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# ILF

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### ILF – West Bank

#### CASE NOTES – Spring and Summer 2015

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*Editor's Note: The following two cases demonstrate the impact of an advanced skill being utilized by ILF-West Bank lawyers: the use of expert witnesses. This practice is uncommon amongst defense attorneys in Palestine, and has been the subject of comprehensive mentoring and training by the ILF's International Fellows.*

*In the first case, the ILF-West Bank attorney used a technology expert to provide evidence to the court that a non-expert would be unable to substantively provide. In the second case, the ILF-West Bank attorney zealously advocates for his client by not only challenging the testimony offered by the Prosecutor's medical expert, but by also providing a compelling counter-expert to directly combat the Prosecutor's arguments and evidence. The use of expert witnesses in criminal cases, and the courts' willingness to be persuaded by them in both cases, is evidence of growing the ILF's impact on the development of West Bank's justice system.*

#### **In the matter of F.M. (ILF Jenin 140, Attorney Maryam Jaradat)**

Attorney Maryam Jaradat represented a 17 year old juvenile client who was charged under the Telecommunications Code Section 91 with making threats. It was alleged that he made a series of threats against the complainant on Facebook. After careful consideration of the facts and evidence against her client, Attorney Jaradat chose to challenge the prosecution's case with an expert in computer technology and communications. In testimony before the court, the expert witness explained the inherently inexact science of tracing online posts back to a specific individual, pointing out that Facebook profiles can be hacked relatively easily.

In her pleading, Attorney Jaradat argued that the prosecution had not—and in fact could not, in this case—prove that the defendant was the one who posted the threats in question. Based on the lack of supporting evidence from the prosecutor, and the strong expert opinion put forth by the ILF-West Bank attorney, the court acquitted the defendant of all charges on March 25, 2015. This case was an opportunity for the ILF-West Bank lawyer to educate the court and prosecutor on the use of social media evidence. It is important for the ILF-West Bank to be on the cutting edge of this burgeoning area of law, and for its lawyers to ensure that this new type of evidence is addressed and

presented properly in accordance with the law. It was also an important moment for Attorney Jaradat to practice the key skill of finding and preparing an expert for testimony at trial.

***In the matter of L.R. (ILF Ramallah 140, Attorney Nael Ghannam)***

The client, who suffers from a mental disability, was still supported by his parents and extended family when he was accused in 2012 of the rape of his sister, who also suffers from a mental disability. The client confessed to the police, the prosecution, and the Court of First Instance.

This client was initially represented by an attorney appointed by the Palestinian Bar Association. That attorney met qualifications for appointment (the only requirement in Palestine to be a court appointed attorney is five years of experience); however, when the client pled guilty at his indictment, he was represented by a younger associate of the appointed attorney (who had passed the case on to his associate) who was not qualified under PBA guidelines. Eventually both attorneys abandoned the case. Attorney Ghannam took over the case after a referral from the court during the initial trial period, due to the court's concerns about the poor representation that this disabled client had received to date.

At the insistence of the court, the client underwent a mental health assessment, following which the court received a medical report from a "psychological hospital" stating that the client was of sound mind and could therefore be held criminally responsible for the alleged crime. As a part of his proactive defense investigation, Attorney Ghannam also had the client assessed by a private psychologist, who found that the client was *not* of sound mind and that he could *not* be held criminally responsible for his alleged actions. At trial, the prosecutor's assessing psychologist was not called as a witness to provide testimony in support of his report, but Attorney Ghannam presented his assessing psychologist for questioning by the judge and prosecutor. Based on the latter's testimony, the court referred the client to a psychological hospital for additional evaluation for a pre-determined period. At the conclusion of the evaluation period, the hospital issued a report, signed by two doctors, stating that the defendant was of sufficiently sound mind to be held criminally liable for his alleged action. Upon returning to court, Attorney Ghannam argued that the new psychological report should not be considered because the doctors were not presented as witnesses who could be questioned by the court and the defense. After overruling Attorney Ghannam's objections and the in-court testimony of his expert witness, and elevating the written report of the later doctors, the court found the defendant guilty and sentenced him to ten years of imprisonment.

Attorney Ghannam then filed an appeal, arguing that the fact that an unqualified lawyer had represented the client when he pled guilty to the charges invalidated the rest of trial. The Court of Appeals accepted this argument and returned the case to the first instance court for re-trial.

