not to extradite Dr. Diab a second time. There is no justification for a second extradition just as there were no grounds for a first extradition. Dr. Diab is innocent.** Not only a casualty of Canada's defective extradition law, he is also the victim of judiciaries (both French and Canadian) that have **vilified him shamelessly on the basis of pure deceit.**

You may recall that I tried to hand deliver my letter to you last summer. But the authorities kept me well at bay — out of the physical premises of the Department of Justice where I was prohibited from depositing my letter to you in an official mailbox, somewhere in the catacombs of your Ministry's building on Sparks Street. Residents of Ottawa learned of my frustrating experience thanks to an Op Ed in the Ottawa Citizen. Indeed, these Canadians (and many more besides) regard the strenuous effort required to secure a reply from you as yet another example of your government's delinquency in handling the Diab case. Considered squarely, it is an egregious miscarriage of justice and it behoves you to address it, not relegate it to oblivion.

Mr. Virani, Dr. Diab's supporters are persons of enormous resolve. They will not allow this case to disappear from public consciousness. They have scrutinized the details of the Diab file. They are aware of the mendacious assertions that have been used to defile him. It is clear to them, and to so many others, that the (2014) wrongful extradition and (2023) wrongful conviction of Dr. Diab are the respective outcomes of *a politics of deceit*, of scandalous fabrications. You may find this formulation sensational and unfounded. It is not. Permit me to elaborate on my claim and defend it with substantive proof.

*

Anyone who has read France's 2023 verdict, wrongfully convicting Hassan Diab of the 1980 Copernic bombing, will have concluded that the Paris Assize Court decision relied on a welter of undocumented statements riddled with contradictions, absurd claims, and unsolved queries. Indeed, taken as a whole, France's verdict reads as a farfetched narrative. Nor is this surprising, for the verdict was at once the reflection of a sham trial and a confusing amalgam of sundry materials, thrown together illogically. France's 32-page argument (justifying conviction) resembles the unconvincing script of a B-movie, a crime thriller rated "shlock." Baffling and often surreal, the narrative is wrought of loose ends and missing links, disavowals and the suppression of key documents and exculpatory fingerprint evidence. In short, the verdict has left many incredulous: "You can't make this stuff up," they often say. The reality is that the authors of this 32-page text could *only have made it up*. The result is a flawed, and thus knotted, fabric of fictions, lies, and unsworn statements (likely extorted through torture), intended to frame Hassan Diab —

to scapegoat him and thus bring closure to the mystery case of the 1980 Copernic attack, now more than 40 years old.

In casting him as a scapegoat, as a shadowy *stand-in* for the real culprit, French authorities sought *to appear* successful in catching the bomber. “Appear” is the operative word here, for it signals an *illusion* that was manufactured to advance France’s counter-terrorist cause and to subdue the victims’ lobby with its ceaseless calls for retribution. But if the Diab scapegoat surfaced as an expedient mechanism of psychological and political displacement, he had first to be fabricated, afforded a true-to-life character, so that, to some, at least, he would resemble the real bomber.

To be clear, the Diab scapegoat is not a real human being, he is an imaginary persona, *a structure of thinking*, and those who created this mysterious figure were practising *a politics of distraction*, intended to catch public opinion in a web of deceit. Indeed, the entire story that was cobbled together between 1980 and 1999, and that formed the basis of France’s wrongful 2023 verdict, was a red herring writ large, a veritable diversion.

In its earliest iteration (1999-2008), the story they hatched claimed that Diab travelled to France by train via Spain in order to carry out an attack on Paris’s Copernic synagogue. But after 2018, once Diab’s alibi came to light, demonstrating that at the time of the bombing he was in Beirut studying for exams, the story had to be adjusted. In that new version of the story (2021), Diab was said to have travelled to Paris by plane. He then, it was argued, returned speedily to Beirut just in time to sit the exams. There is no evidence for either of these Hollywood-style scenarios. Still, the prosecution’s 2023 version circles back to the incoherent first rendition, in which Diab is said to have travelled to Paris by train via Spain. But as the French investigative judge/magistrate Jean-Marc Herbaut stated when questioned at the 2023 trial: “You can’t have it both ways. Either Diab went by train or by plane, but not both.”

