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USE OF MOTIONS IN LIMINE IN CIVIL PROCEEDINGS

Attorneys frequently find themselves in situations where the opposing counsel persistently solicits prejudicial evidence which, although logically relevant, is not legally relevant.¹ When this situation arises, the attorney is faced with the dilemma of either continually objecting to the evidence, thereby arousing the suspicions of the jury and creating additional prejudice, or not objecting to the evidence, thereby waiving the right to raise the issue in a motion for a new trial or on appeal.² To avoid facing this double-edged sword, many experienced trial attorneys employ a relatively new procedural device: the motion in limine.³ This article is intended as a guide⁴ for the practicing attorney in the use of motions in limine in civil practice.⁵

Although there are different versions of the motion in limine, it is generally referred to as a pretrial request for "an evidentiary ruling that a

1. See E. CLEARY, *MCCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE* § 185 (2d ed. 1972) for a discussion of the terms *legal relevance* and *logical relevance* and for the need to discard this distinction in favor of a single relevancy standard.

2. Comment, *The Motion in Limine: Pretrial Trump Card in Civil Litigation*, 27 U. FLA. L. REV. 531, 536 (1975).

3. The motion in limine is appropriate in both civil and criminal proceedings. However, it is important to distinguish the motion in limine from another motion which is used to exclude inflammatory evidence in criminal proceedings—the pretrial motion to suppress. Whereas the motion in limine is based on the trial court's inherent discretion to exclude prejudicial evidence, the motion to suppress is based on the court's duty to exclude evidence which has been improperly obtained.

4. From his limited experience as a law clerk, the author has learned that the motion in limine practice in Missouri is much more widespread than the reported cases indicate. The suggestions contained herein are based on written commentaries and case law, and are intended as a suggested procedure that will be safe for any attorney to follow. These suggestions do not attempt to presume what short-cut procedures individual courts may employ.

5. For a collection of cases, see Annot., 63 A.L.R.3d 311 (1975). See generally Davis, *The Motion in Limine—A Neglected Trial Technique*, 5 WASHBURN L.J. 232 (1966); Traster, *Protecting Your Client with the Motion in Limine*, 22 TRIAL LAW GUIDE 147 (1978); Comment, *The Use of Motions in Limine in Civil Litigation*, 1977 ARIZ. ST. L.J. 443; Comment, *Motion in Limine*, 29 ARK. L. REV. 215 (1975); Comment, *Motions in Limine in Washington*, 9 GONZ. L. REV. 780 (1974); Comment, *The Motion in Limine: Pretrial Trump Card in Civil Litigation*, 27 U. FLA. L. REV. 531 (1975); Note, *The Motion in Limine—A Useful Procedural Device*, 35 MONT. L. REV. 363 (1974); Note, *Civil Procedure—New Mexico's Recognition of the Motion in Limine*, 8 N.M.L. REV. 211 (1978); Note, *Pretrial Exclusionary Evidence Rulings*, 1967 WIS. L. REV. 738; 20 AM. JUR. TRIALS 441 (1973).

For an excellent account of the use of motions in limine in criminal proceedings, see Rothblatt & Leroy, *The Motion in Limine in Criminal Trials: A Technique for the Pretrial Exclusion of Prejudicial Evidence*, 60 KY. L.J. 611 (1972).

particular piece of evidence has potentially inflammatory characteristics or aspects that outweigh whatever materiality it possesses."⁶ However, the motion in limine is better defined as "a request for a ruling on the admissibility of certain evidence made at any time prior to the offer of that evidence at trial."⁷ If the court determines that the potential prejudicial effect outweighs the probative value of the evidence, it may issue an "order directing the opposing party, his counsel and witnesses to refrain from introducing . . . [that] evidence, either directly or indirectly, without first determining its admissibility outside the presence of the jury."⁸ In addition to foreclosing mention of the excluded evidence during examination of witnesses, the court's order may also preclude reference to the prejudicial evidence in pleadings, voir dire, opening statements, off-hand remarks by counsel, and closing arguments.⁹

Authority for the use of motions in limine in most jurisdictions is found in the trial court's inherent discretionary power to admit or exclude prejudicial evidence.¹⁰ This power has evolved by case law¹¹ rather than by specific authority from statutes or rules of procedure.¹²

6. 20 AM. JUR. TRIALS 447-48 (1973).

