SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO. SB25
or
SUBJECT

Debbie Sybell
(NAME)

(Street Address or Route Number)

(City and Zip Code)

Senator Brian Burke
(Representing)

Speaking in Favor: X

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.
Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: MAY 25, 1999

BILL NO. SB 25
or
SUBJECT

PAUL E. SICULA
(NAME)

135 W. WELLS # 604
(Street Address or Route Number)

MILWAUKEE, WISC 53203
(City and Zip Code)

WISC. ACAD OF TRIAL LAWYERS
(Representing)

Speaking in Favor: X

Speaking Against:

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO. 1999 SB 25
or
SUBJECT Informing jurors of the effect of their verdict.

Bernard T McCartan
(NAME)

6000 American Pkwy
(Street Address or Route Number)

Madison WI 53783
(City and Zip Code)

Civil Trial Council of Wis
(Representing)

Speaking in Favor:

Speaking Against: X

Registering in Favor:
but not speaking:

Registering Against:
but not speaking:

Speaking for information only; Neither for nor against:

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO. SB 25

or

SUBJECT Instruction to jury

James C. Ratzel

(NAME)

31626 W. Muscovy Rd

(Street Address or Route Number)

Chenequa WI 53029

(City and Zip Code)

Civil Trial Counsel of Wis.

(Representing)

Speaking in Favor: ☐

Speaking Against: ☒

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25

BILL NO. SB 25

or

SUBJECT Jury Info

Eric Englund

(NAME)

44 E. Mifflin

(Street Address or Route Number)

Madison 53703

(City and Zip Code)

Wis. Insurance Alliance

(Representing)

Speaking in Favor: ☐

Speaking Against: ☒

Registering in Favor: but not speaking: ☐ switched

Registering Against: but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO. SB25

or

SUBJECT

Senator Brian Burke

(NAME)

(Street Address or Route Number)

(City and Zip Code)

(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☒ (written testimony)

Registering Against: but not speaking: ☐

Speaking for information only; Neither for nor against: ☐

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P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO. SB25
or
SUBJECT

James E. Hough
(NAME)

10 E. Doty St., Suite 500
(Street Address or Route Number)

Madison, WI 53703
(City and Zip Code)

Civil Trial Counsel of WI
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

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Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5-25-99

BILL NO. SB-25
or
SUBJECT

Bell Dunbar
(NAME)

5330 Kevins Way
(Street Address or Route Number)

Madison WI 53710
(City and Zip Code)

State Farm Ins
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☑

Speaking for information only; Neither for nor against: ☐

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: May 25, 1999

BILL NO. SB-25
or
SUBJECT

Misha Lee
(NAME)

44 E. Mifflin, Suite 305
(Street Address or Route Number)

Madison, WI 53703
(City and Zip Code)

Sentry Insurance
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor: but not speaking: ☐

Registering Against: but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5-25-99

BILL NO. SB 25
or
SUBJECT

Charles Stern
(NAME)

8201 Excelsior Dr
(Street Address or Route Number)

Madison WIS 53711
(City and Zip Code)

Wis. Mut. Ins. Co.
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.
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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO.
or
SUBJECT SB 25

J. Denis Moran
(NAME)

213 NE, Capitol
(Street Address or Route Number)

(City and Zip Code)

Chief Judges + Legislative Comm. of Judicial Conference
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.
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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO. SB25
or
SUBJECT

James E. Hough
(NAME)

10 E. Doty St., Suite 500
(Street Address or Route Number)

Madison, WI 53703
(City and Zip Code)

Wis. Economic Development Assoc.
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: May 25, 1999

BILL NO. SB 25

or

SUBJECT

HILDA HEGLUND
(NAME)

756 N. Milw. Street
(Street Address or Route Number)

Milw. 53202
(City and Zip Code)

COSBE
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5-25-99

BILL NO. SB 25

or

SUBJECT

BILL REA
(NAME)

756 N. MILW.
(Street Address or Route Number)

MILW. 53202
(City and Zip Code)

MMAC
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

Please return this slip to a messenger PROMPTLY.

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State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

SENATE HEARING SLIP

(Please Print Plainly)

DATE: 5/25/99

BILL NO. SB 25

or

SUBJECT

LEE FINSHAW
(NAME)

6000 AMERICAN PARKWAY
(Street Address or Route Number)

MADISON WI 53783
(City and Zip Code)

AMERICAN FAMILY INSURANCE
(Representing)

Speaking in Favor: ☐

Speaking Against: ☐

Registering in Favor:
but not speaking: ☐

Registering Against:
but not speaking: ☒

Speaking for information only; Neither for nor against: ☐

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Senate Sergeant-At-Arms
State Capitol - B35 South
P.O.Box 7882
Madison, WI 53707-7882

BRIAN BURKE

WISCONSIN STATE SENATOR

Senate Chair, Joint Committee on Finance

Testimony of Senator Brian Burke
Senate Bill 25
Senate Committee on Judiciary & Consumer Affairs
May 25, 1999

Jurors perform a vital role in our system of justice. We put great faith and trust in jurors to weigh the evidence and render a fair verdict.

While courts are required to instruct juries regarding the applicable law and the burdens of proof, they only provide jurors with part of the law. This is contrary to the traditional trust we place in jurors to do justice and results in mistaken verdicts that do not reflect the intentions of jurors.

Senate Bill 25 would fill this information void by requiring the court in civil actions to explain to the jury the legal conclusions that will follow from the jury's possible findings. In addition, the bill permits counsel for each party to comment on the court's explanation so there is no tactical advantage for the plaintiff or the defendant.

Without such information, jurors speculate about how the case will turn out given their special verdict answers. Jurors sometimes express shock and outrage following a trial when they discover, contrary to their intent, their findings deprived an injured party of a remedy under the law. Examples are comparative negligence cases where the plaintiff's negligence equals or exceeds 51 percent and cases where an employer is found 100% responsible for an employee's injuries involving a defective product.

We should not force jurors to operate in an information vacuum. With this bill, Wisconsin will join the vast majority of states in enlightening jurors by sharing with them the legal effect of their findings. Justice should be blind, but not uninformed.

I urge the committee to give favorable consideration to Senate Bill 25.

