Fudan University Law School

Shanghai, China

04 December 2018 18:00-20:30 Hours

**Basic Trial Advocacy Course and Demonstration Bail Hearing**

SDSU Basic Trial Advocacy Course

This experimental practical law course teaches law students and young lawyers how to make legal arguments in English before a simulated court hearing. It is a one-month program held in San Diego and ending with a visit to the federal court in Las Vegas. Participants will alternate serving as prosecutors or defense counsel in 13 phases of a federal criminal case including pretrial phases, jury trial, sentencing, appeal, postconviction petition, and probation revocation hearing. The course includes court, jail, crime lab, and police station visits, as well as police ride alone and firing of assault rifles and pistols. Each class day consists of 1.5 hours of advanced English, a minimum of 4.5 hour classroom exercises, and special presentations. Before and during the course each student will write 16 essays about newspaper or law related articles. San Diego State University and the community with lawyers volunteering their services provide this tuition-free course. The students pay for their air travel, hotel, Las Vegas trip, and medical insurance (about $2,600 for one month). Students are required to have passed the TOEFL or IELTS or have substantial English to participate in the courtroom exercises as determined by the instructor. Student participants will receive an official invitation (DS 2019) for a J-1 visa. The course is taught by John Cleary and Wang Yijun.

Law students from Moscow State University started this experimental advocacy program, which was held for seven summers (2004-2011). This will be the fourth summer with Chinese students.

Demonstration Bail Hearing

To provide an opportunity to asses this advocacy program a bail hearing will be presented by a defense attorney and prosecutor before a judge. The bail hearing is held usually within 48 hours of the arrest and detention of a defendant after arrest. The defense will seek release of a defendant, often with financial security (bail) or conditions (supervised release). The prosecutor may seek detention (no release) or agree to certain conditions of release. The judge may ask questions and then decides. Although the court considers the seriousness of the crimes charged, the judge rarely questions the sufficiency of evidence to support the charges. The indictment (charge) constitutes legal probable cause, although the defendant is legally presumed to be innocent. The court is primarily concerned whether the defendant is a danger to the community or whether conditions may ensure that he or she will be present for trial.

Facts

Defendant Buxing Yang is a student at SDSU taking a finance graduate course at SDSU while working at a bank in San Diego. The bank sustained a loss of $255,000 traced to a single computer, where Yang and two other employees worked. The FBI sought a search warrant of the homes of the three employees. In search Wang’s house they found his computer, which contained proof of a wire transfer of $255,000 to a bank in the Bahamas, outside the jurisdiction of the U.S. in a secret numbered account. The FBI searched his bank account, cell phone, and cell phone records. The other suspects had no recent income. Yang’s parents in China, a college professor and doctor had a net worth of $50,000 and owned a modest home. Yang had a net worth of less than $10,000.

Then an FBI agent interviewed Yang at SDSU. The agent gave him a Miranda warning. There is a question whether the agent denied Yang’s request for a lawyer or threatened him with the loss of his job at the bank. Yang told the agent that won the $255,000 in gambling at Las Vegas. The FBI established that no casino reported any winnings over $10,000, and the search of the cell phone, cell phone records, and bank records (credit card) revealed he was not in Las Vegas at the indicated time.

Thereafter the federal grand jury in an indictment charged Yang with bank embezzlement (18 U.S.C. 656 30-year maximum) and false official statement (lying to the FBI agent) (18 U.S.C. 1001 five-year maximum). For these two offenses the Sentencing Guidelines would provide for about a three-year sentence. The prosecution suspects that Yang was involved in money laundering (18 U.S.C. 1956 20-year maximum), but no charge has been filed.

Yang has no criminal record. In China and in the U.S. he is an excellent student admired by his teachers and fellow students.

Confidentially Yang told his defense counsel that the $255,000 wire transfer was for a friend Red Hat, who may have been a dope dealer, and he expected to receive a $50,000 commission. He was also afraid he might be harmed if Red Hat was investigated.

Issues

Both the prosecution and defense must deal with the following issues:

1. Yang was a good student, a good worker at the bank, and liked by his fellow workers and students.

2. With a potential maximum sentence of about three years confinement, Yang would be a good candidate for pretrial release.

3. Because he has a J-1 visa, even if he were released on bail, he could be taken into administrative immigration custody. If released on the criminal charge, he could seek an administrative immigration bond permitting his release.

4. Is there a danger of flight and return to China, where the U.S. would be unable to seek his return?

5. Could Yang be required to return the money in the bank account in the Bahamas as a form of financial security for his release? Is the money still there?

6. Could one or more conditions ensure his appearance at trial? Wearing of GPS device that would not permit him near airports or harbors, weekly reporting to a pretrial services officer, supervision by an SDSU teacher, reporting daily at his SDSU dorm, or other conditions.

Procedure for the Demonstration

After an explanation of the summer program, the bail hearing will take place. Each attendee should have read this statement, so as to follow the presentation made by defense counsel. The judge will first ask the defense lawyer to state the reasons for release, and then the prosecutor responds. The judge will usually ask questions (such as those in the Issues above). The judge controls the process and may permit counsel to respond to one another. The judge then determines whether to detain or release the defendant.

After the demonstration there will be a short question and answer period about the summer program or the bail hearing. Students then wishing to participate as defense counsel and prosecutor will be separated into pairs. Then those designated as defense or prosecutor will meet in separate groups for 10-15 minutes to discuss the issues and how to best present their side. After that each pair will make a presentation of not more than eight minutes (total for the pair) and each will be critiqued for one minute each. Then the next pair will proceed until we finished with all who wish to make a presentation.