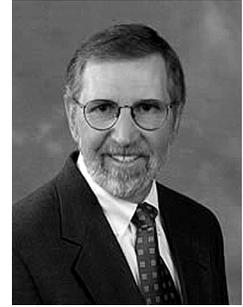


Lynn Laufenberg Named Trial Lawyer of the Year



The Wisconsin Academy of Trial Lawyers (WATL) named Lynn R. Laufenberg the Robert L. Habush Trial Lawyer of the Year. Attorney Laufenberg received the award at WATL's Presidents' Dinner on Friday, December 1, 2006 in Milwaukee, Wisconsin. Incoming WATL President Robert L. Jaskulski (Milwaukee) and Outgoing WATL President Daniel A. Rottier (Madison) hosted the event.

The Robert L. Habush Trial Lawyer of the Year Award is bestowed on that member of our organization who has made an outstanding contribution to the public interest or who has demonstrated compassion and commitment to advocacy on behalf of injured consumers.

WATL President Daniel A. Rottier stated, "Lynn is a fierce advocate who lets the facts and legal theory drive his advocacy. He is never driven by anger or animosity. Tort law in Wisconsin has benefited by his contributions as have hundreds of his clients. We all owe him a debt of gratitude. He is a fitting recipient of the Robert L. Habush Trial Lawyer of the Year award."

Lynn R. Laufenberg is the senior member of the Milwaukee law firm of Laufenberg & Hoefle, S.C. He concentrates his practice in personal injury litigation, representing persons and families harmed by medical negligence, defective products, unsafe premises and other careless acts. He is a 1975 *cum laude* graduate of Marquette University Law School. Later he clerked for former Supreme Court Justice Bruce F. Beilfuss. Laufenberg lives on Moose Lake in Waukesha County with his wife Mary Jane. They have four children, including Mike, who is also a member of the law firm.

Laufenberg served as President of WATL in 2003 and continues to serve on the Board of Directors. He served as President of the Wisconsin Civil Justice Education Foundation in 2004 and continues to serve as a trustee. He has been a co-editor of *The Verdict*, WATL's quarterly publication, has co-chaired WATL's Constitutional Challenge Committee and serves on WATL's Amicus Curiae Brief Committee and the Jury Instruction Committee. He is a frequent lecturer and writer on the subjects of tort law and trial advocacy. He has been

elected to three terms on the State Bar of Wisconsin's Litigation Section and served as Chair of that Section as well as chair of the Section Leaders Council. He is a member of the Wisconsin Chapter of the American Board of Trial Advocates and has been recognized as a Civil Trial Specialist by the National Board of Trial Advocacy.

Laufenberg's scholarship and impact on Wisconsin law has been immense. As Bill Gleisner, the 2005 recipient of the award stated, "Lynn is our organization's 'scholar in residence.' He would be at home in any law school in the country." He has been an active developer of Wisconsin tort law, appearing before state and federal appellate courts in numerous cases. His work in the area of products liability successfully led to the formulation of the enhanced injury doctrine, which precludes consideration of fault of an injured party in causing the accident when determining liability for enhanced injuries. *Farrell v. John Deere Co.*, 151 Wis. 2d 45, 443 N.W.2d 50 (Ct. App. 1990) and *Kutsugeran v. AVCO*, 973 F.2d 1341 (7th Cir. 1992) He also successfully argued for the rejection of "comparative risk" evidence as relevant to a determination of whether a product is "unreasonably dangerous." *Bittner v. American Honda Motor Co. Inc.*, 194 Wis. 2d 122, 533 N.W.2d 476 (1995)

Laufenberg's work on stray voltage cases has been cutting edge, arguing successfully that the Public Service Commission's "level of concern" did not establish the sole basis for a utility's liability for damages caused by stray voltage in *Hoffmann v. WEPCO*, 2003 WI 64, 262 Wis. 2d 264, 664 N.W.2d 55.

In the area of medical malpractice, Laufenberg argued successfully that the "alternative methods of treatment" concept did not apply to determination of liability for negligent diagnosis. *Miller v. Kim*, 191 Wis. 2d 187, 528 N.W.2d 72 (Ct. App. 1995)

On issues of evidence, Laufenberg has confirmed that, once qualified as an expert, opinion based on statistical information concerning impact of spinal injuries on impairment of future earning capacity could

not be precluded. *Brain v. Mann*, 129 Wis. 2d 447, 385 N.W.2d 227 (Ct. App. 1986). He has also confirmed the privileged nature of income tax and income information from non-earned sources and precluded the discovery of same in context of claim for impairment of earning capacity. *Konle v. Page*, 205 Wis. 2d 389, 556 N.W.2d 380 (Ct. App. 1996)

Former WATL President Jim Weis wrote of Laufenberg, “Lynn is one of the classiest and brightest lawyers that I have ever known. He combines a great intellect with a calm reassuring demeanor. He is one of those rare individuals who can communicate equally well with the Supreme Court or with a jury. There is no pretense, just substance. Lynn has given countless hours to the Academy in almost every conceivable capacity. He has written dozens of superb amicus briefs and consulted on many more. His dedication to this organization has been consistent and unwavering. I have never known Lynn to turn down a request for help from the Academy.” Cases where Laufenberg has written WATL amicus briefs and/or participated in oral argument before the Wisconsin Supreme Court include the following seminal cases:

