Mingxin Xu | Before the Lawyer

Good morning sir, I've been wondering - how's my trial going?

No?

Right. I am working on your first petition. It is nearly finished.

May I know what's written in my first petition?

Unfortunately I cannot show you the documents, because they are officially secret. Nevertheless, the extensive experience I have gained in all these trials would naturally be used to your benefit.

You're saying that I cannot see my own petition?

The first petition is very important, because the first impression made would often influence the whole course of the proceedings. That's why I am putting so much effort into it.

The court must be taking this first petition very seriously?

No. On some occasions initial petitions are not even read by the court. They are simply put in the file with a note that says, for the time being, the hearings and surveillance of the accused would be much more important than anything put in writing.

So what's the point of the first petition?

If the petitioner pressed the issue, it would be added that once all the evidence had been collected, and prior to the verdict, this first petition would be considered as well, together with all other documents of course.

That sounds important

Unfortunately that isn't true either in most cases. The first petition is usually misplaced or completely lost, and even if it was retained to the very end, I have only heard this by way of rumor of course, it would be scarcely even glanced at.

You were ending a sentence with a preposition!

What's wrong with that?

I'm not even sure why I have been arrested.

In my decades of experience, the Law has made no mistake. After all, the court, as far as I know, and I know only the lowest level, doesn't seek out guilt among the general population. But, as the Law states, it is attracted by guilt and has to send the guards out. That's the Law. What mistake could there be? Besides, you have not been arrested. You are under arrest. You are still free. We call that conditional freedom.

But I have already told you almost every single detail of my life - all the way from kindergartens. And even you told me that you can't tell what I have done wrong.

The matter is complicated. A number of subtle points are involved, in which the court loses its way. But then in the end it will pull out some profound guilt from somewhere where there was originally none at all.

So, can I see what you have written in my first petition?

In general, court proceedings, including all documents, are kept secret not only from the public but from the accused as well. That is of course regrettable, but not entirely without justification. You must remember the fact that the proceedings are not public, they can be made public if the court considers it necessary, but the Law does not insist upon it.

Then how did you know what to write in my first petition?

The court records, and above all the writ of indictment, are not available to the accused and his defense lawyers, so that in general it's not known, or not known precisely, what the first petition should be directed against and for that reason it can only be by chance that it contains something of importance to the case.

Is that a long-winded way of saying that you have no idea what to right in my first petition?

I bet.

Then I don't even need a lawyer.

Nothing would be more mistaken than to conclude from this that defendants have no need of lawyers before the court. On the contrary, there is no other court before which there is a greater need. For in general the proceedings are kept secret not only from the public but from the accused as well. For even the accused has no access to the court records, and it's very difficult to ascertain during the hearings which documents are involved, particularly for the defendant, who after all is timid and disconcerted, and distracted by all kinds of concerns. This is where the defense enters in.

So you can help me with the hearings?

In general defense lawyers are not allowed to be present at the hearings and so must question the defendant about the hearing immediately upon its conclusion, if at all possible at the very door of the hearing room, and deduce from the defendant's often quite hazy accounts whatever might be useful to the defense.

Why are you talking in third person?

What's wrong with that?

You remind me of a certain politician.

Who?

The forty fifth president of the United States.

But that's not what's important, since not much can be learned that way, though even here, as elsewhere, a skillful person can learn more than others. Nevertheless, the most important factor is still the lawyer's personal contacts. They are the most valuable aspect of a defense. I have no doubt already learned from my own experience that the lowest level of the court system is not entirely perfect, that it includes some employees who forget their duty and can be bribed, which in turn produces breaches, so to speak, in the strictly closed system of the court.

Bribery?

Now this is where lawyers can push their way in, bribing people and pumping them for information; in fact in earlier days there were even cases of stolen files.

Is this how you are going to help me? steal my files from the court?

Only petty lawyers do this kind of things to lure new customers, but they either contribute nothing to the future progress of the trial or make it worse. Only honest personal contacts with higher officials are truly helpful. By "higher officials" I mean the higher officials from the lower ranks, of course. They are the only channel through which we can influence the progress of the trial, imperceptibly at first, but more and more clearly as it moves along.

So do you have those "honest personal contacts"?

As you have seen yourself, officials, and relatively high ones at that, came to me, offered information willingly that was clear or at least easily interpreted, discussed the recent progress of the trial, indeed in some cases even allowed themselves to be convinced, gladly taking on the other's point of view.

I...did see some sturdy-built gentlemen in sleeping gowns coming to your office. With no disrespect to plumbers, I thought they were your plumbers.

Of course one didn't dare trust them too far with respect to this latter trait. No matter how decisively they state their new intent, which is favorable to the defense, they may well go straight to their office and issue a decision for the next day that conveys the exact opposite, and is perhaps even more severe with respect to the defendant than that which they had at first intended, and which they claimed to have entirely abandoned.