STATE CAPITOL, POST OFFICE BOX 7882, MADISON, WISCONSIN 53707-7882

PHONE (608) 266-8535 OR 1-800-249-8173; FAX (608) 267-0274

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JAMES T. MURRAY, JR.
MARY K. WOLVERTON
MARY LEE RATZEL
WILLIAM R. SACHSE, JR
RANDY S. PARLEE
JANET E. CAIN
TIMOTHY J. PIKE
RONALD G. PEZZE, JR.
PETER F. MULLANEY
MICHAEL P. CROOKS

JAN M. SCHROEDER
FREDERICK J. SMITH
ANDREW J. QUARTARO
CLAYTON L. RIDDLE
MOLLY C. FELDBRUEGGE
PATRICIA J. EPSTEIN
DAVID F. ANDRES
KWAME S. GREEN
MARIA DELPIZZO SANDERS*
SHERRY A. KNUTSON
RYAN D. BURKE
JUDITH O. O'CONNELL

*ALSO ADMITTED IN OHIO

May 24, 1999

HAND DELIVERED
Senator Gary George
118 South, State Capitol
Madison, WI 53702

HAND DELIVERED
Senator Joanne Huelsman
5 South, State Capitol
Madison, WI 53702

HAND DELIVERED
Senator Alice Clausing
319 South, State Capitol
Madison, WI 53702

HAND DELIVERED
Senator Fred Risser
220 South, State Capitol
Madison, WI 53702

HAND DELIVERED
Senator Alberta Darling
22 South, State Capitol
Madison, WI 53702

Re: Senate Bill 25

Dear Senate Judiciary Committee Members:

I am writing to express my opposition to SB25 insofar as it relates to informing juries as to the effects of their verdicts as part of the jury instructions.

I have been a practicing trial lawyer in Wisconsin for 25 years. I graduated in 1974 from Marquette Law School and spent a year clerking in the Wisconsin Supreme Court for Chief Justice Bruce Beilfuss. I have been in private practice in Milwaukee since that time and engaged exclusively in the trial of civil lawsuits, representing both plaintiffs and defendants, but primarily defendants.

I am a member of the American Bar Association, the State Bar of Wisconsin, am past president of the Civil Trial Counsel of Wisconsin, am a member of the American Board of Trial Advocates and have been elected to membership in the American College of

Trial Lawyers.

Based on my experience, I believe it would be a serious mistake to enact legislation permitting judges to inform juries as to the effect of their verdicts. This would be a very significant departure from our tradition of jurisprudence, and I am convinced that it would detract from Wisconsin's reputation for even-handed administration of justice.

The traditional role of the jury, dating back to the English common law, is to act as the finder of fact. In contrast, it is the role of the judge to apply the law to the facts as found by the jury, after the verdict has been rendered. Our tradition is that jurors are to search for the truth and find the facts accordingly, without regard to the consequences to one party or the other. In fact, at the close of every jury trial, the jury is admonished by the judge to "Let your verdict speak the truth, whatever the truth may be!" Traditionally, jurors are requested to find the true facts in a case without knowing whether their verdicts will favor the plaintiff or the defendant. In this fashion, it is believed, and I firmly agree, that justice results without favoritism or partiality on the part of the jury.

There is no reason to inform the jury as to the effect of the verdict, unless it is assumed that that knowledge might somehow impact on their decision. If jurors are to continue to be viewed as fact finders, searching for the truth, how can informing them as to the effect of their verdict assist them in that function? In fact, it can only cause to distract them from that purpose and make their decision more difficult. Are the jurors to disregard the facts if they are being asked to consider who will benefit from the verdict?

Jurors are not to serve as super-legislators. If the people of Wisconsin do not believe that under a certain set of facts, one party or the other should prevail, then the answer is to change the law, a function of the legislature. Jurors should not be asked to disregard the law or the facts so as to deliver an outcome-oriented verdict.

Jury nullification or jury lawlessness, as they are sometimes phrased, has not been a widespread problem in Wisconsin, as it has sometimes been in other states. Wisconsin, for example, is unique among many states in that in civil personal injury lawsuits, for example, the jury knows that the defendant has insurance, because

in Wisconsin a plaintiff may proceed directly against the insurance company as well as against the individual defendant. My colleagues from other states frequently ask me how defendants can obtain even-handed justice when the jury knows that there is insurance involved. I always answer that the system works just fine here because juries are not informed as to the results of their verdict and they take their fact finding seriously. I am very concerned that if we begin advising jurors that if they decide a case in a particular way that one party or the other will prevail or benefit, we will lose that reputation.

I urge you to reject SB25, since to me it represents a step backwards from the impartial administration of justice to a system of outcome-oriented verdicts which will be necessarily based in part upon jurors' biases and notions of who deserves to lose or profit in a given trial irrespective of the facts or the law.

Thank you for your consideration of these comments.

Very truly yours,

PETERSON, JOHNSON & MURRAY, S.C.

James T. Murray, Jr.

JTM:blc

Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson
Chief Justice

213 N.E. State Capitol
Telephone 608-266-6828
Fax 608-267-0980

J. Denis Moran
Director of State Courts

May 24, 1999

Senator Gary George, Chair
Senate Judiciary and Consumer Affairs Committee
118 South, State Capitol
Madison, WI 53702

Dear Senator George:

I write to you to express the opposition of the Legislative Committee of the Wisconsin Judicial Conference and the Chief Judges to SB 25, relating to explanations to civil juries, which is before the Senate Judiciary Committee for public hearing on May 25.

Their first concern is that this proposal is a legislative invasion of a judicial prerogative - the conduct of a trial. Second, the requirement that trial judges explain the legal conclusions that may follow from "possible" jury findings could, in a complex multi-party case, require a veritable course in comparative negligence, the effect of cross complaints, counter-claims, etc. Third, there is a greater opportunity for appeal and, thereby, reversal of the trial judge because of a failure to accurately or fully explain the legal consequences. Fourth and lastly, the provision that after the judge gives the explanation counsel for each party may "comment" on the court's explanation will be interpreted by many counsel as an opportunity to disagree with the judge's explanation and invite the jury to engage in its own ideas of jury nullification.

Also attached is a letter from Judge P. Charles Jones of Dane County that was written last session with respect to 1997 Senate Bill 320. Although that bill applied to all jury cases, not just civil juries as SB 25 does, his comments are still pertinent and apply to this bill.

Thank you for the opportunity to comment on this bill. If you have any questions, please feel free to call me.