- *Strenke v. Hoger*, 2005 WI 25, 279 Wis. 2d 52, 694 N.W.2d 296, where he successfully argued on behalf of the plaintiff that proof of intent to cause injury to a specific person was not required to support an award of punitive damages under Wis. Stat. § 895.85(3).
- *Baumeister v. Automated Products, Inc., et al*, 2004 WI 148, 277 Wis. 2d 21, 690 N.W.2d 1, where he participated in oral argument and the Supreme Court confirmed the “every argument must be frivolous” standard as basis for award of sanctions for frivolous appeal.
- *Haferman v. Vangor, et al.*, 2005 WI 171, 286 Wis. 2d 621, 707 N.W.2d 853, again participating in oral argument and helping to convince the Supreme Court they should reject the contention that the 3-year statute of limitations applied to claims of medical malpractice asserted on behalf of developmentally disabled child.
- *Fuchsgruber, et al v. Custom Accessories, Inc., et al.*, 2001 WI 81, 244 Wis. 2d 758, 628 N.W.2d 833, where he participated in oral argument and the Supreme Court rejected the contention that modification of the joint and several liability rule contained in the amended comparative negligence statute, Wis. Stat. § 895.045, applied to strict product liability claims.
- *Rebernick v. Wausau General Insurance Co.*, 2006 WI 27, 289 Wis. 2d 324, 711 N.W.2d 621 Confirmed that “notice of availability” of UIM

coverage required by § 632.32(4m) applies to excess/umbrella coverage.

- *Stehlik, et al. v. Rhoads, et al.*, 2002 WI 73, 253 Wis. 2d 477, 645 N.W.2d 889. Revised formulation of verdict and jury’s allocation of responsibility where plaintiff is alleged to have been passively negligent for not using available injury prevention equipment.
- *Lagerstrom v. Myrtle Worth Hospital, et al.*, 2005 WI 124, 285 Wis. 2d 1, 700 N.W.2d 201. Established that collateral source payments in medical malpractice cases are admissible solely for the purpose of a jury’s consideration in determining the reasonable value of medical care.
- *Amanda Carney-Hayes, et al. v. Northwest Wis. Home Care, et al.*, 2005 WI 118, 284 Wis. 2d 56, 699 N.W.2d 524. Confirmed that so-called “Alt” privilege may not be asserted to preclude questioning a defendant in a malpractice action on standard of care issues.

Laufenberg is a prolific writer, authoring articles for magazines and publications concerning medical malpractice, collateral source rule, informed consent, joint and several liability, and stray voltage. Most recently he had two articles published in *Trial Magazine*, “How do I Blame Thee? Let me Count the Ways” (May 2006) explaining how to confront the “blame the patient” defense in medical malpractice cases, and “No More Dr. Nice Guy” (May 2005), which discusses how to get jurors past the doctor’s likeability issue and to the merits of the case.

Finally Laufenberg has been a strong advocate for the civil justice system in the halls of the Legislature, appearing as a witness in the legislative process on behalf of WATL, the Litigation Section of the State Bar of Wisconsin and the State Bar of Wisconsin over 20 times to present testimony in opposition to efforts to restrict access to the courts by injured consumers, overturn common law rights of recovery and undermine the independence of the judiciary.

Beyond the many attributes of Laufenberg’s legal abilities, Bill Gleisener noted, “In addition to a brilliant mind, Lynn is one of the kindest, fairest persons I have ever known, in or out of the law. As a consequence of his intelligence and fair-mindedness, he is one of the most ethical lawyers I have ever known. As if that were not enough, his judgment is impeccable. I would trust Lynn with any confidence or with any legal responsibility, however sensitive. I am very proud to call him ‘friend.’”

Jim Weis concurred, saying, “Lynn is an extraordinary man. With all his success he remains kind, patient and willing to help anyone who asks. In these days

when trial lawyers are cast in such a negative light Lynn is a great ambassador for us all. He is a thoughtful, intelligent man who has dedicated his life to helping those less powerful seek justice. We are fortunate to have him as a member of the Academy and honored to have him as trial lawyer of the year.”

On receiving the award, Laufenberg expressed his appreciation and humility in receiving the award, discussing the previous winners of the Trial Lawyer of the Year Award. Below are his remarks.

I was an officer of the Academy when this award was conceived and participated in the selection process over the first four years of its existence. From that experience, I learned just how hard it was to single out one among many highly deserving candidates for this recognition.

Now the recipient, I look out among you and see many, many truly dedicated and exceptional trial lawyers who I consider more deserving of this award. So it is with a lot of hesitation that I stand before you and it is in your name that I accept this recognition.

It is an honor and privilege to be put in the company of those who have already received this recognition in the name of someone who has done so much for this organization and the civil justice system. I have always believed that the true value of this recognition should be the inspiration and motivation its namesake and the recipients provide to all of us to be the best we can be as trial lawyers.

