

Discovery - Testing - Partially Destructive Testing is
Within the Scope of the Illinois Discovery Rules -
Sarver v. Barrett Ace Hardware, Inc., 63 Ill.2d 454,
349 N.E.2d 28 (1976)

Joseph Taconi Jr.

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Joseph Taconi Jr., *Discovery - Testing - Partially Destructive Testing is Within the Scope of the Illinois Discovery Rules - Sarver v. Barrett Ace Hardware, Inc.*, 63 Ill.2d 454, 349 N.E.2d 28 (1976), 26 DePaul L. Rev. 408 (1977)
Available at: <https://via.library.depaul.edu/law-review/vol26/iss2/12>

This Recent Cases is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

The legitimate conclusions to be drawn from *Genaust* are speculative in nature. However, one conclusion is that the Illinois Supreme Court is continuing to take a restrictive attitude toward product liability claims. This trend began in *Winnett v. Winnett*,⁴⁵ in which the court held that a bystander was not an intended user and not foreseeable as a matter of law. Thus, in *Genaust* as in *Winnett*, the scope of duty has been restricted by use of a foreseeability test. This desire to limit the number of strict liability actions was also indicated in *Rios v. Niagara Machine and Tool Works*.⁴⁶ The court in *Rios* held that once a purchaser of a product installs a safety device thereon, any unreasonably dangerous condition that existed due to the lack of such device was no longer present. Thus, the manufacturer was not liable for failure to install a safety device.

The future role of foreseeability in duty to warn cases is a major concern. It is likely that foreseeability will become the only factor which will determine whether there is a duty to warn. Courts will not consider the seriousness of the injury or the burden of precaution.⁴⁷ The decision may impede the development and expansion of the manufacturer's duty to warn. Closer scrutiny must be given to the duty of the manufacturer in future cases as modern and rapid advances in technology result in the production of highly sophisticated products. Many consumers will lack the experience, skill and knowledge necessary to fully comprehend the dangerous propensities of the products and must be made aware of the possible dangers resulting from their use. In this respect, the courts should be the vanguard of the public to minimize the adverse effects of a narrowed scope of the duty to warn.⁴⁸

Jeffrey Kripton

Discovery—Testing—PARTIALLY DESTRUCTIVE TESTING IS WITHIN THE SCOPE OF THE ILLINOIS DISCOVERY RULES—*Sarver v. Barrett Ace Hardware, Inc.*, 63 Ill.2d 454, 349 N.E.2d 28 (1976).

In *Sarver v. Barrett Ace Hardware, Inc.*,¹ the Illinois Supreme Court

45. 57 Ill.2d 7, 310 N.E.2d 1 (1974) (injury to child resulting when her hands were placed in a conveyor belt, held not foreseeable on a motion to dismiss).

46. 12 Ill.2d 79, 319 N.E.2d 232 (1974).

47. See notes 38-43 and accompanying text *supra*.

48. For an overview concerning other types of defects in strict liability, see Hofeld, *Looking At a Decade of Product Liability Law in Illinois—Where We've Been and Where We're Going*, 64 ILL. B.J. 344 (1976); Pope & Pope, *Design Defects Cases: The Present State of Illinois Product Liability Law*, 8 J. Mar. J. Prac. & Proc. 351 (1975).

1. 63 Ill.2d 454, 349 N.E.2d 28 (1976).

addressed the issue of whether Illinois discovery rules permit partially destructive testing of evidence. Adopting the rationale of prior case law,² the court looked to the objectives to be achieved by the discovery rules. The *Sarver* court held that partially destructive testing of evidence before trial, when authorized under the sound discretion of the trial court,³ is permissible under the discovery provisions of the Illinois Supreme Court.⁴ This note will examine the *Sarver* holding in light of the purposes of the discovery rules and will comment upon a possible application of the *Sarver* principles to totally destructive testing.

The plaintiff in *Sarver* was injured by an allegedly defective hammer manufactured by the defendant, Estwing Manufacturing Company, and sold by the defendant Barrett Ace Hardware. The plaintiff alleged that while using the hammer a piece of metal chipped off its striking face and struck him in the eye, causing serious injury. At trial, the metal chip that caused the injury was unavailable for inspection.⁵ In order to ascertain whether the hammer was defective,⁶ tests that would destroy a portion of the hammer had to be performed.⁷ Subject to limitations,⁸ the trial court granted the defendant's request for destructive testing.⁹ The appellate court reversed,¹⁰ noting that the relevant Illinois discovery provisions, Supreme Court Rules 201(b)(1)¹¹ and 214,¹² do not expressly

2. *People ex rel. General Motors v. Bua*, 37 Ill.2d 180, 226 N.E.2d 6 (1967); *Monier v. Chamberlain*, 35 Ill.2d 351, 221 N.E.2d 410 (1966).

