

FILED

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Starcher, J., dissenting:

If this Court gets into reversing jury verdicts on the basis of a trial judge's discretionary call on whether to allow rebuttal witnesses, we are going to need to amend our *Constitution* -- to hire some new justices!

Nothing is more committed to a trial judge's discretion than a decision on rebuttal testimony. As a trial judge, I almost never allowed it. Litigants always want to have the "last word," and lawyers can always make "fairness" arguments as to why they need rebuttal.

This trial judge properly exercised his discretion and concluded -- and the record bears this out -- that Dr. Wallace had well explained the document issue. The majority is being swayed by the "expert" issue to find error in the rebuttal issue. There was no error on either issue and this verdict should stand.