That sounds exactly like a certain politician. By the way, are you on Tweeter?

Of course there is no way to protect oneself against that, for what's said in private conversation is exactly that - a private conversation with no public consequences, even if the defense has not been otherwise constrained to retain the favor of those gentlemen.

Maybe we should forget about the first petition and go straight to the hearing?

Truly pertinent and reasoned petitions can only be devised later, when, in the course of the defendant's hearings, the individual points of the indictment and its basis emerge more clearly, or may be surmised. Under these conditions the defense is naturally placed in a very unfavorable and difficult position.

But that too is intentional?

Yes. The defense is not actually countenanced by the Law, but only tolerated, and there is even some controversy as to whether the relevant passages of the Law can truly be construed to include even such tolerance. In the strict sense, therefore, there are no court-recognized lawyers; all those who appear before the court as lawyers are basically shysters.

That sounds really fucked up. How the hell does this whole thing work?

The proceedings in the courts of law are generally a mystery to the lower officials, who are the only people I know of; therefore they can almost never follow the progress of the cases the are working on throughout their course; the case enters their field of vision, often they know not whence, and continues on, they know not where.

Sounds like they learn nothing from their cases

The lessons to be learned from the study of the individual stages of a trial, the final verdict and its basis, are lost to these officials. Their involvement is limited to that part of the trial circumscribed for them by the law, and they generally know less about what follows, and thus about the results of their own efforts, than the defense lawyer, which as a rule remains in contact with the accused almost to the very end of the trial. So in this respect, they can occasionally learn something of value from the defense lawyer.

No wonder the officials are always so irritable.

All officials are irritable, even when they appear clam. No, sorry, that was a typo. I meant "calm."

For instance the following story is told, and has every appearance of truth. An elderly official, a decent, quiet gentleman, had studied a difficult case, rendered particularly complex due to the lawyer's petitions, for one entire day and night without a break. Now as morning approached, after twenty four hours of probably not very productive work, he went to the outer door, waited in ambush, and threw every lawyer who tried to enter down the steps. The lawyers gathered on the landing below and discussed what they should do; on the one hand they have no real right to be admitted, so they can hardly start legal proceedings against the official, and as already mentioned, they have to be careful not to arouse the ire of the bureaucracy. On the other hand each day missed at court is a day lost, so it was important to them to get in. Finally they decided to try to wear the old gentleman down. One lawyer at a time would rush up the stairs and, offering the greatest possible passive resistance, allow himself to be thrown back down, where he would then be caught by his colleagues. That lasted for about an hour; then the old gentleman, who was already tired from working all night, grew truly exhausted and went back into his office. At first those below could hardly believe it, so they sent someone up to check behind the door to make sure there was really no one there. Only then did they enter, probably not even daring to grumble.

Once upon a time I wanted to go to law school.

Um, ok

Because I am a non-resident alien, and I wasn't sure whether I could go to law school with a valid student visa.

We certainly don't like illegal immigrants

I asked the law schools' admissions offices, who were truly hard to reach. They often took weeks to reply to emails, if they deigned to reply at all. Often times, when they did give a reply, they would give me the contact information of someone who worked in the international students office, and asked me to speak to him or her instead. I would then send out another round of emails just to reach that designated person. If that person deigned to reply to me, he or she was likely to set up another date that lied a few weeks ahead in the future, either over the phone, or, what do you call that, Zoom? Anyways, after waiting for another period of time, when I finally got to speak with that person from the international students' office, they would tell me that their office could only answer questions from admitted students, and I should contact the admissions office instead. So my applications never went pass this initial inquiry.

Why are you telling me all these?

I don't know. Somehow I was reminded of this story.

For the lawyers, and even the least important of them has at least a partial overview of the circumstances, are far from wishing to introduce or carry out any sort of improvement in the court system, while, and this is quite characteristic, almost every defendant, even the most simple minded among them, starts thinking up suggestions for improvement from the moment the trial starts, and in doing so often wastes time and energy that would be better spent in other ways. The only proper approach is to learn to accept existing conditions.

My head is aching from the effort that I have made to force myself to listen to you.

Are you implying that you are innocent?

I told you this outright the last time we met.

If you're innocent, then the matter is really quite simple.

I remember you said that a number of subtle points are involved, in which the court loses its way. But then in the end it pulls out some profound guilt from somewhere where there was originally none at all.

Yes, yes, of course. But are you innocent?

Yes. I am totally innocent.

That's the most important thing.

Well, didn't you just tell me that charges are never made frivolously, and that the court, once it brings a charge, is convinced of the guilt of the accused, and that it is difficult to sway them from this conviction?