3. See text accompanying notes 30-33 *infra*.

4. 63 Ill.2d at 454, 349 N.E.2d at 30.

5. *Id.* at 457, 349 N.E.2d at 29. Realizing that the metal chip that allegedly caused the injury was unavailable for inspection, the defendant Estwing made a request for production of the hammer. This request was granted for the purpose of enabling the defendant to visually examine the object. *Id.*

6. In order to show the liability of a seller in a products liability action, it is essential to illustrate that the product was "in a defective condition unreasonably dangerous to the user. . . ." RESTATEMENT (SECOND) OF TORTS §402A (1965).

7. A visual examination of the striking face of the hammer revealed some indentations but no obvious chipping. An expert for the defendant found that in order to determine the metallurgical properties of the hammer, it would be necessary to remove a piece of metal from it for testing purposes. 63 Ill.2d at 457, 349 N.E.2d at 29.

8. See text accompanying note 33 *infra*.

9. 63 Ill.2d at 457-58, 349 N.E.2d at 29. Counsel for the plaintiff had refused to comply with the discovery order, ostensibly upon grounds that the legal theory of discovery under Illinois Supreme Court Rules 201 and 214 does not provide for destructive testing. 63 Ill.2d at 458-59, 349 N.E.2d at 29.

10. 29 Ill.App.3d 195, 199, 330 N.E.2d 269, 272 (1975).

11. ILL. REV. STAT. ch. 110A, §201(b)(1) (1975). The relevant portion of Illinois Supreme Court Rule 201(b)(1) states:

Except as provided in these rules, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking disclosure or of any other party, including the existence, description, nature, custody,

sanction destructive testing.¹³ Thus, the Illinois Supreme Court was faced with the issue whether the language of Supreme Court Rules 201(b)(1) and 214 is broad enough to include the physical testing of tangible objects, even when that testing involves the alteration or partial destruction of the object.¹⁴ The court held that partially destructive testing is allowable because it relates to the "nature" and "condition" of tangible things under Supreme Court Rule 201(b)(1) and falls within the term "inspection" under Supreme Court Rule 214.¹⁵

In *Sarver*, the court noted that few jurisdictions have dealt with the question whether destructive testing is a permissible discovery device.¹⁶

condition, and location of any documents or tangible things, and the identity and location of persons having knowledge of relevant facts. . . .

12. ILL. REV. STAT. ch. 110A, §214 (1975). The relevant portion of Illinois Supreme Court Rule 214 states:

Any party may by written request direct any other party to produce for inspection, copying, reproduction, and photographing specified documents, objects or tangible things, or to permit access to real estate for the purpose of making surface or sub-surface inspections or surveys or photographs, or to disclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the nature, contents, or condition of such documents, objects, tangible things, or real estate is relevant to the subject matter of the action. . . .

13. 29 Ill.App.3d 195, 198-99, 330 N.E.2d 269, 272 (3d Dist. 1975). The appellate court reasoned that any expansion of the interpretation of the rules to allow destructive testing would involve a policy question which should be determined by the supreme court, particularly since an amendment of the rules or a previously unaccepted interpretation might be required.

14. 63 Ill.2d at 459, 349 N.E.2d at 29.

15. *Id.* at 460, 349 N.E.2d at 30.

16. New York is one of the few jurisdictions that permits destructive testing. The New York Civil Practice Law & Rules specifically provides for testing:

Discovery and production of documents and things for inspection, testing, copying or photographing

(a) As against party:

1) After commencement of an action, any party may serve on any other party notice:

(i) to produce and permit the party seeking discovery, or someone acting on his behalf, to inspect, copy, test or photograph any specifically designated documents or any things. . . .

N.Y. CIV. PRACT. LAW (Consol.) §3120. The New York rule is in contrast to the Illinois rule which does not provide for testing. *See* notes 11 & 12 *supra*.