Most of us in this room share many common attributes necessary to be a successful trial lawyer — hard work, willingness to take a risk, competitive drive, courage and fear of failure. But we all have the opportunity and, perhaps, the responsibility to be so much more. To do so much more.

Bob Habush, in whose name this award is given, and all who have been recognized before me have shown different ways to do that. They embody the variety of talents and strengths, which have combined to make this organization great over the past 50 years. By their work, their dedication and their professionalism, they defy the stereotype that the enemies of the interests we represent try to create. All are good people. All are great trial lawyers. All have been tremendous sources of inspiration and examples of the very best of our profession. I'd like to share with you what they represent to me. How they continue to inspire, motivate and teach me to continue to strive to follow in their footsteps.

It starts, of course, with Bob Habush. Bob's accomplishments, inside and outside the courtroom, are well known. His contributions to this organization and the interests we represent are unequalled. In and of

themselves, those accomplishments and contributions should inspire all of us. But I had a unique opportunity in the past year to work with Bob in preparation for the Supreme Court arguments on the punitive damage issues raised in the Strenke and Wischer cases. I was privileged to argue the Strenke case. What I saw during preparations was a man who, despite his accomplishments and obvious talents, was wise enough to know that he did not have all the answers. Who was able to recognize the talents that others possessed. Who was willing to listen to what they had to say. To consider it, to assimilate it and then mold it into an impressive and credible presentation. Bob Habush demonstrates the adage: the harder I work, the luckier I get. There are no shortcuts to being a great trial lawyer.

Mike End — the epitome of the gentleman trial lawyer. For me, Mike consistently demonstrates that you can be a strong and effective advocate for your client and, at the same time, show respect for the system and the opposition by being civil and conducting yourself in a consistently professional manner. After all, how can we expect others to have and maintain respect for the system without demonstrating that respect ourselves by how we relate to judges, juries, witnesses and opposing counsel. Even when they test our patience. I am so pleased, as I know you are, that he has agreed to share his many talents as a future president of this organization.

John Peterson. For me, John stands as an example of unwavering and unqualified commitment to this organization and the interests it represents. He assumed the role of chair of the Legislative Committee from Bob Habush at a time when there was great peril to our interests. Without regard for the long odds and bleak prospects, John inspired me by his consistently calm demeanor. A calmness and confidence that came from an absolute conviction that we are on the right side of the battle to save our civil justice system. Regardless of the odds and resources aligned against us. If the cause is just — a great trial lawyer is not intimidated. A great trial lawyer does not give up.

Ric Domnitz. Ric embodies the passion we all aspire to have in pursuing the interests of our clients and our organization. In my mind, you can never be truly successful as a plaintiffs' trial lawyer if you do not believe in the cause. "Belief in the cause" means on a large scale that we are committed to the principle that the constitutional guarantees to access to the courts, the right to a jury trial and a remedy for wrongs are not hollow sentiments.

On a smaller scale, "belief in the cause" means that we truly believe in each client's case. If we do not have that belief, we cannot effectively convey it in the court-

room. It was a lesson I learned well when I was a much younger lawyer and making the transition from defense work to plaintiffs work. I tried two cases nearly back-to-back in Judge McGraw's courtroom in Waukesha County. Many of the same people were on both juries. I lost the first case and won the second. One of the jurors told me that they could tell that I believed in my case the second time.

Ric truly believes in the cause and has an unequalled ability to articulate that belief passionately and persuasively.

Jim Weis — A unique combination of homespun wisdom, creativity and sharp intellect. If Ric persuades by articulate passion, Jim uses calm logic and down to earth examples to lead his audience, whether it be a jury or the seven members of the Wisconsin Supreme Court, to the unavoidable, inevitable conclusion. I have had the pleasure of serving with Jim on the Academy's Amicus Committee and he consistently reminds me of the value of simplification. He demonstrates that great trial lawyers understand their audience and are able to distill their cause to its simplest terms.

Keith Clifford. We kiddingly refer to Keith as a political junkie whose idea of great TV programming is C-SPAN. But Keith reminds me that we, as trial lawyers, cannot exist in isolation from the greater social and political forces, which have such potential to influence our profession and our cause. Not all of us can have the instincts and insight which permit us to feel as comfortable or be as effective in the political environment as Keith. But Keith demonstrates that, to be a great trial lawyer, we must have a social conscience and we must be engaged in that process in whatever way we can if we are going to have any hope of survival.

Bill Gleisner — the person who doesn't know how to say no. I've always felt that the most successful trial lawyers share two essential character traits. A curiosity about how things work, why things are the way they are and a willingness to challenge the status quo. For the most successful trial lawyers, the least satisfactory explanation for why we should continue to do things a certain way is that is the way they've always been done. Bill personifies these traits and combines them with a keen intelligence and a gift for nuance. Bill inspires me every day to question the things we think we know. To challenge those rules which are no longer consistent with modern policy and to be creative.

All of those who have been recognized before me stand as confirmation that there is no one way or one formula for those of us who strive to be what a trial lawyer should be. I hope that I can continue to justify the judgment of those who made this selection by making even a small contribution to their legacy.