Sincerely,

J. Denis Moran
Director of State Courts

JDM:jah
Attach.
Cc: Senate Judiciary and Consumer Affairs Committee Members

FROM THE CHAMBERS OF:
P. Charles Jones
Circuit Court Judge

City-County Bldg., #215
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709

November 24, 1997

Ms. Sheryl Ann Gervasi
Capitol, 305 E
Supreme Court
Madison, WI 53702

Dear Ms. Gervasi,

As a member of the Civil Jury Instructions Committee and at your request, I have reviewed 1997 Senate Bill 320 which amends §805.13(4), Stats. The amendment adds the following language to the subsection:

> The court shall explain to the jury the legal conclusions that will follow from its possible findings and shall permit counsel for each party to comment on the court's explanation.

After reviewing the proposed statutory change, I discussed the matter with Judge Michael Nolan, chair of the Civil Jury Instructions Committee. Although there has not been time to query the entire committee, it is our joint opinion that the amendment would overturn about 120 years of Wisconsin law and create an unworkable situation for the trial judges of Wisconsin and probably the Civil Jury Instructions Committee.

In 1874, the Wisconsin legislature adopted legislation which made the Special Verdict a matter of right in civil litigation. As you know, a Special Verdict asks the jury to answer specific factual questions regarding the issues of the case being presented to them without regard to the effect of the answers on the final judgment of the case. This was noted by the Supreme Court in 1899 in ***Ward v. Chicago, Milwaukee & St. Paul R. Co.***, 102 Wis. 215, 223 (1899) as follows:

> The special verdict was expressly intended to submit to the jury for answer certain questions of fact, which they are to answer from the evidence, guided by instructions appropriate to the questions only, without regard to the legal effect of their answers upon the

> ultimate question of the rights of the parties. Thus, it was expected and intended to relieve the jury from all consideration as to whether their answers are consistent with a general recovery by either party, and thus to obtain a result as far as possible free from sympathy and prejudice.

As early as 1907 in ***Banderob v. Wis. Cent. R. Co.***, 133 Wis. 249, 287 (1907), the Supreme Court held that:

> It is reversible error for the trial court by instruction to the jury to inform the jury expressly or by necessary implication of the effect of an answer or answers to a question or questions of the special verdict upon the ultimate liability of either party litigant.

This rule of law has continued uninterrupted to the present time. It was recently memorialized in ***Kobelinski v. Milwaukee & S. Transport Corp.***, 56 Wis.2d 504, 520 (1972) as follows:

> The fundamental rule in this state is that it is reversible error for either the court or counsel to inform the jury of the effect of their answer on the ultimate result of their verdict, especially if it appears that the error complained of has affected the substantial rights of the party seeking to revise or set aside the judgment or secure a new trial.

In addition to the concern that this overturns the 120 year precedential rule of law of this state, the amendment poses serious problems for the trial judge and the handling of cases: First, it would require the judge to draft an explanation of the legal effects of a jury's findings not only for a whole host of different types of litigation tried to juries, but also for a myriad of different potential scenarios that could result from the answers of the jury in any given case. For example, in a personal injury case involving multiple defendants being tried under the new comparative negligence statute, §895.045, eff. May 17, 1995, the judge would not only have to explain in lay terms the effect of a finding of negligence on the part of the plaintiff, but also the different effects of percentages of negligence on the respective defendants. The judge would have to try to explain in language a juror could comprehend, if not understand, that if one defendant is more than 50 percent negligent, he/she would be jointly and severally liable for the damages allowed, but if a defendant is 50 percent or less negligent, he/she would only be liable for that percentage of the damages allowed (and, of course, damages allowed would have to be explained to mean not the amount of damages found by the jury, but that amount reduced by plaintiff's negligence).

Second, the amendment allows counsel to comment on the judge's explanation. In our opinion, this invites not only argument that plays upon the jury's sympathy or bias by allowing counsel to tell the jury what the outcome may be if it does thus and so, it sets up potential arguments before the jury between counsel on the judge's explanation as to what the effect of the jury's

findings will be. In our opinion it undermines our constitutional premise that the trial judge is the "judge of the law".

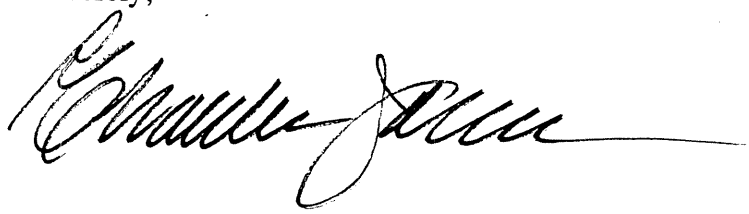
Third, it sets up whole new avenues of attack on jury's verdicts and motions for new trial, and creates claims of error by the trial judge. It invites sympathy, prejudice and passion from the jury, an outcome the legislature and the courts should strive to avoid.

Finally, from the perspective of the Civil Jury Instructions Committee, the amendment will probably force the committee to try to draft so-called "boiler-plate" explanations for the trial judges and the lawyers in all of the areas of civil litigation presently addressed by the three volumes of instructions, and areas under consideration or not yet addressed.

Judge Nolan and I do not purport to speak for the entire jury instruction committee. However, we share these thoughts as members of the committee and as trial judges.

Thank you for the opportunity to express our thoughts.

Sincerely,



cc: Hon. Michael Nolan

CIVIL TRIAL COUNSEL OF WISCONSIN

TO: Members, Senate Committee on Judiciary

FROM: James E. Hough, on behalf of Civil Trial Counsel of Wisconsin

DATE: May 25, 1999

RE: Opposition to 1999 Senate Bill 25

The Civil Trial Counsel of Wisconsin, an organization of over 700 Wisconsin trial lawyers, strongly opposes Senate Bill 25 and respectfully urges that the committee not advance this legislation.

The role of juries is to determine who is telling the truth and to resolve factual issues. It is the duty of the judge, not the jury, to apply rules of law, including the application of the comparative negligence statute.

Prior to comparative negligence, plaintiffs who were found as little as 1% at fault were banned from recovery. Wisconsin was a pioneer in comparing fault between plaintiffs and defendants in order that an injured party who was less at fault could recover a portion of damages. This progressive system allows parties who have contributed to their own injuries to recover damages in relation to comparative fault at or below 50%.

To suggest- as Senate Bill 25 does- that juries be permitted to manipulate facts regarding comparative fault to achieve a pre-determined mandatory result makes a mockery of the jury system and is contrary to longstanding legislative intent.

If the theory is that every person should recover some money for injuries sustained regardless of fault, perhaps we should abolish the jury system, and substitute a form of worker's compensation for all injured parties.