7. Comment, 1977 ARIZ. ST. L.J., *supra* note 5, at 444.

8. Comment, 29 ARK. L. REV., *supra* note 5, at 217. This statement refers to a prohibitive motion in limine seeking a preliminary order. For further discussion of the types of motions in limine, see text accompanying notes 22-28 *infra*.

9. Wagner v. Larson, 257 Iowa 1202, 136 N.W.2d 312 (1965).

10. Davis, *supra* note 5, at 234. *E.g.*, in Burrus v. Silhavy, 155 Ind. App. 558, 563-64, 293 N.E.2d 794, 797 (1973), the court stated:

A "motion in limine" is not a creature of statute nor is it found in the Indiana Rules of Procedure. The authority of the trial court to entertain a "motion in limine" emanates from the inherent power of the trial court to exclude or admit evidence in the furtherance of its fundamental constitutional purpose which is the administration of justice. . . . A "motion in limine" is a necessary adjunct to the trial court's inherent power to admit and exclude evidence. The trial court may issue protective orders against prejudicial questions or statements which could be uttered before a jury and thereby prevent a fair and impartial jury trial.

Accord, Good v. A. B. Chance Co., 565 P.2d 217 (Colo. App. 1977); Proper v. Mowry, 90 N.M. 710, 568 P.2d 236 (Ct. App. 1977); Fenimore v. Donald M. Drake Constr. Co., 87 Wash. 2d 85, 549 P.2d 483 (1976).

11. The first reported case considering a form of the motion in limine was Bradford v. Birmingham Elec. Co., 227 Ala. 285, 149 So. 729 (1933), where the plaintiff sought to exclude any reference to his character by the defendant. The trial court denied the motion and the Supreme Court of Alabama upheld that ruling, stating that such action "would be wholly unjustified by, and in violation of, all precedent, and an unwarranted usurpation of judicial power and authority." *Id.* at 287, 149 So. at 730.

In spite of this initial setback, motion in limine practice is now widespread in the United States. 20 AM. JUR. TRIALS 450 (1973); Comment, 8 N.M.L. REV., *supra* note 5, at 214 (stating that at that time the motion had been expressly recognized in federal courts and in 16 states). Use of the motion is especially prevalent in Texas. Davis, *supra* note 5, at 234. Even the Supreme Court of Alabama, which originally rejected motions in limine, has upheld the granting of such a motion. Cain v. Aetna Life Ins. Co., 360 So. 2d 322 (Ala. 1978).

12. "Specific statutes are not required to authorize a motion in limine." Good v. A. B. Chance Co., 565 P.2d 217, 221 (Colo. App. 1977).

In Missouri, there are three possible sources of authority for the propriety of a motion in limine. The first and foremost is that the motion in limine is within the inherent discretion of the trial court.¹³ Secondly, there are two Missouri Supreme Court cases which recognize the motion.¹⁴ Finally, Missouri Supreme Court Rule 62.01 and Federal Rule of Civil Procedure 16 may be cited as authority for motions in limine.¹⁵

13. See note 10 *supra*.

14. *Rogers v. Fiandaca*, 491 S.W.2d 560 (Mo. 1973); *State v. Schleicher*, 438 S.W.2d 258 (Mo. 1969). *Rogers*, noted chiefly for its interpretation of a portion of the standing provisions of Missouri's wrongful death statute, RSMo § 537.080 (3) (1978), presented a wrongful death action arising out of a one-car collision which resulted in the death of all of the occupants. There were no eyewitnesses to the collision nor did anyone see who was driving the car when it departed from the home of one of the occupants. Consequently, there was substantial speculation as to who was driving the car at the time of the accident. The plaintiff, having settled his claim out of court and remaining in the action only to defend the counterclaim, offered a motion in limine to preclude the use of certain prior inconsistent statements made by the parents of plaintiff's decedent to the effect that decedent was driving the car when it left their house. The trial court granted the motion and following the close of the evidence directed a verdict in favor of the plaintiff.