A close look at the narrative and its various incarnations reveals a plethora of contradictions, distortions, and unsolved questions. Indeed, the scrupulous work of two French investigative magistrates has illuminated these flagrant discrepancies, underscoring the speciousness of France’s anti-Diab tale. Thanks to these two magistrates (Jean-Marc Herbaut and Richard Foltzer), Diab’s innocence was irrefutably demonstrated in 2018. On January 12, Jean-Marc Herbaut ordered Diab’s release. *With this move, he, Herbaut, had rendered void the consensus of his counter-terrorist peers.*

If the story that forms the basis of France’s verdict is inconsistent in its substance, it is nonetheless consistent in its pattern of omissions, in its denial of the irrefutable evidentiary material. *Diab’s fingerprints were taken 10 times over and they never matched those of the alleged bomber. And precisely because of this powerful exculpatory evidence, prosecutors went to extraordinary lengths to fabricate inculpatory material in order to bury the inconvenient truth of Diab’s innocence.* All those actors who sought Diab’s prosecution knowingly suppressed, obscured, denied, or stamped out exculpatory evidence. There are 4 major conjunctures in which this burial of evidence occurred and on which I rest my case.

Conjuncture 1. France presents its Record of the Case (ROC) to Canada

On November 13, 2008, Diab was arrested. The RCMP took his fingerprints. The latter were sent to France for comparison with the prints of the alleged bomber. On November 19, 2008, France's investigative magistrate Marc Trévidic received a report indicating that Diab's prints did not match those of the bomber. Trévidic did not share this fingerprint comparison evidence with his Canadian counterparts. He mulled over this "discomforting" news for a few days and decided *to omit* this fingerprint evidence in the certified ROC that he submitted to Canada on December 11, 2008. Citing a 1980 (and thus out-dated) French Police document, which stated that there were no exploitable fingerprints on the hotel card, Trévidic dissembled. He used an anachronistic document to occlude his omission of key exculpatory evidence. "But court documents, as CBC's David Cochrane has indicated, "show that France (notably Trévidic's predecessor) was able to find a usable fingerprint on the hotel card in May 2007 — 19 months before the extradition request was made." Having falsified the certified ROC in December of 2008, Trévidic had essentially committed perjury on two counts: 1. he omitted the results of fingerprint analysis that excluded Diab; and 2. he denied that there were any usable fingerprints. With this mendacity, *he was knowingly pursuing the wrong man and everything that he submitted in the ROC to Canada could only have been a tissue of falsehoods.*

Trévidic's double lie to Canada was only disclosed in 2018 by the two honourable French investigative magistrates, Jean-Marc Herbaut and Richard Foltzer. But France never corrected its false statement and thus misled the Canadian Superior Court of Justice, the Court of Appeal for Ontario, and the Supreme Court of Canada. This first suppression of exculpatory evidence is to be attributed to France, the second to Canada. I turn to the extradition process to make this plain.

Conjuncture 2: Canadian Crown Attorneys abet the extradition of Diab to France

Legal scholars, such as Rob Currie and Gary Botting, have established that Canada's defective extradition law overrides Canada's Charter of Rights and Freedoms. For one, it presumes the requesting state to be reliable; in this, it allows false evidence to be taken at face value as justification to extradite the person sought. The Diab case illustrates this well. False evidence from France was used to send Diab to "purgatory" in a maximum-security prison. He languished there for more than three years without charge.

But it was not only the law that facilitated this unjust extradition; it was also agents of the law who "pro-actively" sought this expulsion. Canadian officials in the Department of Justice actively propped up the French extradition case, delaying court procedures and withholding vital information. In November 2009 they requested a comparative analysis of fingerprints. In early 2010, the RCMP produced the analysis. The fingerprints did not match. The Crown attorneys would have known this throughout the extradition hearings, yet they never shared the information with the defence or showed it to the Canadian judge who made the extradition order. In fact, the Crown attorneys regularly exchanged memos with their French counterparts pushing for and obtaining court delays until the French authorities could find a 'smoking gun' that would guarantee Diab's extradition. What was this smoking gun? Flimsy handwriting "evidence". But while the prosecutors' treatment of this material as convincing evidence of guilt was fully dismissed by 5 international experts (and later by French experts), this same handwriting

“evidence” served as a red herring to distract from the **scientific fingerprint proof** of Diab’s innocence, proof that France and Canada sought to conceal at all costs.

For a decade, France sequestered possession of fingerprint evidence that would have refuted allegations against Diab. And for eight years, Canadian government officials also knew that Diab’s fingerprints did not match those of the suspected bomber. They withheld this fact from the court, abetting a French extradition request that was tainted from the outset.

Clearly, documented fingerprint analysis, which had excluded Diab from the crime of Copernic, became **the central element that prosecutors sought to quash**. We see this with investigative magistrate Marc Trévidic who suppressed this exculpatory material in 2008. We see this again when Canadian Crown attorneys suppressed this vital material between 2010 and 2011.