Did I really say "difficult"? No, it is impossible that the court can be swayed from it. You don't seem to have a general overview of the court yet, but since you're innocent, you won't need one. I'll get you off on my own.

How are you going to do that? You said yourself a moment ago that the court is entirely impervious to proof.

Impervious only to proof brought before the court. But it's another matter when it comes to behind-the-scene efforts. In your case, for example, since you're entirely innocent, I plan to undertake the following. In fact, I forgot to ask what sort of release you want. There are only three possibilities: actual acquittal, apparent acquittal, and protraction. Actual acquittal is best of course, but I don't have the slightest influence on that particular result. In my opinion, there is not a single person who could have an influence on an actual acquittal. In that case the defendant's innocence alone is probably decisive. Since you're innocent, it would actually be possible to rely on your innocence alone. But then you wouldn't need help from me or anyone else.

I think you are contradicting yourself.

Huh?

You said earlier that the court is impervious to proof. Later you said that only the public aspect of the court is impervious to proof, and now you even claim that an innocent person needs no help at all before the court. That's a contradiction in itself. Moreover, you stated earlier that judges can be personally influenced, but now you deny that actual acquittal can ever be achieved through personal influence. That's a second contradiction. These contradictions can be easily explained. We're talking about two different things here, what the Law says, and what I've experienced personally; you must not confuse the two. In the Law, which I've never read-

Wait a minute. You have never read the Law?

Yes. I told you before that lawyers are just like yourself, outside of the law. We are only allowed to read about the Law, but not the Law itself.

But how-

I was telling you that the Law says of course on the one hand that an innocent person is to be acquitted. On the other hand, it does not say that judges can be influenced. My decades of experience in the system, however, has been precisely the opposite.

Tell me more.

I know of many instances of influence. Of course it's possible that in the cases I have dealt with no one was ever innocent. But doesn't that seem unlikely? In all those cases not one single innocent person? Even as a child I listened closely to my father when he talked about trials at home, and the judges who came to his office discussed the court as well. In their circles no one heard the crucial stages of innumerable trials, followed them insofar as they could be followed, and, I must admit, I never saw a single actual acquittal.

Not a single acquittal then. That confirms the opinion I've already formed of this court. So it has no real point in that respect either. A single hangman could replace the entire court.

You must not generalize. I have spoken only of my own experience.

That's quite enough. Didn't you mention that your father was a lawyer too? Have you heard of acquittals in earlier times?

Such acquittals are said to have occurred, of course. But that's extremely difficult to determine. The final verdicts of the court are not published, and not even the judges have access to them. Thus only legends remain about ancient court cases. These tell of actual acquittals even in a majority of cases. You can believe them, but they can't be proven true. Nevertheless they shouldn't be entirely ignored. They surely contain a certain degree of truth, even if that exists only for aesthetic purposes.

I assume these legends cannot be cited in court?

No, they can't.

Then it's useless talking about them.

Right. Let's leave actual acquittal aside then. I mentioned two other possibilities, apparent acquittal and protraction. It can only be one of these two. Both can be achieved with my help, but not without any effort, of course. The difference in that respect being that apparent acquittal requires a concentrated but temporary effort, while protraction requires a far more modest but continuous one. First, then, apparent acquittal. If that's what you want, I'll write out a certification of your innocence on a sheet of paper. The text of such certification was handed down to me by my father so it is totally unchallengeable. Then I'll make the rounds of the judges I know with the certification. Let's say I start by submitting the certification to the judge who will come to my office for his dose of common sense tonight. I submit the certification to him, explain to him that you're innocent. It's not a mere formality. It's truly binding surety.

That would be very kind of you. And the judge would believe you and still not actually acquit me?

Just as I said. Nor is it absolutely certain that every judge would believe me. Some judge or other, for example, might demand that I bring you to him personally. Then you would have to come along. In that case the battle is already half won, of course, particularly because I would instruct you carefully in advance on how to conduct yourself before the judge in question. Things are more difficult in the case of those judges who turn me away from the very start, and that will happen too. We'll just have to try several times before we give up on them eventually, but we can afford that, since individual judges can't decide on the issue. Now when I have gathered enough judges' signatures on the certification, I take it to the judge who's currently conducting your trial. Perhaps I have his signature already, then things would go a little more quickly than usual. In general there aren't many more obstacles then, that's the period of highest confidence for the defendant. It's remarkable but true that people are more confident at this stage than after the acquittal. No further special effort is required. The judge has on the certification the surety of a

number of judges; he can acquit you with no second thoughts, and, after going through various formalities, will no doubt do so, to please me and his other acquaintances. You, however, leave the court free.

So I'll be free then.