The Missouri Supreme Court upheld the decision, and stated that it "found no error in the ruling and findings of the trial court." 491 S.W.2d at 565. Although the court did not expressly approve of the use of motions in limine, its tacit approval of the same provides strong support for their continued use.

State v. Schleicher involved a criminal prosecution for second-degree burglary and stealing. In a footnote, the court stated that a pretrial motion to suppress may be appropriate during the next trial to exclude evidence obtained during an unlawful search of another's apartment. 438 S.W.2d at 261 n.4.

Although attorneys have used *Schleicher* as authority for the use of motions in limine, its value as such appears to be limited. As previously stated, the motion to suppress is to preclude the use of evidence which was illegally obtained, whereas the motion in limine seeks the exclusion of prejudicial evidence, regardless of the manner in which it was obtained. See note 3 *supra*. In *Schleicher*, it appears that the court would exclude the evidence based on *how* it was obtained, rather than on the basis that its prejudicial value outweighed its probative value. Thus, *Schleicher* is not convincing authority for motions in limine in civil actions. Its use for that proposition is not recommended, especially considering the availability of *Rogers* and other more persuasive authorities herein cited.

Motions in limine have also reached the Missouri courts of appeal on three different occasions; however, these cases did not rule on the propriety of using motions in limine. *Moore v. Rollmo Corp.*, 575 S.W.2d 859 (Mo. App., D. Spr. 1978); *Land Clearance for Redevelopment Auth. v. Massood*, 526 S.W.2d 354 (Mo. App., D.K.C. 1975); *Glick v. Allstate Ins. Co.*, 435 S.W.2d 17 (K.C. Mo. App. 1968).

15. FED. R. Civ. P. 16 provides in part:

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

- (1) The simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury; [and]
- (6) Such other matters as may aid in the disposition of the action. . . .

This rule has been cited as authority for motions in limine in the follow-

When an attorney files a motion in limine, his primary objective is to keep any reference to certain prejudicial evidence from the jury.¹⁶ This eliminates the need for objecting to the offer of the evidence at trial, thereby "preserving neutrality in the mental processes of the jury."¹⁷ Aside from precluding the offer of evidence at an upcoming trial, the granting of a motion in limine may significantly enhance a client's bargaining position for settling a civil action out of court.¹⁸

There are two additional objectives which an attorney may achieve through the filing of a motion in limine, regardless of the outcome. One of these objectives is to obtain insight into the opposing counsel's reason for offering the evidence and his theory in support of its admissibility.¹⁹ Consequently, even if the motion is denied, one would have time to re-search the opposing counsel's theory and to prepare another objection to the evidence when it is offered at trial. Secondly, filing the motion will help preserve a record for appeal.²⁰

The effect of motion in limine practice "has been to shorten the trial, simplify the issues and reduce the possibilities of a mistrial."²¹ Considering the existence of congested dockets in most jurisdictions, the positive effect of motions in limine may be the primary reason that many courts are now accepting their use.

ing cases: *Aley v. Great Atlantic & Pacific Tea Co.*, 211 F. Supp. 500 (W.D. Mo. 1962) (provides strong authority for the use of motions in limine in Missouri federal courts); *Hertz v. Graham*, 23 F.R.D. 17 (S.D.N.Y. 1958); *Penn v. Automobile Ins. Co.*, 27 F. Supp. 336 (D. Or. 1939). In addition, in states which have patterned their rules of civil procedure after the federal rules, the following cases have cited their respective versions of rule 16 as authority for the use of motions in limine: *Bradbeer v. Scott*, 193 Cal. App. 2d 575, 14 Cal. Rptr. 453 (1961); *Wallin v. Kinyon Estate*, 164 Mont. 160, 519 P.2d 1236 (1974); *Heath v. Board of Comm'rs*, 40 N.C. App. 233, 252 S.E.2d 543 (1979).

Mo. R. Civ. P. 62.01 (a) is nearly identical to Fed. R. Civ. P. 16. Considering the similarity between the two rules, the above cited cases would support the proposition that Mo. R. Civ. P. 62.01 (a) is authority for the use of motions in limine.