Proponents of SB25 want the best of all worlds – juries who set high awards- and a system that allows a person most at fault to collect substantial dollars from one minimally at fault- thereby creating another victim and clear inequity.

Again, we respectfully urge your opposition to SB25.

MAILING ADDRESS:
P.O. Box 1691
Madison, WI 53701

James E. Hough, Executive Director
(608) 283-2586
(608) 283-2589 FAX

OFFICES:
44 East Mifflin Street, Suite 104
Madison, WI 53703

CIVIL TRIAL COUNSEL OF WISCONSIN

...Defending Wisconsin citizens, businesses and municipalities

TO: Members, Senate Committee on Judiciary

FROM: Bernard T. McCartan, Legislative Chair

DATE: May 25, 1999

RE: **1999 Senate Bill 25/Summary of Testimony**

On behalf of the Civil Trial Counsel of Wisconsin (CTCW) and personally, as a member of CTCW's Board of Director, I am here to express my strong opposition to 1999 Senate Bill 25.

Senate Bill 25 would require judges in civil cases to instruct jurors on the effect of their verdict, and allow counsel for the parties to comment on the court's instructions in closing argument.

The changes embodied in SB25 would effectively abolish Wisconsin's long history of using special verdicts in civil cases. Under that system, jurors find the facts, after which the court applies the law to those facts to reach a conclusion. This separation of function has served Wisconsin well by preserving the citizen's role in the judicial function while promoting uniform and consistent application of the law by the courts.

Instructing the jurors on the effects of their verdict would place jurors in a position to determine the facts in light of the law in any given case. The practical result is to create situations in which jurors might be tempted to make or alter findings in such a way as to bring about a desired outcome without any regard to the true facts or the law. Given that jury deliberations in Wisconsin are conducted in secret, it would be difficult, if not impossible, to determine if any such abuse occurred in a particular case.

Passage of Senate Bill 25 would constitute a very unfortunate development in Wisconsin law, and I strongly urge your opposition to it or any similar measure which may come before the 1999 Legislature.

Thank you for the opportunity to present my views and those of the trial lawyers who defend civil cases in Wisconsin.

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Madison, WI 53701-1691

WEB ADDRESS:
www.ctcw.org
(608) 283-2586 phone
(608) 283-2589 fax

OFFICE ADDRESS:
10 East Doty Street #500
Madison, WI 53703

WISCONSIN INSURANCE ALLIANCE
44 EAST MIFFLIN STREET • SUITE 305
MADISON, WISCONSIN 53703
(608) 255-1749
FAX (608) 255-2178
wial@execpc.com

Memorandum

TO: Senate Judiciary Committee

DATE: May 25, 1999

FROM: Eric Englund

RE: SB-25

We appear today in opposition to this legislation.

For over a hundred years Wisconsin courts have followed the well settled principal that the duty of the jury is to resolve questions of fact and that it is error to have the jury instructed on how their findings of fact will be impacted by the application of existing law. In other words, the duty of the jury is to resolve issue of facts... not understand or apply the law to those facts. The reason for this distinction has been stated time and time again by our Wisconsin Supreme Court. Our Court has recognized that the job of the jury in resolving disputes of fact is extremely complex and that this most difficult task becomes compromised and confused if they are made aware of how their fact-findings will be applied to the law.

Our Wisconsin Supreme Court said it best in a 1975 decision:

> "It is argued that the refusal to fully inform the jurors is contrary to the traditional trust we place in the ability of juries to do justice. Of course, this criticism is in itself based on a fundamental distrust of the jury system, for it assumes that jurors are not faithful to their oath to follow the instructions of the trial judge. We decline to explore the pros and cons of this controversy, because any change in the rule would be contrary to the established basis for the use of juries, particular in negligence cases... we suggest that the jury should be admonished, and impressed, that it's function in a negligence case is fact finding only and that it is not it's role to usurp the legislative function or the judicial function in interpreting the comparative negligence statues. <u>It is the role of the judge, and not the jury, to implement the general policies of the comparative negligence statutes</u>."
>
> <u>McGowan v. Story</u>, 70 Wis. 2d 189, 234 N.W. 2d 325 (1975) at 329-330

We ask that you not support this legislation.

Wisconsin Coalition for Civil Justice

P.O. Box 2157 Madison, WI 53701
Phone: 608/258-9506
Fax: 608/283-2589

TO: Senate Committee on Judiciary
FROM: Bill G. Smith, President
Wisconsin Coalition for Civil Justice
DATE: May 25, 1999
RE: Senate Bill 25: Explanations to juries

For over a hundred years, Wisconsin courts have followed the well-settled principle that the duty of the jury is to resolve questions of fact and that it is error to have the jury instructed on how its finding of fact will be impacted by the application of existing law. ***In other words, the duty of the jury is to resolve the issues of fact...not understand or apply the law to those facts.***

The reason for this distinction has been stated time and time again by our Wisconsin Supreme Court. Our court has recognized that the job of the jury in resolving disputes of fact is extremely complex and that this most difficult task becomes compromised and confused if the members of the jury are made aware of how their fact findings will be applied to the law.

Our Wisconsin Supreme Court said it best in a 1975 decision:

"It is argued that the refusal to fully inform the jurors is contrary to the traditional trust we place in the ability of juries to do justice. Of course, this criticism is in itself based on a fundamental distrust of the jury system, for it assumes that jurors are not faithful to their oath to follow the instructions of the trial judge. We decline to explore the pros and cons of this controversy, because any changes in the rule would be contrary to the established basis for the use of juries, particularly in negligence cases...we suggest that the jury should be admonished, and impressed, that its function in a negligence case is fact finding only and that it is not its role to usurp the legislative function or the judicial function in interpreting the comparative negligence statutes. **It is the role of the judges, and not the jury, to implement the general policies of the comparative statutes."** (emphasis added.)

McGowan v. Story, 70 Wis. 2nd 189, N.W. 2d 235 (1975) at 329-330

On behalf of the members of the Wisconsin Coalition for Civil Justice, I respectfully urge you to **oppose** recommending Senate Bill 25 for passage.

Wisconsin Academy of Trial Lawyers

Keeping Wisconsin Families Safe

EXECUTIVE DIRECTOR
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WISCONSIN STATE SENATE

Committee on
JUDICIARY AND CONSUMER AFFAIRS

GARY GEORGE, CHAIRPERSON

PUBLIC HEARING ON 1999 SENATE BILL 25

MAY 25, 1999

CHAIRMAN GEORGE AND MEMBERS OF THE COMMITTEE, my name is Paul E. Sicula. I am the legislative representative for the Wisconsin Academy of Trial Lawyers. I appear today in support of Senate Bill 25. Thank you for this opportunity.