The New York courts have allowed partially destructive testing under the New York civil practice rule. In *Foster-Lipkins Corp. v. Suburban Propane Gas Co.*, 72 Misc.2d 457, 339 N.Y.S.2d 581 (1973), the court allowed testing procedures that would have resulted in the virtual destruction of certain parts of a cylinder. The principles that provided the basis for the New York court's decision were in harmony with the basic goals of the *Sarver* court—to facilitate and expedite the trial in accordance with the rights of the parties and to illuminate the issues in the case. *Compare* *Foster-Lipkins Corp. v. Suburban Propane-Gas Co.*, 72 Misc.2d 457, 339 N.Y.S.2d 581 (1973), *with* *Sarver v. Barrett Ace Hardware*,

The court examined previous Illinois cases to determine the objectives behind this state's discovery provisions. In *People ex rel. General Motors v. Bua*,¹⁷ the Illinois Supreme Court struck down a discovery request for the production of voluminous documents.¹⁸ Criticizing the unreasonable discovery request, the court expressed the hope "that the bench and bar will wisely use the tools of discovery to illuminate the actual issues in the case rather than to harass and obstruct the opposing litigants."¹⁹ In addition to the *Bua* decision, the *Sarver* court relied upon *Monier v. Chamberlain*.²⁰ In *Monier*, the court stated that "the objective to be obtained under the discovery rules is the expeditious and final determination of controversies in accordance with the substantive rights of the parties."²¹

The proposition that the discovery rules are to be used to illuminate the actual issues in the case and to expedite the trial in accordance with

Inc., 63 Ill.2d 454, 349 N.E.2d 28 (1976).

Partially destructive testing has been approved by the New York courts in other factual situations. In *Edwardes v. Southampton Hosp. Ass'n*, 53 Misc.2d 187, 278 N.Y.S.2d 283 (1967), suit was brought to recover damages for injuries sustained when an intramedullary pin broke while in place. The defendant requested production of the pin for testing. The court noted that an adequate test could be performed on ¼ inch of the 13½ inch pin and held that since the pin was central to the case, testing could be done. *See also* *Beauty Silk Mfg. Co. v. Krumholz*, 141 Misc. 204, 252 N.Y.S. 643 (1931). *Contra*, *Jerry & Herbert Lehmann, Inc. v. Turtle Bros.*, 149 Misc. 744, 267 N.Y.S. 785 (1933).

17. 37 Ill.2d 180, 226 N.E.2d 6 (1967).

18. The plaintiff, injured while riding in a 1961 Corvair, contended that General Motors negligently manufactured a tie rod that caused the accident. At trial, a request was made and granted for the production of documents relating to the Corvair model years from 1960 through 1965. On appeal, the Illinois Supreme Court found that to demand complete records for Corvair model years through 1965 was an abuse of the discovery rule. *Id.* at 193-94, 226 N.E.2d at 14.

19. *Id.* at 193, 226 N.E.2d at 14.

20. 35 Ill.2d 351, 221 N.E.2d 410 (1966). In *Monier*, the court interpreted former Supreme Court Rule 17, predecessor of Supreme Court Rule 214, relating to the inspection of tangible things. Former Supreme Court Rule 17 provided:

A party may at any time move for an order directing any other party or person to produce specified documents, relating to the merits of the matter in litigation, for inspection and to be copied or reproduced, or produce for inspection or to be photographed objects or tangible things relative to the merits of the said matter. . . .

ILL. REV. STAT. ch. 110, §101.17 (current version at ILL. REV. STAT. ch. 110A, §214 (1975)).

The action in *Monier* was brought to recover damages for personal injuries arising from an accident allegedly caused by the defendant's negligent operation of a motor vehicle. The plaintiff requested that the defendant and his insurance company produce for inspection and copying numerous documents, reports, and memoranda made by the defendant concerning the accident. The court held that the discovery request sufficiently designated the materials sought and allowed discovery of the items. 35 Ill.2d 351, 356, 221 N.E.2d 410, 414-15 (1966).