16. *Hyatt v. Sierra Boat Co.*, 79 Cal. App. 3d 325, 337, 145 Cal. Rptr. 47, 54 (1978). ("The advantage of such motions is to avoid the obviously futile attempt to 'unring the bell' in the event a motion to strike is granted in the proceedings before the jury."); *Good v. A. B. Chance Co.*, 565 P.2d 217 (Colo. App. 1977); *Burrus v. Silhavy*, 155 Ind. App. 558, 293 N.E.2d 794 (1973); *People v. Harris*, 86 Mich. App. 301, 272 N.W.2d 636 (1979); *Bridges v. City of Richardson*, 163 Tex. 292, 354 S.W.2d 366 (1962); *Fenimore v. Donald M. Drake Constr. Co.*, 87 Wash. 2d 85, 549 P.2d 483 (1976); *Davis, supra* note 5, at 233; 20 AM. JUR. TRIALS 450 (1973); Note, 35 MONT. L. REV., *supra* note 5, at 362; Note, 8 N.M.L. REV., *supra* note 5, at 219.

17. 20 AM. JUR. TRIALS 450 (1973).

18. *Id.* at 451-52.

19. *Id.* at 450-51.

20. *Stroud v. Dorr-Oliver, Inc.*, 112 Ariz. 574, 544 P.2d 1089 (1976); *Orange County Flood Control Dist. v. Sunny Crest Dairy, Inc.*, 77 Cal. App. 3d 742, 143 Cal. Rptr. 803 (1978) (appellant's motion in limine provided a sufficient record to preserve his vague motion to strike for appellate review). See text accompanying notes 46-69 *infra*.

21. *Burrus v. Silhavy*, 155 Ind. App. 558, 563, 293 N.E.2d 794, 797 (1973).

Motions in limine may be divided into two major categories: prohibitive and permissive.²² The prohibitive motion in limine requests the court to issue an order prohibiting opposing counsel and his witnesses from alluding to the prejudicial evidence in any manner during any portion of the trial proceedings. Conversely, the permissive motion in limine seeks an order allowing the admission of potentially sensitive evidence before it is offered at the trial.

Prohibitive motions in limine may request either an absolute or a preliminary court order.²³ The preliminary order is not a final ruling by the court and serves merely to preclude mention of or reference to prejudicial evidence during any phase of the proceedings until the proponent of that evidence receives the court's permission out of the presence of the jury. An absolute order, however, is a final ruling by the court, and the proponent may not seek the court's approval for the admission of the evidence even if the offer is made out of the presence of the jury.

The permissive motion in limine has appeared in only a few reported cases.²⁴ However, this form of the motion appears "to be nothing more than a logical extension of the 'prohibitive' type"²⁵ of the motion, especially when one interprets the denial of a prohibitive motion as a preliminary ruling "favoring the admissibility of potentially prejudicial evidence."²⁶

Although there is little authority directly authorizing permissive motions in limine, such authority did not exist for the prohibitive motions forty years ago.²⁷ The federal courts appear to be the most promising source for case law in this area. Expansive pretrial proceedings are established by Federal Rule of Civil Procedure 16;²⁸ therefore, counsel should

22. 20 AM. JUR. TRIALS 452-54 (1973); Comment, 1977 ARIZ. ST. L.J., *supra* note 5, at 468.

23. 20 AM. JUR. TRIALS 452-54 (1973); Comment, 29 ARK. L. REV., *supra* note 5, at 223; Note, 8 N.M.L. REV., *supra* note 5, at 216.

24. *LeRoy v. Sabena Belgian World Airlines*, 344 F.2d 266 (2d Cir.), *cert. denied*, 382 U.S. 878 (1965) (transcript of flight transmissions allowed in wrongful death action); *Hertz v. Graham*, 23 F.R.D. 17 (S.D.N.Y. 1958) (allowed depositions from a prior action which evolved from the same occurrence); *United States v. Certain Tracts of Land*, 57 F. Supp. 739 (S.D. Cal. 1944) (ruling that comparable sales would be permitted, even though state law would prohibit the same); *Penn. v. Automobile Ins. Co.*, 27 F. Supp. 336 (D. Or. 1939) (on retrial, defendant was allowed to use the testimony that his expert witness had given during the first trial); *Maroco v. Ford Motor Co.*, 7 Cal. App. 3d 84, 86 Cal. Rptr. 526 (1970) (pretrial ruling on judicial notice was incorrect, but not reversible error); *Walters v. Kellam & Foley*, 360 N.E.2d 199 (Ind. Ct. App. 1977) (indicating that a pretrial ruling would have been appropriate to determine whether custom evidence tended to prove a material proposition in the negligence case); *Keeney v. City of Overland Park*, 203 Kan. 389, 454 P.2d 456 (1969) (suggesting that pretrial ruling on reasonableness of ordinance may be used). See generally Comment, 1977 ARIZ. ST. L.J., *supra* note 5, at 468-70.