Senate Bill 25 will require judges to tell jurors the impact certain laws will have on the answers they give to the special verdict questions. In effect, the bill authorizes the judge to tell the jury how the case will turn out depending on how they answer the questions. It also will permit counsel for each party to comment on the court's explanation during closing argument.

This proposal may sound like a radical proposition, but Wisconsin is actually in a very small minority of states that refuse to explain to juries the effects of their answers. Most states presently allow jurors to know the legal conclusions which will follow from their verdict. None of our neighboring states has this type of restriction.

The Wisconsin Academy of Trial Lawyers (WATL) supports this bill because we believe it will help juries in their deliberations. Our members are lawyers who stand before juries every day and are among the strongest supporters of the jury system. Jurors invariably take their responsibility very seriously; they listen carefully to the evidence and try their very best to answer the verdict questions in a responsible manner. They bring the collective wisdom and values of the community to bear in their decision-making

process. They want very much to do the right thing for the parties involved, but sometimes are hampered because we intentionally withhold information from them.

We refer to jurors as the finders of fact because it is their job to determine which side has proven its case in a dispute, but jurors are also instructed on applicable law. Currently, jurors receive instructions from the judge on what laws they are to apply to the facts they have heard. We explain complicated issues to jurors, like negligence, product liability and medical malpractice, but we don't tell them the effect of the answers to the questions on the verdict. Sometimes we tie the jury's hands by only giving them part of the law. This bill is designed to give them instructions on parts of the law that are currently kept from them.

Jurors are sometimes disillusioned and disappointed to learn results are just the opposite of what they intended, because they've been kept in the dark about the law. Juror interviews after trials sometimes show jurors have reached conclusions they did not intend because we don't tell them the consequences of their decisions. Some examples are: employers whose negligent conduct is found responsible for causing their employees' injuries are protected by the worker's compensation law from paying the verdict; plaintiffs with some contributory negligence have that negligence compared individually with each defendant, meaning if the negligence is split among multiple defendants and the plaintiff also bears some responsibility, the plaintiff is unlikely to recover anything at all.

As an experienced trial attorney, an unintended or unjust verdict is frustrating. But for the client who has endured years of pain and anguish and has waited patiently to have his or her day in court, the effect of the verdict can be tragic. It is difficult to explain to a client the logic behind a rule which, in essence, negates the true intent of the jury's verdict.

What happens when the jury is instructed on only part of the law? Very often what happens is jurors fill in with what they believe the law to be. While we expect jurors to use their everyday experiences in reaching their decisions, they sometimes use their knowledge of "the law" – sometimes accurate knowledge, most often inaccurate – in their decision-making. Juror interviews after trials sometimes show jurors have speculated on how they believe the law will make the case come out. We do not believe this is a failing of jurors, but a normal thought process for them to go through. We believe this bill will give jurors accurate information to use as they deliberate and allow both sides to give an appropriate explanation of the impact. Because both sides can

comment on the judge's explanation, we do not believe there will always be a tactical advantage for the plaintiff or for the defendant.

I have attached to this testimony an article that appeared in WATL's quarterly publication, *The Verdict,* in the fall of 1996. This article, authored by one of our association's board members, Attorney Christine Bremer of Wausau, gives a more detailed history and analysis of this proposal. On behalf of the Wisconsin Academy of Trial Lawyers, I urge this committee to support SB 25 for the public policy reasons stated in this article.

As the article notes, this issue has been the subject of some discussion for many years. In 1940, Thomas Ryan wrote in favor of this change in the *Wisconsin Law Review.* He noted:

> If a judge is more able than the juryman to rise above his predilections, it is because of his knowledge and education. Did the juryman possess the knowledge of the judge, he would be no different from the judge in that particular, and the remedy is not to keep information from him, but to enlighten him to the fullest extent possible; not to curtail his vision, but to extend it; not to make him fearful to take a step, but to be a lamp to his feet — in a word, to treat him as a co-laborer in the temple of justice.

Thank you.

Wisconsin Academy of Trial Lawyers

Special Verdicts: Should Jurors Be Informed of the Legal Effect of Their Answers in Comparative Negligence Actions?

by Christine Bremer

It is a well-known principle of Wisconsin law that jurors are not to be informed of the effect of their verdict. They are to answer the questions on the special verdict fairly and justly, but cannot be told what effect those answers will have on the various parties; on the ultimate outcome of the case. We tell these people that it is their civic duty to sit on a jury. We ask them to put their own lives on hold for a day, a week, a month or more in order for justice to be served. We ask their undivided attention to what are, often times, complicated and difficult matters. We then ask them to render verdicts; to pool their collective wisdom and apportion justice to the various parties. But we don't tell them the consequences of their decisions.

How did this system evolve in Wisconsin? How do other states deal with special verdicts? Is justice being served by this system? Is there a better method for dealing with special verdicts? This article will attempt to answer those questions.

History of the Special Verdict

In order to understand the current state of the special verdict in Wisconsin, we must first examine its history. Prior to the year 1856, Wisconsin only utilized general verdicts in jury trials. In 1856, the legislature enacted the Special Verdict Statute.[1] Revised in 1858, this statute gave the courts power to "direct the jury to find a special verdict. Such verdict shall be prepared by the court in the form of questions, in writing, relating only to material issues of fact and admitting a direct answer to which the jury shall make answer in writing."[2] Currently, the Special Verdict Statute in Wisconsin reads as follows:

> Unless it orders otherwise, the court shall direct the jury to return a special verdict. The verdict shall be prepared by the court in the form of written questions relating only to material issues of ultimate fact and admitting a direct answer. The jury shall answer in writing. In cases founded upon negligence, the court need not submit separately any particular respect in which the party was allegedly negligent. The court may also direct the jury to find upon particular questions of fact.[3]

The Special Verdict Statute was analyzed and interpreted for the first time by the Wisconsin Supreme Court in *Ryan v. Rockford Insurance Company*.[4] The Court stated that the purpose of the statute was to "secure a direct answer free from any bias or prejudice in favor or against either party," and then went on to expound the following doctrine:

