

Presenting evidence of torture at immigration tribunals in the United Kingdom

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Sir,

Physicians who write medico-legal reports to document torture may be called to present evidence at immigration tribunals. In the United Kingdom such attendance is uncommon and, perhaps for this reason, training in this skill is often limited. Practical aspects of attendance at immigration tribunals as a medical witness are outlined here, based upon the author's experience.

The client's lawyer is normally responsible for requesting the physician to attend as a witness. This usually occurs by telephone and often at short notice. At the tribunal there are typically around five courts in session every day, each with a separate judge. A judge will normally consider about five separate hearings per day, one of which is often an asylum case. Asylum cases frequently incorporate the claims of all the separate members of a client's family and thus more than one appeal might be under consideration at the same time.

Witnesses should expect a delay in entering the court building due to routine screening of all visitors with a metal detector. About half an hour before the hearing commences, the witness meets in private with

the client's lawyer. This includes a review of the evidence to be considered and preparation for the questions that the witness is likely to face. A medical witness attends only for the portion of a client's tribunal that directly relates to allegations of torture. One must therefore wait until summoned into the courtroom. If aware that a medical witness is waiting, the judge may prioritize the order of court proceedings to release the physician early.

Whilst waiting, witnesses are seated in a communal area along with clients and their families. Clients report feeling reassured by the attendance of a medical witness. Nevertheless, as the waiting space is visible to legal representatives it is prudent not to associate too familiarly with clients. In order not to cause offence to the client, it is therefore important to explain why this is so and that for the same reason the physician will not normally acknowledge the client inside the courtroom. A physician may also encounter other known clients whose hearing happens to fall on the same day. This is potentially awkward as it risks appearing to provide special support for one individual.

A medical witness typically appears before the court for between thirty minutes and one hour. The hearing is a formal and potentially intimidating environment. The judge is seated upon a platform above the

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rest of the court. He or she does not wear a wig or gown, but is addressed as 'Sir' or 'Ma'am'. In this setting it is easy to be unaware of the client, who is essentially a silent observer of proceedings. Interpreters are often present: this – along with verbatim transcription by the judge and both lawyers – slows proceedings into an unnatural and sometimes awkward rhythm.

The medical witness is first examined by the client's own lawyer. Initial questions confirm identity and professional status. The physician's experience is then considered, often in terms of formal training in medical examination of torture victims, number of reports prepared and previous attendance at immigration tribunals.

Subsequent questions relate to specific details of the client's medico-legal report, typically to clarify the weight of evidence attributed by the physician to his or her clinical findings. It is, therefore, important to be knowledgeable of recognized categories of consistency and to be prepared to defend one's conclusions.

The physician is then cross-examined by the Home Office (government) legal representative. This may contain unexpected and confrontational questions. Witnesses should ensure that they are familiar with the Istanbul Protocol and have considered the likelihood of other causes for injuries under discussion. In the author's experience the government representative often seeks to undermine the credibility of the medico-legal report or of the medical witness. This has taken three forms. First, by alleging that there are inconsistencies within the medico-legal report(s) or between this and the client's own statement of evidence. Second, is the suggestion that the physician is not acting independently and has attempted to assert the credibility of the client's story. Finally, the lawyer may call into question the

physician's knowledge of immigration law by asking if he or she is aware of a specific – and relevant – case of legal precedent. At the end the witness is questioned by the judge (judicial examination). This frequently results in debate about the impossibility of proving motivation for the alleged torture.

Attending immigration tribunals is a rewarding, if sometimes stressful, experience. This is a particularly true where strong evidence of torture has previously been dismissed. On one occasion this was due to the judge receiving from the client's lawyer faxed copies of clinical photographs of extensive scarring that were badly blurred. Being able immediately to present original photographs to the judge swiftly swung proceedings. For the same reason, witnesses should also bring along original copies of their reports.

There are other reasons why physicians should consider attendance at immigration tribunals worthwhile. This is a formative experience that, through feedback from the client's lawyer as well as the written determination of the judge, serves to enhance the quality of subsequent medico-legal reports. Certainly it will increase physicians' understanding of the intricacies of the asylum legal process. Encouraging clinicians to attend may be facilitated by improving training in presenting evidence at court, for example through role playing techniques. Physician attendance and better communication with lawyers could help to highlight and redress unfair dismissal of significant medical evidence by immigration judges. The presence of physicians as witnesses also serves to establish the value of medical evidence in the eyes of the wider legal system.