21. *Id.* at 357, 221 N.E.2d at 415.

the substantive rights of the parties is supported by the broad policy objectives behind promulgation of discovery rules. With the adoption of the discovery provisions in the Federal Rules of Civil Procedure,²² a liberal philosophy of pre-trial discovery was established.²³ This philosophy also had a substantial effect upon the promulgation of pre-trial discovery rules in the individual states.²⁴ The basic objective of this philosophy was the elimination of trickery in order to safeguard against surprise at trial.²⁵ In most instances, pre-trial discovery improves the

22. FED. R. CIV. P. 26-37.

23. Holtzoff, *Instruments of Discovery Under Federal Rules of Civil Procedure*, 41 MICH. L. REV. 205 (1942). See M. GREEN, BASIC CIVIL PROCEDURE 120-22 (1972); Speck, *The Use of Discovery in United States District Courts*, 60 YALE L.J. 1132 (1951). At common law it was virtually impossible for a party to investigate an opponent's claim or his awareness of relevant information before trial. F. JAMES, CIVIL PROCEDURE §6.1 at 179-80 (1965). Common law equity courts did have a pre-trial device that was a forerunner of modern day discovery. This device was known as a bill of discovery in aid of an action at law or defense at law. The bill of discovery afforded a party the opportunity to have his adversary answer interrogatories that would be received as admissions at trial. However, equity still adhered to the concept that the trial was the appropriate time for determining the facts of a case. *Id.* See 6 J. WIGMORE, EVIDENCE §1846 at 379-80 (3d ed. 1940). See generally James, *Discovery*, 38 YALE L.J. 746 (1929). The common law relied almost exclusively upon the pleadings to give advance notice to the parties of claims and defenses. See G. RAGLAND, DISCOVERY BEFORE TRIAL 1-5 (1932). For a short history of the development of discovery from the common law to the adoption of the Federal Rules of Civil Procedure, see R. MILLAR, CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE 201-19 (1952).

24. M. GREEN, BASIC CIVIL PROCEDURE 122 (1972). For a comparison of various states that have made significant modifications by incorporating versions of the Federal Discovery Rules into their practices, see Note, *Discovery Practice in States Adopting the Federal Rules of Civil Procedure*, 68 HARV. L. REV. 673 (1955).

25. See *Parrino v. Landon*, 8 Ill.2d 468, 472, 134 N.E.2d 311, 313 (1956); W. GLASER, PRE-TRIAL DISCOVERY AND THE ADVERSARY SYSTEM 11 (1968). This is accomplished by educating the parties prior to trial of true claims and defenses. *Drehle v. Fleming*, 129 Ill. App.2d 166, 263 N.E.2d 348 (3d Dist. 1970), *aff'd*, 49 Ill.2d 293, 274 N.E.2d 53 (1971). See *People ex rel. Terry v. Fisher*, 12 Ill.2d 231, 236, 145 N.E.2d 588, 592 (1957). In *Terry*, pursuant to former Supreme Court Rule 101.19-4, ILL. REV. STAT. ch. 110, §101.19-4 (1957), the Illinois Supreme Court ordered an insured defendant to answer written interrogatories as to the existence and amount of liability insurance. The plaintiff had sued the defendant for personal injuries resulting from the defendant's alleged negligent operation of a motor vehicle. The above cited Supreme Court Rule provided that "a deposition may be taken as to any matter not privileged which relates to the merits of the matter in litigation." This provision was construed by the court as encompassing the disclosure of the existence and amount of the defendant's liability insurance. The rationale of the decision turned upon the fact that where an automobile liability insurance policy is in effect, an injured party may sue the insurer if a judgment is returned unsatisfied against the insured. Therefore, the disclosure of the insurance policy educated the plaintiff as to possible action against the insurer. In turn, educating the parties promoted the chances of settlements. See W. GLASER, PRE-TRIAL DISCOVERY AND THE ADVERSARY SYSTEM 83 (1968); G. RAGLAND, DISCOVERY BEFORE TRIAL 252 (1932).

quality of the trial because the issues are better defined, less irrelevant evidence is introduced, and fewer fabrications are possible at trial.²⁶

The *Sarver* holding clearly is within the scope of this liberal philosophy. *Sarver* involved a products liability claim. In a products liability action, the most important issue is whether a defect actually exists.²⁷ The trial court in *Sarver* found that defectiveness could not be determined by a visual examination of the hammer.²⁸ Therefore, it was necessary to allow testing, even though that testing was destructive. The court noted that the testing, by illuminating the essential issue of defectiveness, would facilitate the final determination of the controversy.²⁹