Conjuncture 3. When France’s Appeals Court reverses the 2018 decision to release Diab

In 2021, the French Court of Appeal resorted to this same strategy: they twisted Diab’s exculpatory evidence out of joint with a preposterous rationalization dubbed the “careful bomber” theory. With this fanciful claim, they speculated that the bomber took extra care not to leave any trace of fingerprints on the hotel registration card that he signed. Such sophistry eclipsed all discussion of exculpatory evidence.

Conjuncture 4. The Trial

During the 2023 trial at the Court of Assize in Paris (France), a version of this careful bomber theory took on an even more risible form when an ex-police officer, unrelated to the Diab case, testified that in the 1980s there was a police policy that forbade the suspect from touching the paper on which he signed his name. With this fantastical tale, the court categorically averted all mention of Diab’s exculpatory evidence. In the same thrust, it turned the public’s attention to a *doctored-up facsimile of a lost passport*, and called this theatrical prop the smoking gun.

In a published article, Paul Browne describes the preposterous way the faded and falsified photocopy of an old passport (the original of which Dr. Diab had lost in Beirut some forty years ago after a vacation in Greece) was used to justify the verdict. Based on hearsay, “the Court heard that the original passport had been found in 1981 on the person of the nephew of the leader of a terrorist group based in South Lebanon. Allegedly, this nephew was carrying several passports under different names when he was arrested by the Italian police at the Rome Airport. The French say that this nephew was released by the Italians two weeks later and [that he] left with all of the documents. Why was he allowed to leave with the evidence, even though he was attempting to enter Italy under false pretenses? The story does not say.”

“[I]n a fit of twisted logic, the Court in Paris concluded that the alleged discovery by the Italian police of Dr. Diab’s passport in the personal effects of the nephew of a terrorist organization’s leader *proved* that Dr. Diab was a member of that organization.” *The passport proved nothing*. Moreover, that there was at least one inauthentic visa stamp on the photocopy of the passport renders the so-called smoking gun evidence all the more suspicious. The visa stamps

could have been added to the photocopied passport while the original passport would have been intentionally discarded. Indeed, the disappearance of the original passport remains a mystery that invalidates the entire smoking gun theory. And yet, “the Court accepted the [suspect] Spanish and French visa stamps on the photocopied passport as proof that Dr. Diab had travelled to Paris from Spain in 1980, when the bombing occurred.”

“The source of this tale of the discovery of the passport on the person of this nephew has not been disclosed. Because the ‘nephew’ [like the original passport], has disappeared, there is no way to confirm the story or find out more. And who knows who the Italian border guards were or whether they could be found today? Courts in Canada are not supposed to accept ‘intelligence reports’ uncorroborated by witnesses or by material proof as evidence in a trial. But in France, the courts apparently do accept such things.”

*

Mr. Virani, France’s 2023 verdict is awash in unanswered questions and flimsy speculations. That an innocent man should be convicted to life in prison on such specious allegations is nothing short of scandalous. Equally troubling is the fact that the suppression of Diab’s exculpatory evidence has occurred primarily in a judicial context where the law purports to serve justice. Canadians who study the Diab case have thus every reason to raise serious questions about the integrity of the justice system, both here (given Canada’s defective extradition law) and in France (given that trials there are conducted with no burden of proof, and often on the basis of the judge’s subjective feeling – his “conviction intime.”)

Are you, Minister Virani, prepared to endorse, tolerate, or comply with these flawed judiciaries that have wrecked the lives of innocent persons such as Dr. Diab? The mental torment to which he and his family have been subjected for more than 16 years is indescribable. You, sir, have the opportunity to bring his nightmare to an end now. You have the opportunity to say: **No second extradition for Hassan Diab**. Indeed, you have a choice: you can either display courage and moral probity by confronting the system that scapegoated Hassan Diab or you can live with the eternal memory of having failed to hold accountable those responsible for an outrageous miscarriage of justice. If you choose the latter, Canadians from coast to coast will not forget that your government betrayed Hassan Diab; they will forever remember that a foreign state was given licence to ride roughshod over the rights and freedoms of a wholly innocent Canadian citizen. And they will deem that appalling.

I urge you to opt for the first choice. Please say now that Dr. Diab is innocent and that he shall not be extradited a second time, for that declaration is well overdue.

Sincerely,

Michelle Weinroth, PhD

On behalf of Independent Jewish Voices Canada