LAVERY, C. J., dissenting. On the basis of the procedural history of this case, I respectfully dissent from part I of the majority's opinion. Contrary to the majority's view, the trial court did not abuse its discretion by permitting the testimony of the plaintiff's expert, Michael Culmo, on rebuttal, and Culmo's testimony was not prejudicial to the defendants.

The transcript of the trial demonstrates that both counsel for the parties failed to comply timely with the requirements of our rules of practice with respect to amended pleadings and the disclosure of expert witnesses. Apparently, the plaintiffs timely disclosed Timothy Foreman, a builder and an inspector, as an expert witness who testified during the plaintiffs' case-in-chief. Approximately five weeks before trial, the plaintiffs moved to amend their complaint to allege the defects to the structural frame of the house at issue in this appeal. The defendants did not object to the amendment in a timely fashion.[1] During trial, the defendants disclosed that Barry Steinberg, a structural engineer, would testify as an expert witness. Thereafter, the plaintiffs disclosed Culmo, a structural engineer, to rebut Steinberg's testimony. Although the defendants objected strenuously, the court permitted Culmo to tes-

tify.[2] The court also permitted the defendants to introduce additional testimony from Steinberg in surrebuttal.[3]

"It is a well established principle of law that the trial court may exercise its discretion with regard to evidentiary rulings, and the trial court's rulings will not be disturbed on appellate review absent abuse of that discretion. . . . Sound discretion, by definition, means a discretion that is not exercised arbitrarily or wilfully, but with regard to what is right and equitable under the circumstances and the law . . . . And [it] requires a knowledge and understanding of the material circumstances surrounding the matter . . . . In our review of these discretionary determinations, we make every reasonable presumption in favor of upholding the trial court's ruling. . . . *State* v. *Orhan*, 52 Conn. App. 231, 237, 726 A.2d 629 (1999). Evidentiary rulings will be overturned on appeal only where there was an abuse of discretion and a showing by the [appellant] of substantial prejudice or injustice. *State* v. *Hernandez*, 204 Conn. 377, 390, 528 A.2d 794 (1987)." (Internal quotation marks omitted.) *Baughman* v. *Collins*, 56 Conn. App. 34, 35–36, 740 A.2d 491 (1999), cert. denied, 252 Conn. 923, 747 A.2d 517 (2000). "[Our courts] will not overturn the trial court's evidentiary rulings in the absence of a showing that the trial court clearly abused its discretion and that the ruling likely affected the court's ultimate determination." *Connecticut Associated Builders & Contractors* v. *Hartford*, 251 Conn. 169, 190, 740 A.2d 831 (1999).

My view, based on my reading of the transcript, is that the patience of the trial judge was sorely tested by the lack of pretrial preparation on the part of trial counsel.[4] The court accommodated the late disclosure of expert witnesses by both sides, and permitted rebuttal and surrebuttal testimony to avoid prejudice to all concerned. Furthermore, the evidence elicited from Culmo was relevant and was not prejudicial to the defendants.

Prejudicial evidence is not evidence that is merely damaging. Culmo's testimony was relevant because it pertained to the structural integrity of the house, the central issue in the case. Relevant evidence should be excluded in situations "where the evidence offered and the counterproof will consume an undue amount of time [or] where the defendant, having no reasonable ground to anticipate the evidence, is unfairly surprised and unprepared to meet it." *State* v. *DeMatteo*, 186 Conn. 696, 702–703, 443 A.2d 915 (1982). In this case, Culmo's relevant testimony was permissible because it did not consume an undue amount of time and did not surprise the defendants. Indeed, Culmo's testimony was no surprise to the defendants because they knew that the structural integrity of the house was at issue.

I also am of the opinion that the majority has confused

prejudicial evidence with evidence that is merely damaging. ''All evidence adverse to a party is, to some degree, prejudicial. To be excluded, the evidence must create prejudice that is *undue* and so great as to threaten an injustice if the evidence were to be admitted.'' (Emphasis in original.) *Chouinard* v. *Marjani*, 21 Conn. App. 572, 576, 575 A.2d 238 (1990). All of the experts testified that the structure of the house was compromised to some degree; the issues concerned the extent of repairs necessary to correct the problems and their related costs. The court heard evidence concerning the cost of the repairs, which ranged from less than $10,000—Steinberg's testimony—to more than $200,000. Culmo's estimate was neither the high nor the low figure before the court. I cannot overlook the fact that the court gave the defendants the opportunity to present surrebuttal evidence on the cost of repairs. I therefore conclude that the defendants' claim before this court that the trial court abused its discretion with respect to the admission of expert testimony by Culmo is without merit.

For those reasons, I respectfully dissent from part I of the majority's opinion, and I would affirm the judgment of the trial court.

[1] The following colloquy took place on the day trial was to commence:

''[The Court:] And I understand, [plaintiffs' counsel, Matthew J.] Collins, that you filed a request to amend your complaint, and I believe it's the first request that has been made, isn't it, Mr. Collins?

''[Plaintiffs' Counsel]: Yes, it is, Your Honor.

* * *

''[The Court:] The objection is dated today and states that the amended complaint adds new allegations of defects to the structural frame. Can you tell me what they are?

''[Defendants' counsel, Allen A. Marko]: The allegations are that the floor is sloping, and the frame of the house has shifted, causing doors no longer to be able to close and causing the floors to crack.

