

排除非法证据申请书

*****人民法院：

关于贵院正在审理的刘扬涉嫌抢劫罪一案中，辩护人请求贵院将《起诉书》所列证据中刘扬的多项有罪供述，和刘妻李雪的证言作为非法证据，在本案中予以排除。

理由如下：

被告刘扬在河北香河萧山拘留所收押侦查期间，受到五位侦查人员，王晓兵，谢春阳，胡峰，刘民，和薛薇的审问。从2011年10月3日到2011年10月31日不足一个月时间内，刘洋被讯问15到20次，有时由2到3名侦查人员参加，有时全部5人都参与讯问。一次，刘洋在被剥夺睡眠和不予进食情况下被连续讯问长达26小时之久。在讯问中，侦查人员曾推搡被告人，导致其双臂一处2厘米长抓伤和多处严重淤青。同时被告妻子李雪也被侦查人员威胁如不出示所需证言会被监禁。如果李雪也被监禁，那么她和刘洋年幼的儿子就会无人照看。在这种情况下，刘洋才违背其本意多次认罪。此后刘某也多次翻供，并坚持自己的清白。

侦查人员对刘扬施暴，连续审讯剥夺其睡眠并不予进食达26小时，威胁刘妻以获取供述的行为不符合我国相关的法律规定，为通过非法手段收集证据的行为。

法律依据：

根据《刑事诉讼法》第五十四、五十六条规定，采用刑讯逼供等非法方法收集的犯罪嫌疑人、被告人供述和采用暴力、威胁等非法方法收集的证人证言和被害人陈述，应当予以排除。在审判时发现应当排除的证据的，应当依法予以排除，不得作为判决的依据。同时，法庭审理过程中，审判人员认为可能存在本法第五十四条规定的以非法方法收集证据情形的，应当对证据收集的合法性进行法庭调查。当事人及其辩护人、诉讼代理人有权申请人民法院对以非法方法收集的证据依法予以排除。

《关于办理刑事案件排除非法证据若干问题的规定》第一条规定，采用刑讯逼供等非法手段取得的犯罪嫌疑人、被告人供述和采用暴力、威胁等非法手段取得的证人证言、被害人陈述，属于非法言词证据。

基于以上理由和法律依据，辩护人认为《起诉书》中作为定罪证据的被告人刘扬的有罪供述，是在遭受暴力，26小时没有得到睡眠和进食情况下作出的，根据法律规定，系非法证据。同样《起诉书》中作为定罪证据的刘妻李雪的证言，是在受威胁的情况下形成的。同样也是非法证据。

综上所述，刘扬的供述和李雪的证言，应作为非法证据予以排除。

此致

*****人民法院

申请人：XX 律师

XXXX 年 X 月 X 日

The Application for Exclusion of Illegal Evidence

To: XX People's Court

Applicant: XXX

Date

In the case of the *Prosecutor v. Mr. Liu Yang*, Liu Yang is accused of having committed robbery. The defendant asks the court to exclude the confessions of Liu Yang and the testimony of Li Xue as illegal evidence.

For the Following Reasons:

During the pre-trial interrogation conducted at Hebei Xianghe Xiaoshan Detention Center, Liu Yang was interrogated by five interrogators: Wang Xiaobing, Xie Chunyang, Hu Feng, Liu Min, and Xue Wei. He was interrogated 15 to 20 times over the course of a month, from October 3, 2011 to October 31, 2011, sometimes by two or three of the named interrogators, sometimes by all five. At one point, he was interrogated for 26 hours continuously during which time he was deprived of sleep and food. During several of these interrogations, the interrogators jostled Liu Yang, causing a 2 cm scratch and severe bruising on his arms. His wife, Li Xue, the only person attending to their young child, was also threatened with detention if she did not give the required testimony. As a result, Liu Yang confessed to several instances because he was overwhelmed, although it was not his real intention. However, Liu recanted for several times and continued to claim his innocence.

In the current case, the actions of the interrogators' use of violence towards Liu Yang, the continuous interrogations depriving the sleep and food of Liu Yang, and threatening Li Xue were carried out in order to obtain confessions and testimony. These actions are conducts of collecting evidence through illegal means according to the relevant laws and regulations.

Legal Basis:

Article 54 and Article 56 of Criminal Procedure Law of the People's Republic of China state that confessions by a suspect or a defendant obtained through torture, extortion and other illegal means as well as witness testimonies obtained through the use of violence, threats and other illegal means should be excluded. At the trial stage, illegal evidence should be excluded if found, and the court cannot use illegal evidence as the basis for adjudication. In addition, if the adjudicator suspects that illegal evidence under Art.54 may exist, the court has a duty to conduct an enquiry into the legality of the evidence. The defendant and his defender have the right to apply to the people's court to exclude illegally obtained evidence.

According to Article 1 of the Rules on Certain Issues Relating to the Exclusion of Illegal Evidence in Criminal Cases, confessions by a suspect or a defendant obtained through torture, extortion and other

illegal means, witness testimonies and victim statements obtained through the use of violence, threats and other illegal means are illegal oral evidence.

Based on the above stated reasons and law, the defender submits that the guilty confessions of Liu Yang, which has been used as the basis of the indictment, was made under the conditions of suffering violence, and deprived of sleep and food for 26 hours, therefore they should be excluded as illegal evidence according to the law. For the same reason, the forced testimony of Li Xue, which has also been used as evidence in the indictment, should be determined as illegal evidence.

In conclusion, the confessions of Liu Yang, as well as the testimony of Li Xue, should be excluded as illegal evidence.