25. 20 AM. JUR. TRIALS 454 (1973).

26. *Id.*

27. See note 11 *supra*.

28. See note 15 *supra*.

not be timid about proposing a permissive motion in limine in federal court.

Motions in limine ordinarily are written²⁹ motions filed prior to the selection of the jury.³⁰ The decision as to the exact time for making the motion is part of the moving party's overall trial strategy and should be made only after determining the type of motion to be used, the type of order to be sought, and the probability that the court will grant the motion.³¹ Whenever the motion is filed, a copy of the motion, along with a notice as to the time and place where the motion is to be taken up, should be served on the opposing party.³² The court will generally take up the motion on a law day or at the pretrial conference.³³

The motion in limine should be simple and concise and should state:

1. The basic issues that will arise in the trial;
2. What evidence the opposing counsel is likely to attempt to offer;
3. Why that evidence is unduly prejudicial; and
4. That no remedial action taken by the court at the time the evidence is offered could repair the damage which will be caused by the mention of the evidence, *i.e.*, that prejudice will be instilled in the minds of the jurors.³⁴

In other words, the motion must:

[Describe] the evidence which is sought to be excluded with sufficient specificity to enable the trial court to determine that it is clearly inadmissible under the issues as drawn or which may develop during the trial, and . . . [that] the evidence is so prejudicial

29. A motion in limine may be oral, but the oral motion must be made on the record. Frequently this is done in the pretrial conference. If the oral motion is not made on the record, the making of the motion and the ruling on it will not be sufficient to enable one to raise the issue on appeal.

30. Although there are no specific rules as to the form of a motion in limine, it should generally conform to the forms used for other motions in the jurisdiction. *See, e.g.*, FED. R. CIV. P. 7(b); 10; Mo. R. CIV. P. 55.02, .26. *See* 20 AM. JUR. TRIALS 502-04 (1973), for examples of basic forms for motions in limine.

31. For instance, if the party who files a prohibitive motion in limine does not expect to get a favorable ruling from the trial court, he may file the motion early in the proceeding in order to discover the opposing counsel's theory for the admission of the potentially prejudicial evidence. Once this discovery is made, counsel will have until the time of the trial to prepare an attack on this theory or to find other evidence to lessen the impact of the damaging evidence. However, if the moving party expects the motion to be granted, filing it too early will give opposing counsel time to discover other theories for the admission of evidence or to gather substitute evidence. *See* 20 AM. JUR. TRIALS 498-99 (1973); Comment, 1977 ARIZ. ST. L.J., *supra* note 5, at 449-50.

32. 20 AM. JUR. TRIALS 501 (1973).

33. *See, e.g.*, FED. R. CIV. P. 16, 78; Mo. R. CIV. P. 55.30, 62.01. *Cf.* Good v. A. B. Chance Co., 565 P.2d 217, 221 (Colo. App. 1977) ("Here, the purpose of the motion and the nature of the affirmative defenses asserted by Chance rendered an evidentiary hearing on the *in limine* issues essential to an informed ruling on the questions presented."); Lewis v. Buena Vista Mut. Ins. Ass'n, 183 N.W.2d 198 (Iowa 1971) (encouraged the trial court to hold evidentiary hearings unless the validity of the motion in limine was obvious on its face).