> [I]t has often been demonstrated in the trial of causes that the non-expert juryman is more liable than the experienced lawyer or judge to be led away from the material issues of fact involved by some collateral circumstance of little or no significance, or by sympathy, bias or prejudice; and hence it is common practice for courts, in the submission of such particular questions and special verdicts to charge the jury, in effect, that they have nothing to do with, and must not consider the effect which their answers may have upon, the controversy or the parties.[5]

In effect, the Court in *Ryan* held that it is error to instruct the jury how the special verdict questions should be answered to be consistent with a general verdict for either party. In *Banderob v. Wisconsin Cent. Ry. Co.* the Court further defined that ruling by stating that it is reversible error, by instructions, to inform the jury, **expressly or by necessary implication**, of the effect of their answers (emphasis added).[6]

Since *Ryan* and *Banderob*, the Wisconsin Supreme Court has consistently pointed out that: it is improper to authorize the jury to answer in the form of a legal conclusion;[7] that erroneous instructions, with regard to special verdict questions, are generally prejudicial;[8] that it is improper to read the comparative negligence statute to the jury as it instructs the jury as to the effect of their answers;[9] and that the court must not, in its charge to the jury, inform them of the ultimate result of

their answers.[10]

This doctrine has been upheld in Wisconsin for more than 100 years. More recently, the Wisconsin Supreme Court discussed, at some length, the wisdom behind the special verdict doctrine in *McGowan v. Story*.[11] In *McGowan*, the plaintiff was injured while transferring hot tar from his employer's truck to a distributor's vehicle. The case was tried to a jury, who found the plaintiff 50% negligent, employer 30% negligent, and the distributor 20% negligent. During the course of their deliberations, the jury returned to the courtroom and asked to be advised of the effect of its answers on the rights of the parties. The trial judge refused to so advise the jury. It should also be noted that the plaintiff had requested a general verdict, which would have made the effect of the jury's answer apparent. That request was also denied.

The Wisconsin Supreme Court agreed with the trial judge's decision, stating that "the judge was foreclosed by the law of this state from advising the jury."[12] Although the Court made mention of plaintiff's, and others', criticism of the rule, it nonetheless held fast to the age old tradition, stating as follows:

> It is argued that the refusal to fully inform the jurors is contrary to the traditional trust we place in the ability of juries to do justice. Of course, this criticism is in itself based on a fundamental distrust of the jury system, for it assumes that jurors are not faithful to their oath to follow the instructions of the trial judge. We decline to explore the pros and cons of this controversy, because any change in the rule would be contrary to the established basis for the use of juries, particularly in negligence cases. ...We suggest that the jury should be admonished, and impressed, that its function in a negligence case is factfinding only and that it is not its role to usurp the legislative function or the judicial function in interpreting the comparative negligence statute. It is the role of the judge, and not the jury, to implement the general policies of the comparative negligence statute.[13]

Since the Court's ruling in *McGowan*, there have been no changes, legislative or judicial, made in the special verdict doctrine. Despite the fact that the doctrine pre-dates Wisconsin's comparative negligence law, Wisconsin courts have consistently applied it to comparative negligence actions, without considering the implications of doing so.[14]

Special Verdicts in Other Jurisdictions

Wisconsin is one of only a few states which does not allow a jury to know the legal consequences of its verdict. In addition to Wisconsin, only Arkansas, Hawaii and Massachusetts have adopted similar provisions.[15] Other jurisdictions have been much more realistic in their views of the jury system.

In Indiana, the legislature decided juries should be informed of the effect of their verdicts, although 1995 tort "reform" legislation somewhat limited this procedure.[16] Juries are no longer informed about any immunities available to a nonparty or about limitations placed on punitive damage awards. Experience will show how the defense bar may use or attempt to broaden these limitations.

In Minnesota, whose comparative negligence law was modeled directly on Wisconsin's law, the rules of civil procedure grant broad discretion to trial courts in informing the jury.[17] Idaho, which has a 50% comparative negligence system, has legislatively mandated their confidence in juries.[18] In Utah, the state Supreme Court held that a jury could not be informed of the consequences of its verdict;[19] however, after further consideration, the Court subsequently reversed its position on this issue[20] and ruled that juries should be so informed.

Colorado struggled with this issue for some time before settling on its current "pro-inform" position. In *Simpson v. Anderson,* the Colorado Court of Appeals held that juries should be informed of the legal effect of their apportionment of negligence, since the law of comparative negligence is not secret.[21] The Colorado Supreme Court subsequently reversed the holding and argued that such a disclosure to the jury would influence jury verdicts and displace the function of a trial judge.[22] Thereafter, the Colorado legislature restored the holding of the Court of Appeals by adopting the following statutory mandate:

> In a jury trial in any civil action in which contributory negligence is an issue for determination by the jury, the trial court shall instruct the jury on the effect of its findings as to the degree of negligence of each party. The attorneys for each party shall be allowed to argue the effect of the instruction on the facts which are before the jury.[23]

In Kansas, the issue of informing the jury of the effect of their verdict came before the Kansas Supreme Court in *Thomas v. Board of T. Trustees.*[24] In discussing the rationale behind the rule, the Court pointed out the following reasons why the rule should not be followed

indiscriminately:

> (1) [I]t is a senseless practice, since an intelligent juror will in most cases already have a good idea of what effect his answers will have on the ultimate verdict; (2) adherence to the rule can and has led juries to speculate unnecessarily as to the meaning of the law, resulting in mistaken verdicts that do not reflect the true intent of the jury; (3) the rule is an unwarranted intrusion on the traditional role of the jury to temper harsh rules of law and see that substantial justice is done between parties.[25]

The Kansas Court further held that juries **should** be informed of the effect of their verdict, especially in comparative negligence cases (emphasis added). Explaining their reasoning, the Court stated:

> In our judgment, the rule ignores the reality that jurors often do concern themselves with the practical effects of their findings, and without being informed by the Court, will undoubtedly speculate as to the result of their verdict. Under the Kansas comparative negligence statute, if a jury finds that the defendant and plaintiff were equally at fault, the plaintiff recovers nothing. Expecting the defendant to recover 50% of his damages, the unknowing jury will insure that he receives nothing. Furthermore, we believe that there is a real danger of a jury taking upon itself to decrease the damage award by the percentage of plaintiff's negligence unless it is informed that the required deduction is a statutory duty of the trial court.[26]

In 1995, the Wisconsin comparative negligence statute was revised. It now provides that the negligence of the plaintiff shall be measured separately against **each** person found to be causally negligent.[27] Furthermore, liability for persons whose negligence is less than 51% is limited to the percentage of causal negligence attributable to that person.[28] Joint and several liability only applies where the person is 51% or more causally negligent.[29] Without being informed of these rules of law, a jury could very well render a verdict in which they believe they are awarding money damages to the plaintiff, but which, in reality, awards her nothing.