Yes, but only apparently free, or more accurately, temporarily free. Judges on the lowest level, and those are the only ones I know, don't have the power to grant a final acquittal. That power only resides in the highest court, which is totally inaccessible to anyone. We don't know what things look like up there, and incidentally, we don't want to know. Our judges, then, lack the higher power to free a person from the charge, but they do have the power to release them from it. When you are acquitted in this sense, it means the charge against you is dropped for the moment but continues to hover over you, and can be reinstated the moment an order comes from above.

So how is that acquittal at all?

Let me explain to you how the distinction between actual and apparent acquittal reveals itself in purely formal terms in court regulations. In an actual acquittal, the files relating to the case are completely discarded, they disappear totally from the proceedings, not only the charge, but the trial and even the acquittal are destroyed. Everything is destroyed. And apparent acquittal is handled differently. There is no further change in the files except for adding to them the certification of innocence, the acquittal, and the grounds for the acquittal. Otherwise they remain in circulation. Following the law court's normal routine they are passed on to the higher courts, come back to the lower ones, swinging back and forth with larger or smaller oscillations, longer or shorter interruptions. These paths are unpredictable. Externally it may sometimes appear that everything has been long since forgotten, the file has been lost, and the acquittal is absolute. No initiate would ever believe that. No file is ever lost, and the court never forgets. Someday, quite unexpectedly, some judge or other takes a closer look at the file, realizes that the case is still active, and orders an immediate arrest.

I'm assuming that a long time has passed between the apparent acquittal and the new arrest?

That's possible, and I know of such cases. But it's equally possible that the acquitted individual leaves the court, returns home, and finds agents already there, waiting to arrest him or her again. Then of course his or her life as a free man is over.

And the trial begins all over again?

Of course, the trial begins all over again. But it is again possible, just as before, to secure an apparent acquittal.

You must gather all your strength again and not give up.

But isn't effecting a second acquittal more difficult than the first?

That can't be said for certain. You mean, I take it, that the judges' judgement might be unfavorably influenced with regard to the defendant because of the second arrest. That's not the

case. The judges have foreseen this arrest from the moment of the original acquittal. So in fact it has scarcely any effect. But there are no doubt countless other reasons why the judge's mood as well as his legal opinion on the case may differ, and the efforts for a second acquittal must therefore be adapted to the changed circumstances and be as strong in general as they were for the first acquittal.

But this second acquittal isn't final either.

Of course not. The second acquittal is followed by a third arrest, the third acquittal by a fourth arrest, and so on. That's inherent in the very concept of apparent acquittal. [PauseUm. Seems like apparent acquittal doesn't sound like a good option to you. Then perhaps protraction would suit you better. Shall I explain to you the nature of protraction?

Yes, please.

Protraction is when the trial is constantly kept at the lowest stage. To accomplish this the defendant and his lawyer, in particular his lawyer, must remain in constant personal contact with the court. I repeat, this doesn't require the same effort it takes to secure an apparent acquittal, but it does require a much higher level of vigilance. You can't let the trial out of your sight. You have to visit the relevant judge at regular intervals, and any extra chance you get as well, and try to keep him as well disposed as possible in all ways. If you know the judge personally, you have to try to influence him through judges you do know, although you still don't dare dispense with the direct conferences. If nothing is omitted in this respect, you can be sufficiently assured that the trial will never progress beyond its initial stage. The trial doesn't end, of course, but the defendant is almost as safe from a conviction as he would be as a free man.

So how is this different from apparent acquittal?

Compared to apparent acquittal, protraction offers the advantage that the defendant's future is less uncertain. He is spared the shock of sudden arrests, and he doesn't have to worry at what may be precisely the worse time in terms of other circumstances, about taking on the stress and strained connected with securing an apparent acquittal. Of course protraction also has certain disadvantages for the accused that must not be underestimated. I don't mean the fact that the defendant is never free; he's not free in a true sense in the case of an apparent acquittal either. It's a different sort of advantage. The trial can't come to a standstill without some reason that's at least plausible. So something must happen outwardly in the trial. Therefore various measures must be taken from time to time, the defendant has to be interrogated, inquiries conducted, and so forth. The trial must be kept constantly spinning within the tight circle to which it's artificially restricted.

That doesn't sound like a very good option either.

Of course that involves certain inconveniences for the defendant, which on the other hand you mustn't imagine as all that bad. After all, it's a merely formal matter. For example the interrogations are quite brief. If you don't have the time or inclination to attend, you can excuse yourself. With certain judges you can even set up a long-term schedule together in advance. In

essence it's merely a matter of reporting to your judge from time to time, since you're a defendant.

My head is aching from the effort that I have made to force myself to listen to you. I think we should talk another time.

I'm sorry, but there was more I wanted to tell you. I had to sum things up briefly, but I hope it was all clear.

Oh, yes.

Both methods have this in common: they prevent the accused from being convinced.

But they also prevent an actual acquittal.

You got it. I'll see you next time in court.