34. *See* 20 AM. JUR. TRIALS 496-98 (1973); Comment, 1977 ARIZ. ST. L.J., *supra* note 5, at 447-49; Comment, 29 ARK. L. REV., *supra* note 5, at 224.

in its nature that the moving party should be spared the necessity of calling attention to it by objecting when it is offered during the trial.³⁵

The motion should conclude with a prayer requesting the court to make a proper order instructing the opposing party, his counsel, and his witnesses not to refer to the excluded evidence in the presence of the jury.³⁶

The moving party's motion should be accompanied by a suggested order for the court to direct to the opposing party and a memorandum in support of the motion.³⁷ The contents of the suggested order are extremely important.³⁸ A properly drawn order must satisfy several requirements. First, the order must specify precisely what evidence is to be excluded.³⁹ Secondly, the order should state that the evidence is to be excluded for all purposes, including impeachment. Thirdly, the order must state that the court's directives apply to the opposing party, his counsel, and his witnesses.⁴⁰ Finally, the order should state that it precludes all direct and indirect forms of communication during all portions of the proceedings.⁴¹ An order drawn to meet these four requirements will preclude the opposing counsel from successfully claiming that he was not sufficiently notified of the court's decision and will preclude him from getting evidence admitted through a loophole in a poorly drafted motion.⁴²

The memorandum which should accompany the motion in limine is equally important.⁴³ This is counsel's best opportunity to convince the

35. *Fenimore v. Donald M. Drake Constr. Co.*, 87 Wash. 2d 85, 91, 549 P.2d 483, 488 (1976). *Accord*, *Bridges v. City of Richardson*, 163 Tex. 292, 354 S.W.2d 366 (1962).

36. The author has not discovered any cases wherein the court order contained sanctions for its violation. Although this is a common practice in pretrial discovery orders, the same does not appear to have carried over to motion in limine practice. However, there appears to be no reason why a court could not make such an order, since it certainly has the power to enforce its orders, even to the extent of holding violators in contempt. *See Charbonneau v. Superior Court*, 42 Cal. App. 3d 505, 116 Cal. Rptr. 153 (1974).

37. 20 AM. JUR. TRIALS 492-94, 500-01 (1973).

38. *Bruder, Pretrial Motions in Texas Criminal Cases*, 9 HOUS. L. REV. 641, 653 (1972).

39. In *Lewis v. Buena Vista Mut. Ins. Ass'n*, 183 N.W.2d 198, 201 (Iowa 1971), the court stated: "The motion should be used, if at all, as a rifle and not as a shotgun, pointing out the objectionable material and showing why the material is inadmissible and prejudicial."

40. In *Dutcher v. Lewis*, 260 N.W.2d 404 (Iowa 1977), plaintiff's motion was granted; however, the damaging evidence came in during voir dire because the court order did not include this portion of the proceeding.

41. *Wagner v. Larson*, 257 Iowa 1202, 136 N.W.2d 312 (1965).

42. *See Dutcher v. Lewis*, 260 N.W.2d 404 (Iowa 1977).

43. In *Fenimore v. Donald M. Drake Constr. Co.*, 87 Wash. 2d 85, 91, 549 P.2d 483, 488 (1976), the court stated:

To enable the court to make such a determination prior to trial and "out of context" the moving party should provide a memorandum of authorities showing that the evidence is inadmissible. If the court does not have the benefit of legal arguments, it can hardly be said to have abused its discretion if it denies a motion asking it to rule on the admissibility of evidence before it knows what the issues and circumstances are.

court the evidence is such that it not only should be excluded, but that it should be at least conditionally excluded prior to trial. Counsel is more likely to receive a favorable ruling if his memorandum contains authorities for the general use of motions in limine⁴⁴ and authorities for the exclusion of the particular evidence sought to be excluded.⁴⁵

When an appeal is based on an evidentiary ruling, which necessarily involves use of the trial court's discretionary powers, the appellant carries a heavy burden of proof. Relief sought will not be granted unless the trial court's ruling is shown to be clearly erroneous.⁴⁶ With this standard of review in mind, an attorney dealing with a motion in limine must carefully construct the court record to preserve his right to appeal any error that may occur at trial, if he should receive an adverse decision from the trial court.⁴⁷