Consequences of an Uninformed Jury

As stated above, a jury that is not informed of the legal effect of their special verdict answers in comparative negligence cases can, and often does, render unintended verdicts. A case in point illustrates the perils of an uninformed jury.

In 1994, our firm tried a personal injury case to a jury in Wisconsin Rapids. The case involved the scalding of an elderly woman in the bathtub of her rented apartment. The jury decided that our client was 60% negligent for her own injuries (the landlord was apportioned 40%), but awarded her $458,056.51 in damages. After conducting an informal poll of the jury, we learned that they fully intended to award our client monetary damages and, in fact, were confident that they had done so by virtue of entering specific dollar figures on the special verdict form.

Once informed that the effect of their verdict was to award the plaintiff nothing, the members of the jury were shocked and upset, to say the least. In fact, one jury member was so bothered by the actual outcome, that she paid a visit to our client to apologize for the jury's verdict.

Any experienced trial attorney is likely to have several similar stories to relate. We are all frustrated when a hard-fought case produces such an unintended and unjust verdict. But for the client who has endured years of pain and suffering and has waited patiently to have their day in court, the effect of such a verdict can be tragic.

It is difficult to understand the logic behind a rule which, in essence, negates the true intent of a jury's verdict. The Kansas Supreme Court, in *Thomas v. Board of T. Trustees,*[30] attempted to explain that logic as follows:

> The rule which forbids the jury to be informed of the legal effects of its answers assumes that a jury should not concern itself with the practical effect of its apportionment of negligence and that a jury will operate more effectively in a vacuum.

This logic is contradictory to the essential principles of comparative negligence. Since the early 1970's, when the principles of comparative negligence became widely recognized, the role of the jury in negligence actions has changed dramatically. Verdicts requiring simple "yes" or "no" answers were no longer the norm. Juries were now being asked to quantify specific findings of relative fault. The concept of damage apportionment is predicated on its inherent fairness and on the trust we place in jurors. In mandating that citizens participate in the civil jury system, we bestow our faith and trust in their ability to impartially weigh and consider the evidence and to render a fair verdict. Is it not inconsistent that we then "blindfold" the jury and prevent it from knowing the legal effect of

the special verdict findings?

It is more than inconsistent to expect a jury to operate in a vacuum, it is dangerous. In *Seppi v. Betty*,[31] the Idaho Supreme Court observed that jurors frequently adjust their special verdict answers to achieve a predetermined result. If the legal effect of the answers is not obvious, the jury will speculate, often incorrectly, about the legal effect and thereby subvert the fact-finding process.[32] This problem is accentuated in a modified 49% comparative negligence state by the attractiveness of the fifty-fifty allocation.

In restricting the information we give to the jury, we risk not only unjust verdicts, but disillusioned citizens. Jurors take their duty very seriously. Most work diligently to render fair and impartial verdicts. However, when they are informed that the actual outcome is different than what they decided, most jurors feel guilty, disappointed, used and even angry. Such negative jury experiences serve not only to disillusion individual citizens but to heap unnecessary cynical criticism on our already tarnished legal system.

A Proposal for Change

Changes can be made in our civil jury system, changes that will improve the litigation process for all participants and will restore a more equitable image to the overall legal system. Wisconsin should adopt an "ultimate outcome" jury instruction or should change the language of the special verdict statute.

Such a change in the statute was attempted in 1985. Senate Bill 57 was introduced by Senator Chvala and then State Senator Feingold and was co-sponsored by then Representatives Hauke, Wimmer and T. Thompson. The proposed change read as follows:

> SECTION 1. 805.13(4) of the statutes is amended to read:
>
> 805. 13(4) INSTRUCTION: The Court shall instruct the jury before or after closing arguments of counsel. Failure to object to a material variance or omission between the instructions given and the instructions proposed does not constitute a waiver of error. The court shall provide the jury with one complete set of written instructions providing the substantive law to be applied to the case to be decided. **The court shall explain to the jury the legal conclusions which will follow from its possible findings and counsel may comment on the explanation** (emphasis added)."[33]

Unfortunately, no action was taken on this bill and it died at the end of the 1985 session. The original drafters of this bill did not re-introduce it in subsequent sessions. To date, Wisconsin has not amended the special verdict statute, nor have we adopted an "ultimate outcome" jury instruction.

Although Minnesota modeled its comparative negligence law closely on Wisconsin's, it went a step further by allowing trial courts to inform juries of the effect of their answers. In Minnesota, in all comparative negligence cases, "the court shall inform the jury of the effect of its answers to the percentage of negligence questions and shall permit counsel to comment thereon, unless the court is of the opinion that doubtful or unresolved questions of law, or complex issues of law or fact are involved, which may render such instruction or comment erroneous, misleading or confusing to the jury."[34] In accordance with this court rule, the following is a sample special verdict form used in Minnesota:

SPECIAL VERDICT FORM NUMBER 1

COMPARATIVE NEGLIGENCE (FAULT) - TWO OR MORE PARTIES

If you have answered "yes" to questions _____, _____ and _____, then answer this question:

Taking the combined (negligence) (fault) which contributed to the accident as 100%, what percentage thereof do you attribute to:

A. (name) _____ %
B. (name) _____ %
C. (name) _____ %
D. (name) _____ %

TOTAL 100%

_____(claimant's name) may not recover from a defendant when

_____(claimant's name) (negligence) (fault) is greater than the (negligence) (fault) of the defendant.[35]

By conditioning the application of the "inform the jury" rule on the discretion of the trial court, Minnesota allows its civil jury system to be flexible—a much needed quality for such a system if it is to remain viable and fair. It may very well be advantageous to treat a complex, multi-party products liability case differently than a straightforward, two-party personal injury case in

terms of the instructions given to the jury. In Minnesota, as well as other states,[36] trial courts are given the opportunity, on a case-by-case basis, to objectively decide on the proper amount of information to be given to the jury. Certainly this method is preferable to the inflexible, and often unjust, method used in Wisconsin.

