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Material from the FEDERAL EVIDENCE REVIEW should be cited:

[Volume] FED. EVID. REV. [page number]
(Month Year)

Thus, 4 FED. EVID. REV. 40 (Jan. 2007) indicates volume three of the FEDERAL EVIDENCE REVIEW at page 40.

Page numbers in any volume of the REVIEW are consecutive from the first issue of that volume.

FEDERAL EVIDENCE REVIEW

(ISSN: 1556-5645)

Volume 4, Number 10 (September 2007)

Published monthly by FederalEvidence.com

P.O. Box 6883 Arlington, VA 22206-0883

Fax: (571) 312-5642

Web: www.FederalEvidence.com/contact

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Lead Story: The Practice And Role Of Motions In Limine In Federal Court

Motions in limine are a common part of pretrial motion practice and one of the important tools for resolving important evidence issues in federal trials. These motions are a relatively new device in the federal courts and were rarely found in pre-1970s evidence practice. They have become a familiar landmark in the federal litigation landscape, in both civil and criminal cases. Typically, the motion in limine results in a preliminary ruling on the admissibility of contested evidence. The motion can be a central part of a litigation strategy, helping to preserve important appellate issues, revealing an opponent's trial strategy, and ultimately shaping the case for trial. This Lead Story surveys the use and practice of evidentiary motions in limine in federal courts.



in camera in limine proceeding in sexual assault prosecution, noting that under the state *in limine* procedure the trial court “determines that certain evidence ... is relevant to a material issue(s) in this case ... and will permit the evidence to be offered at the trial of this matter. The Court determines that certain other evidence ... is not relevant to any material issue in this case, and therefore may not be offered at the trial of this matter, unless circumstances later warrant.” (quotation omitted).

Motions *in limine* apply not merely to exclude evidence, but also to admit evidence. *See, e.g., United States v. Benally*, 500 F.3d 1085, 1088 (10th Cir. 2007) (noting that trial court ruled on a motion *in limine* to “admit[] evidence of a fourth incident” of defendant’s sexual assault and child molestation crimes) (emphasis added) (reviewed in 4 FED. EVID. REV. 1372 (Sept. 2007)); *United States v. Yida*, 498 F.3d 945, 949 (9th Cir. 2007) (noting that the government “moved *in limine* to admit former testimony of a witness who had been deported”) (emphasis added) (reviewed in 4 FED. EVID. REV. 1283 (Sept. 2007)). Motions “*in limine*” are sometimes used as a vehicle to clarify the manner or scope of admitting evidence. *See, e.g., United States v. Stark*, 499 F.3d 72, 75 (1st Cir. 2007) (“[T]he government filed a motion *in limine* to clarify whether the district court’s suppression order also applied to testimony relating to the illegally-seized marijuana. It sought to admit, *inter alia*, testimony from Torres describing how he unloaded the marijuana from Stark’s RV.”) (emphasis added).

Motions In Limine: An Overview

The phrase “*in limine*” reflects its Latin root of something “at the threshold” or “at the beginning.” *See, e.g., Luce v. United States*, 469 U.S. 38, 40 n.2 (1984) (noting definition of “*in limine*” is “on or at the threshold; at the very beginning; preliminarily”) (citing BLACK’S LAW DICTIONARY 708 (5th ed. 1979) (motion *in limine* is “a written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements)); *Riordan v. Kempiners*, 831 F.2d 690, 697 (7th Cir. 1987) (equating *in limine* motion with a motion “at the threshold”).

In today’s practice, motions *in limine* apply to motions regarding receipt of anticipated evidence. As the Supreme Court has noted, “We use the term [motion *in limine*] in a broad sense to refer to *any* motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984) (emphasis added); *see also Associated Press v. District Court for Fifth Judicial Dist. of Colo.*, 542 U.S. 1301, 1303 (2004) (Denying application for stay of state supreme court order restricting publication of contents of transcripts of

Importance And Role Of Motions In Limine

The motion *in limine* has become a primary tool for a trial court’s case management. *See, e.g., United States v. Tokash*, 383 F.3d 962, 968 (7th Cir. 2002) (“Motions *in limine* are well-established devices that streamline trials and settle evidentiary disputes in advance, so that trials are not interrupted mid-course for the consideration of lengthy and complex evidentiary issues.”); *United States v. Holmquist*, 36 F.3d 154, 163 (1st Cir. 1994) (“In



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