During the new trial, the Attorney Ghannam again raised the issue of competency and the conflicting expert reports, but the client was again sentenced to ten years imprisonment. Undeterred, Attorney Ghannam appealed the case again. Finally, the Appeals Court called the prosecutor's expert psychologist who had filled out the assessment declaring the client competent for criminal liability, and questioning by the court revealed that the psychologist had never re-assessed or even personally met the client, and that upon further review of the client's medical file he likely did not possess the "full competence" required by law in order to be held liable for a crime. After finally being permitted to establish the facts surrounding the client's competency, Attorney Ghannam went on to argue before the court that the defendant should not be held criminally responsible for his

alleged actions because he did not possess the ability to comprehend his actions or the trial. He further argued that, if the court still chose to convict, the accused should reasonably be sentenced in proportion to his criminal responsibility—i.e. if his capacity for responsibility is diminished, so too should be his sentence. On the basis of these arguments, and Attorney Ghannam’s tireless commitment to appealing the case until the relevant experts were properly heard, the court reduced the client’s sentence from 10 years to “time served,” and he was immediately released.

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***Editor’s Note: The following case highlights positive movement in courts’ rulings on issues of speedy trial and juvenile justice. Despite the right to speedy trial guaranteed by the West Bank’s Basic Law Article 30, traditionally courts allow cases to be repeatedly continued by the Prosecutor—sometimes for years—as a result of complainants failing to appear in court to provide testimony. The ILF-West Bank argues that the court should dismiss cases, and reasonably should do so when the complainant’s failure to appear causes the court to infringe the speedy trial right of the accused. This imperative is doubly important when the accused is a juvenile, for whom appearing in repeated court sessions for months or years, even for petty offenses, disrupts their education and potentially has drastic social and psychological impacts on the young person. As the case below demonstrates, the court is still hesitant to dismiss but has shown some movement towards recognizing the basic rights of the accused.***

**In the matter of M.S. (ILF Ramallah 28, Attorney Aya Ghannam)**

In this case, a juvenile client was accused of being an accomplice to theft and of selling stolen property. His arrest began a judicial process that stretched for nearly 5 years, until he was finally acquitted of all charges against him in early 2015. Following the client’s arrest, the police failed to facilitate contact with a lawyer—as required by Basic Law Article 12—and the client confessed to committing these crimes. Fortunately the client was not held in pre-trial custody, and was contracted for representation by ILF-West Bank as of his indictment, at which he entered a ‘not guilty’ plea.

After the client’s indictment, a trial date was set and the complainant was notified that he would have to attend the hearing to give testimony. However, he failed to appear at that hearing in December 2010, and then went on to fail to appear at 18 subsequent hearings over the next five years. Finally, in February 2015, when the complainant failed to appear at the 18<sup>th</sup> hearing in this case, Attorney Aya Ghannam made an oral argument to the judge requesting that he dismiss the case due to insufficient evidence, and because continuing the case yet again would be a violation of her client’s right to speedy trial. Attorney Ghannam explained that, under Article 207 of the Criminal Procedure Code, the court could not consider the complainant’s written complaint unless the complainant appeared in court to provide supporting oral testimony; thus, without either written or oral testimony against the client, there was insufficient evidence to convict. Further, Attorney Ghannam emphasized the negative impact that repeated adjournments had on the client, who, over the course of nearly 5 years, had been made to miss school and was at risk of a range of negative social and psychological impacts as a result of repeated and drastically prolonged interaction with the criminal justice system.

As a result of Attorney Ghannam’s zealous advocacy, the judge finally agreed to refuse to adjourn the case any further, forcing the Prosecution to proceed with its case. Without the required oral testimony from the complainant, the written complaint was excluded, and thus the Prosecutor had

essentially no evidence to support conviction. On February 18, 2015, the judge acquitted the client of all charges.

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***Editor's Note: The following case shows the importance of thorough defense investigation, as well as the importance of attorneys being creative advocates, with the skills and flexibility to advocate for their clients both inside and outside courtrooms.***

**In the matter of M.K. (ILF Ramallah 502, Attorney Suad Jawan)**

Attorney Suad Jawan undertook representation of a client accused of arson. As part of her thorough defense investigation, Attorney Jawan interviewed the complainant in the case who eventually admitted to Attorney Jawan that his claim that the client set fire to his car was false, and that he in fact had not seen who set fire to his car. The reason the complainant accused the client, he said, was because the client was late paying his rent to the complainant. Attorney Jawan discussed the issue at length with the complainant, and through her resourceful advocacy was able to convince the complainant to sign a reconciliation agreement with the accused and to appear in court beside him in order to have the case dismissed. While it is unusual for ILF-West Bank attorneys to work so closely with a complainant, in this case Attorney Jawan's thorough defense investigation revealed an unusual path to the best outcome for her client. This type of strategic thinking is pivotal in providing quality representation to indigent accused. Following the hearing at which the complainant made it clear that his prior testimony was false, the client was acquitted of all charges.

***ILF-West Bank would like to thank all of the ILF's past International Fellows who have so generously lent the ILF their time and expertise. We would particularly like to thank Maneka Sinha, a public defender from the Public Defender Service of D.C., and Bahar Mirhosseini, an attorney with the Legal Aid Society of New York, who served as International Fellows during this period.***

***Nicole D. Taylor, ILF West Bank Director New York September 17, 2015***