''This is the first time allegations in the complaint have been made as to the actual structural frame and, therefore, Your Honor, because it is adding an entirely new part of the claim, we are requesting a continuance.

''This now reopens a part of the pleadings. While the time limit for objecting may have gone by, I still have time to file an answer and special defenses to that, and I'm also requesting time to have a structural engineer investigate this new claim. And the Practice Book section on amendments does allow the court to limit amendments or to add special orders to amendments that are allowed in the interest of justice, and I believe that in this case, where the amendment is coming so close to the trial date, I think that in the interest of justice and equity, it's required that we be given the time to properly investigate this claim coming out for the first time.

''The Court: Mr. Collins, first of all, is this the first claim of defects to the structural frame?

* * *

''[Plaintiffs' Counsel]: Yes—that is, in regard to the structure of the roof. . . . [That has] been the big issue in the case.

''[The Court:] And by the way, who will be your expert with regard to the framing, the same expert? The same expert you will have for the roof?

''[Plaintiffs' Counsel]: Yes, yes. In fact, what precipitated this was we went back, he examined the house, and the house appears to be sagging, appears to be obviously in worse condition than it was.

''The Court: And when did you become aware of that?

''[Plaintiffs' Counsel]: It was probably the day or two before I filed the amended complaint.

''The Court: All right. And were you there in the company of the expert?

''[Plaintiffs' Counsel]: Yes, I was.

''The Court: And would you tell me the name of the expert?

"[Plaintiffs' Counsel]: Timothy Foreman.

* * *

"[Defendants' Counsel]: Your Honor, the plaintiffs had filed a disclosure of expert. In that disclosure, they provided the expert's opinion. There was no mention made of these issues. These are coming up for the very first time, and there was no amendment to the notice of disclosure or the expert's report when it's claimed that this additional information was discovered.

"The Court: All right. One other problem you have, Mr. Marko, is that we're not dealing here with anything that's discretionary. We're talking now about Practice Book § 176 (c) [now § 10-60 (a)], and this amendment by consent, order of the court, or failure to object, and subsection (c) [now (a) (3)] says, 'If no objection thereto has been filed by any party within fifteen days from the date of the filing,' which would have been, I believe . . . April 5th? 'The amendment shall,' and I read that as mandatory . . . . And I would indicate that for that reason, and that is the principal reason, the objection is overruled.

* * *

"[The Court:] I would indicate, however, it's without prejudice to request on your part—to make evidentiary objections to the line of questioning, to this line of questioning with regard to structural defects . . . . Do you have an opposing expert, Mr. Marko?

"[Defendants' Counsel]: We have a person who was to come in, an architect, but not on this issue.

"The Court: Not on this issue?

"[Defendants' Counsel]: No.

"The Court: All right. I would suggest strongly that you advise him or try to obtain a qualified person in that regard. And for that purpose, I assume, Mr. Collins, the structure will be available to anyone that Mr. Marko designates to examine it.

"[Plaintiffs' Counsel]: Yes."

[2] After several days of evidence, the following colloquy took place:

"The Court: We're now resuming the *Cafro* matter, and I would point out . . . There's just been filed a disclosure of expert witness. I think you have it, do you not, Mr. Collins?

"[Plaintiffs' Counsel]: Yes, I just received it.

"The Court: All right. And this is in regard to Barry Steinberg. And was that inspection conducted with both attorneys present on Saturday?

"[Defendants' Counsel]: It was conducted Monday morning, Your Honor. I was not present. . . .

* * *

"[Plaintiffs' Counsel]: I was not able to be present.

* * *

"The Court: All right. . . . Why don't you just put on the record, Mr. Collins, what you indicated to me about a comparable witness that you had contacted.

"[Plaintiffs' Counsel]: Yes, Judge. Mr. Cafro over the weekend had a structural engineer by the name of Culmo, Michael Peter Culmo, do an assessment of the house and he generated a report which I've given to counsel, which is very particular in its examination and in its conclusions, and I would ask that—

"The Court: Let me ask you this, Mr. Collins. I suppose that was in connection with the retention of Mr. Steinberg?

"[Plaintiffs' Counsel]: Yes.

"The Court: As I indicated to counsel in chambers, much of the preparatory work with regard to expert testimony is being accomplished while the trial is going on, and I'm taking judicial notice of that due to circumstances beyond our control.

"I would indicate at this point in time that I would at least, I'd like to have counsel review those two reports, and I would also indicate that after you have reviewed them, if counsel believe it will be in the interest of a full airing of all of the critical issues in this case upon which the court will have to rule, the court would be inclined, particularly if counsel can agree, to allow that additional evidence to have been given in spite of the fact that, as I've stated to you, the ordinary rules with regard to disclosure of expert witnesses prior to trial have been more [breached than honored] in the observance, as I've indicated to you in chambers."

[3] I also note that the court viewed the subject premises at the conclusion of testimonial evidence.

[4] The court explained its reasons for allowing all of the experts to testify in open court:

"The Court: But it would seem to me in fairness, in order not to—to avoid a proliferation of experts where there weren't any up until a few days before the trial would not be in the interest of efficiently disposing of this case; you understand that?

* * *

"The confusion in this case has been generated by the conspicuous lack of preparation on the part of two of the three attorneys involved in this case, and I'm stating that now in the presence of your clients."