This flexibility is particularly important in light of the comparative negligence reforms of 1995. A jury deciding a complex, multi-party case treads upon particularly tricky applications of law and the jury must do so blindfolded. Today, any defendant that is less than 51% at fault will not be held jointly liable. In addition, that same defendant is only responsible up to their percentage of causation. Without this knowledge, a jury blindly allocating liability may circumvent an honest intention to compensate plaintiffs.

In deciding whether Wisconsin's rule against informing should or should not be changed, perhaps we should keep in mind two important points. First, today's jurors are much more sophisticated and have more education and training than they did in 1890. What may have been true for juries more than 100 years ago, may not be true in this day and age. Second, we must not lose sight of the underlying principle of our jury system; namely, our belief that juries can impartially weigh all aspects of a case and enter a fair and just verdict.

Although this issue has been debated for some time in Wisconsin, the most eloquent petition for change was made by Thomas Ryan, writing for the Wisconsin Law Review, more than 50 years ago:

> If a judge is more able than the juryman to rise above his predilections, it is because of his knowledge and education. Did the juryman possess the knowledge of the judge, he would be no different from the judge in that particular, and the remedy is not to keep information from him, but to enlighten him to the fullest extent possible; not to curtail his vision, but to extend it; not to make him fearful to take a step, but to be a lamp to his feet—in a word, to treat him as a co-laborer in the temple of justice. Assuming him to be inferior and unworthy of full confidence and presuming that his knowledge of the effect of his answers upon the ultimate right of a party to recover would cause his prejudices to dictate his answers to the questions of the special verdict, is to adjudge him to be dishonest or at least an inefficient juryman.[37]

We should not continue to accept verdicts from juries that are forced to decide important issues while wearing blinders. We can and should improve our civil jury system by allowing juries to be informed of the effect of their answers in comparative negligence cases.

Christine Bremer *is a shareholder in the Wausau law firm of Grischke & Bremer, S.C. She received her undergraduate degree from Loyola University in Chicago and her law degree from Loyola University School of Law in 1978. She is a sustaining member of the Wisconsin Academy of Trial Lawyers and serves on its Board of Directors and also serves as an editor of* The Verdict. *In addition, she is a member of the Communications Committee of the State Bar of Wisconsin and she is a member of the Marathon County Bar Association, the Association of Trial Lawyers of America, and the American Bar Association.*

The author gratefully acknowledges the assistance of Judy Frymark, legal assistant, in the research of this article.

Endnotes

1 Wis. Laws 1856. c. 120, Sec. 171.
2 Rev. Stat. (1858) c. 132, Sec. 11.
3 Wis. Stats., Section 805.12(1).
4 77 Wis. 611, 46 N.W. 885 (1890).
5 *Id.* at 615, 46 N.W. at 886.
6 133 Wis. 249, 113 N.W. 738 (1907).
7 *New Home Sewing Machine Co. v. Simon* 104 Wis.120, 80 N.W.71 (1899). See also: *Meycr v. Home Insurance* Co., 127 Wis. 293, 106 N.W. 1087 (1906),; *Van De Bogart v. Marinette & Menomonee Paper Co.*, 127 Wis. 104,106 N.W.805 (1906); *Lyon v. City of Grand Rapids,* 121 Wis.609,99 N.W.311 (1904); *Gutzman v. Clancy,* 114 Wis. 589, 90 N.W. 1081, 58 L.R.A. 744 (1902); *Byrington v. City of Merrill,* 112 Wis. 211, 88 N.W. 26 (1901).
8 *De Groot v. Van Akkeren,* 225 Wis. 105, 273 N.W. 725 (1937).
9 *Id.*
10 *Bauer v. Richter,* 103 Wis.412,79 N.W.404 (1989). See also: *Cullen v. Hanisch,* 114 Wis. 24, 89 N.W. 900 (1902); *Sheppard v. Rosenkrans,* 109 Wis. 58, 85 N.W. 199, 83 Am.St.R. 886 (1901); *Brunette v. Town of Gagen,* 106 Wis. 618, 82 N.W. 564 (1900).
11 70 Wis.2d 189, 234 N.W.2d 325 (1975).
12 *Id.* at 234 N.W.2d at 328.
13 *Id.* at 234 N.W.2d at 329-330.
14 See *Erb Mutual Service Gas Co.,* 20 Wis.2d 530 (1963); and *McGowan v. Story, supra.*
15 See *Argo v. Blackshear,* 416 S.W.2d 314 (Ark. 1967); Hawaii Rev. Stats. Sec. 663.31(b) (1983 Supp.); Mass. Gen. Laws Ann., Ch. 231, Sec. 85 (1984-1985 Supp.).
16 Ind. Stats. Ann., Sec. 34-4-33-5 (1995). See generally Sections 34-4-33-4 to 34-4-33-6 (1995).
17 Minnesota Rules of Civil Procedure, Rule 49.01(2). See also, 1969 *Legislative Committee Comment* to Sec. 604.01, Minnesota Statutes Annotated.

[18] Idaho Code Ann., Sec. 6-801.

[19] *McGinn v. Utah Power & Light Company,* 529 P.2d 423, 424 (Utah 1974).

[20] *Dixon v. Stewart,* 658 P.2d 591, 596 (Utah 1982).

[21] 517 P.2d 416 (Colorado 1973).

[22] 526 P.2d 298 (Colorado 1974).

[23] Colo. Rev. Stat. 1973, Sec. 13-21-111(4).

[24] 582 P.2d 271 (Kan. 1973).

[25] *Id.* at 280.

[26] *Id.* at 281-282.

[27] Wis. Stat. Ann. Sec. 895.045(1)(1995).

[28] *Id.*

[29] *Id.*

[30] 582 P.2d at 281-282.

[31] 99 Idaho 186, 579 P.2d 683 (1978).

[32] 99 Idaho at 193, 579 P.2d at 690.

[33] 1985 Senate Bill 57.

[34] Minnesota Rules of Civil Procedure, Rule 49.01(2).

[35] 4 Minn. Prac. JIG 3rd Ed.-18.

[36] See Hawaii Rev. Stat. Sec. 663-31(d) (1976); Nev. Rev. Stat. Sec. 41.141-2 (1979); N.D. Cent. Code Sec. 9-10-07 (1975); Wyo. Stat. Sec. 1-1-lO9(iii) (1977).

[37] Thomas H. Ryan, *Are Instructions Which Inform The Jury Of The Effect Of Their Answers Inimical to Justice?,* 1940 Wis. Law Rev. 400, 402 (May, 1940).