Sarver established that partially destructive testing is within the scope of the Illinois discovery rules. However, the decision indicated that courts should be wary of placing unreasonable burdens upon litigants who are ordered to comply with requests for such testing.³⁰ To protect those litigants, the court demanded that three conditions be satisfied before destructive testing could be allowed; first, the testing must be relevant to the issues presented in the case; second, the information sought must be unavailable through any less destructive methods; and finally, the destructive testing must not unreasonably impair the presentation of the opposing litigant's case.³¹ The court found that these requirements had been satisfied fully by virtue of the

26. W. GLASER, PRE-TRIAL DISCOVERY AND THE ADVERSARY SYSTEM 11 (1968). *Accord*, G. RAGLAND, DISCOVERY BEFORE TRIAL 252 (1932):

Where full and equal discovery is allowed lawyers say that they come much nearer to obtaining the truth because:

- (1) The witness is examined while his memory is fresh;
- (2) The witness usually is not coached in preparation for the trial, and consequently his testimony is more spontaneous;
- (3) A party who has been pinned down to a definite and detailed story early in the litigation can ill afford to manufacture testimony contrary to this story for he is already bound.

See also Johnston, *Discovery in Illinois and Federal Courts*, 2 J. MAR. J. PRAC. & PROC. 22, 27 (1968).

27. See note 6 *supra*.

28. 63 Ill.2d at 457, 349 N.E.2d at 29.

29. *Id.* at 460, 349 N.E.2d at 30.

30. The *Sarver* court stated that:

Our holding necessarily vests broad discretionary powers in the trial court, and "such a breadth of power requires a careful exercise of discretion in order to balance the needs of truth and excessive burden to the litigants."

Id. at 460-61, 349 N.E.2d at 30, quoting *People ex rel. General Motors v. Bua*, 37 Ill.2d 180, 193, 226 N.E.2d 6, 14 (1967). The burdens in *Bua* were overbroad and imprecise discovery demands for large numbers of documents, records, and drawings. The court held that the discovery orders which had been issued requiring production of the various records were too broad and could not be enforced.

31. 63 Ill.2d at 461, 349 N.E.2d at 30.

safeguards ordered by the trial court.³² The trial court had imposed the following conditions: first, a detailed testing plan was to be submitted for the court's approval; second, adequate notice of the time of testing was to be given to opposing counsel; third, opposing counsel could observe and photograph the testing procedure; and finally, one-half of the samples taken at the testing had to be given to the party opposing the discovery request.³³

Application of these principles may present a problem when a party to a lawsuit, seeking a determination of essential facts, requests testing that would result in the total destruction of the tested item. The conflict in such a case probably would center around satisfying the condition that the destructive testing not unreasonably impair presentation of the opposing litigant's case. However, in many cases this difficulty could be resolved by applying safeguards similar to the ones approved in *Sarver*. The opposing party could be given adequate notice and a chance to observe and record the tests regardless of whether the result would be total or partial destruction.³⁴ Of course, if the tested item were destroyed totally, it would be impossible to comply with the final *Sarver* safeguard requiring retention and delivery of samples. However, the court in *Sarver* recognized that this particular order was applicable only to a situation in which partially destructive testing was sought.³⁵ Further, the court stated that "[t]he nature of the protective order required will, of course, depend upon the facts in each case."³⁶ The Illinois Supreme Court therefore has indicated that in a case where totally destructive testing is requested, the courts may fashion appropriate safeguards to protect the rights of the litigants.

These safeguards, however, may be inadequate if the opposing party requests that the item be retained intact in order that it may be admitted into evidence. A party seeking to introduce the item at trial could argue that allowing its destruction would "unreasonably impair the . . . presentation of his case to the trier of fact."³⁷ Admitting an object at

32. *Id.* at 461-62, 349 N.E.2d at 31.

33. *Id.*

34. For example, the *Sarver* trial court required that a detailed testing plan be submitted for the court's approval, adequate notice of the time of testing be given to opposing counsel, and that opposing counsel be allowed to observe and photograph the testing procedure. See note 33 and accompanying text *supra*. These requirements, and any similar requirements that provide adequate notice and opportunity to observe, could apparently be met in any testing situation, regardless of the extent of the resulting destruction.

35. The *Sarver* court stated that turning over one-half of the samples taken at the testing was required "so that additional destruction of the hammer will not be necessary." 63 Ill.2d at 461, 349 N.E.2d at 31.

