



## Good Counsel

# A Look Back

Revisit past *Good Counsel* columns and advice from trial lawyers as we celebrate AAJ's 75th anniversary.

## Prepare for Defense Medical Exams

BY DOROTHY CLAY SIMS

**A** defense medical exam (DME) can be frustrating and frightening for your client. Take these steps to protect your client and your case.

**Educate the plaintiff.** If possible, have your client read his or her own medical records to make sure they are current and review any time line you have created. This avoids misstatements at the exam about critical information such as preexisting similar conditions. Consider inviting your client to attend the deposition of the DME as well.

**Advise opposing counsel if you intend to record the examination.** Many doctors refuse to conduct recorded examinations, so be sure to give proper notification if you will be using video, audio recording, or a court reporter. Schedule sufficient time with the court reporter, as some exams are lengthy. A neuropsychological examination, for example, may take 16 hours over two days, and you do not want your client left unattended if the court reporter departs before the exam is concluded.

**Make sure your client understands the importance of cooperating and maintaining a good attitude.** Explain the consequences of malingering or exaggerating. Do not, however, discuss the specific mechanisms of the tests.

**Hire a private investigator.** If the doctor in question is known to falsely document plaintiffs' abilities, have the investigator follow your client to and from the doctor's appointment. The investigator will be able to dispute false defense claims—for example, that your client walked without a limp as he or she entered and left the building.

**Schedule your client to see his or her own doctor immediately after the DME, preferably on the same day.** Ask the doctor to document and photograph all relevant findings, such as restriction of range of motion, atrophy, unusual color, or temperature changes. Any lack of such findings by the DME doctor will require explanation.

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## Holding Hands

BY JOHN F. ROMANO

**A**stonishingly, some lawyers genuinely believe that by hiring an expert, they have someone available to “hold the lawyer’s hand” throughout the litigation and through trial. They want the hand-holding expert to take the lead with respect to the expert’s work and preparation.

Never hire an expert just so that you will have someone to hold your hand throughout the case. You have heard the saying: “Lead, follow, or get out of the way!” Well, in this instance—when you hire an expert to hold your hand—generally, the case is bungled.

### John F. Romano

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## Buttressing Your Rebuttal

BY ROBERT A. CLIFFORD

**T**he most fruitful rebuttal argument addresses the defendant’s closing argument and emphasizes the case’s strongest points. The main focus of an effective rebuttal should be one or two critical points. Drive home the theory of the case, emphasizing the most powerful case components.

Keep the argument vigorous. While you must address the questions raised by the defense, the overall tactic should be offensive rather than defensive. Pose obvious questions that the defense has not answered—and now cannot, as it no longer has the opportunity.

Your rebuttal is the last thing the jurors will hear before the judge gives them instructions, so leave them with a powerful impression of the plaintiff’s case before they begin deliberating.

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