36. *Id.* at 461-62, 349 N.E.2d at 31.

37. *Id.* at 461, 349 N.E.2d at 30. See also text accompanying note 31 *supra*.

trial, as either real or demonstrative evidence,³⁸ is within the discretion of the trial court.³⁹ The criteria used in determining whether the evidence will be exhibited at trial is its relevance and value to the factfinder's understanding of the issues presented by the case.⁴⁰ Apparently seeking the same goal, *Sarver* allowed destructive testing to promote greater understanding of the essential issue of the product's defectiveness.⁴¹

It would seem that testing an item and exhibiting an item at trial serve the same purpose. However, real or demonstrative evidence will not be admitted at trial if its admission would serve no useful purpose⁴² or if better evidence is available.⁴³ Therefore, when destructive testing would better illuminate the relevant facts in the case, permission for such testing should not be withheld because destruction of the item would prevent its exhibition at trial. This general rule would achieve the result desired by all the parties—the sure and expedient clarification of the relevant issues in the case.

38. The evidence may be real evidence, which involves the production of an object which had a direct part in the incident, or demonstrative evidence, which has no probative value in itself, but which serves as an aid to the finder of fact in comprehending verbal testimony. See *Smith v. Ohio Oil Co.*, 10 Ill.App.2d 67, 75-76, 134 N.E.2d 526, 530 (1956). In either case, the real or demonstrative evidence is addressed directly to the senses of the court or jury for their observation, without intervention of witness testimony. See *Kabase v. State*, 31 Ala.App. 77, 12 So.2d 758 (1943); *Holloway v. Evans*, 55 N.M. 601, 238 P.2d 457 (1951). For examples of various situations in which this type of evidence has been admitted at trial, see *E. E. Thomas Fruit Co. v. Start*, 107 Cal. 206, 40 P. 336 (1895) (holding that the admission of four boxes of fruit into evidence at trial was proper as a means of showing the condition of a larger quantity of the fruit); *Iske v. Metropolitan Util. Dist. of Omaha*, 183 Neb. 34, 157 N.W.2d 887 (1968) (holding that a design for the development of recreational lots on an island was admissible into evidence at trial in order to illuminate the issue of the island's prospective use); *Advance Loan Serv. v. Mandik*, 306 S.W.2d 754 (Tex. Ct. App. 1957) (holding that empty medicine bottles and containers were admissible into evidence at trial in corroboration of testimony that certain medicines had been purchased and used). See also *State v. Marcus*, 240 Iowa 116, 34 N.W.2d 179 (1948).

39. See *Pulley v. Pacific Coca-Cola Bottling Co.*, 68 Wash.2d 778, 415 P.2d 636 (1966); *Bittner v. Wheel Horse Products, Inc.*, 28 Ill. App.3d 44, 328 N.E.2d 160 (1st Dist. 1975); *Riddle v. Memorial Hosp.*, 43 App.Div.2d 750, 349 N.Y.S.2d 855 (1973).

40. *Riddle v. Memorial Hosp.*, 43 App.Div.2d 750, 349 N.Y.S.2d 855 (1973). See also *Kunzman v. Cherokee Silo Co.*, 253 Iowa 885, 114 N.W.2d 534 (1962); *Sherman v. City of Springfield*, 77 Ill.App.2d 195, 222 N.E.2d 62 (4th Dist. 1966).

41. See text accompanying notes 27-29 *supra*.

42. See, e.g., *Bitton v. International Transp., Inc.*, 437 F.2d 817 (9th Cir. 1970) (holding that it was proper to deny a request to disassemble a mechanism and submit a portion of it into evidence at trial, since the jury had sufficient opportunity to view the item, and photographs and a duplicate of the item were received into evidence); *Bates v. Newman*, 121 Cal.App. 800, 264 P.2d 197 (2d Dist. 1953) (holding that it was not error to refuse to allow the admission of demonstrative evidence, when such evidence would merely have been cumulative of evidence that had previously been received).

43. See *Holloway v. Evans*, 55 N.M. 601, 607-08, 238 P.2d 457, 461 (1951).

The Illinois Supreme Court in *Sarver* set sound precedent in Illinois by implementing the underlying purposes of the discovery rules. The decision furthers the ability of the courts to ascertain the truth and to dispose of lawsuits without resort to speculation and conjecture.

Joseph Taconi, Jr.