Generally, the grant or denial of a motion in limine is not reversible error.⁴⁸ The error, if any, is committed only when the evidence is offered at trial and improperly excluded, or conversely, when the evidence is improperly admitted over objection at trial.⁴⁹ If the evidence is never offered, neither party may appeal the ruling on the motion.⁵⁰

There is considerable conflict among the various jurisdictions regarding the requirements to preserve one's objection to the trial court's ruling on a motion in limine. When the motion is denied, some courts require the moving party to renew his objection when the evidence is

44. See notes 10-15 and accompanying text *supra*.

45. See notes 70-97 and accompanying text *infra*.

46. *E.g.*, *Bine v. Sterling Drug, Inc.*, 422 S.W.2d 623, 631 (Mo. 1968) ("A trial court has considerable discretion in the exclusion of evidence, and unless there was an abuse of that discretion, its action will not be cause for reversal. . . .").

47. Counsel must be certain to raise this issue in his motion for a new trial. *Alamo Express, Inc. v. Wafer*, 333 S.W.2d 651 (Tex. Ct. App. 1960) (exclusion of evidence must be raised in motion for new trial). See *Mo. R. Civ. P.* 78.07, 84.13 (a).

48. *Cantlin v. Pavlovich*, 580 S.W.2d 190 (Ark. 1979); *Jordan v. Ensley*, 149 Ga. App. 120, 153 S.E.2d 414 (1979); *Ory v. Libersky*, 40 Md. App. 151, 389 A.2d 922 (1978); *Hartford Accident & Indem. Co. v. McCardell*, 369 S.W.2d 331 (Tex. 1963); *Davis*, *supra* note 5, at 233-34; *Comment*, 1977 ARIZ. ST. L.J., *supra* note 5, at 451; *Comment*, 29 ARK. L. REV., *supra* note 5, at 219.

49. *Cantlin v. Pavlovich*, 580 S.W.2d 190 (Ark. 1979); *Ory v. Libersky*, 40 Md. App. 151, 389 A.2d 922 (1978); *Alamo Express, Inc. v. Wafer*, 333 S.W.2d 651 (Tex. Ct. App. 1960) (motion for new trial must present exclusion of the evidence as the error, not the granting of the motion in limine); *Davis*, *supra* note 5, at 233-34; 20 AM. JUR. TRIALS 510-11 (1973); *Comment*, 1977 ARIZ. ST. L.J., *supra* note 5, at 451; *Comment*, 29 ARK. L. REV., *supra* note 5, at 219.

50. *Cantlin v. Pavlovich*, 580 S.W.2d 190 (Ark. 1979); *Ory v. Libersky*, 40 Md. App. 151, 389 A.2d 922 (1978); *Hartford Accident & Indem. Co. v. McCardell*, 369 S.W.2d 331 (Tex. 1963); *Roberts v. Tatum*, 575 S.W.2d 138 (Tex. Ct. App. 1978); *Commercial Ins. Co. v. Lane*, 480 S.W.2d 781 (Tex. Ct. App. 1972); *City of Corpus Christi v. Nemec*, 404 S.W.2d 834 (Tex. Ct. App. 1966); 20 AM. JUR. TRIALS 511 (1973).

offered at trial,⁵¹ while other courts have no such requirement.⁵² However, even in Texas⁵³ where the objection must be renewed, once the alleged prejudicial evidence is admitted the opponent does not waive his objection by offering explanatory testimony to lessen its prejudicial effect.⁵⁴ Where the case law regarding motions in limine is inconclusive, as it is in Missouri, the safest practice would be to object to the offering of the evidence, on the record, but out of the presence of the jury.

Where the motion in limine is granted, there is also a split of authority as to whether the moving party must renew his motion by objecting if and when the court's order is violated.⁵⁵ Some courts do not require the moving party to make an additional objection to the sensitive evidence.⁵⁶ Other courts, however, do require a timely objection to preserve the right to appeal and to dispel any claim of waiver of the objection to

51. *Jordan v. Ensley*, 149 Ga. App. 120, 253 S.E.2d 414 (1979); *Campbell v. Wilson*, 143 Ga. App. 656, 239 S.E.2d 546 (1977); *Simkins v. City of Davenport*, 232 N.W.2d 561 (Iowa 1975); *Twyford v. Weber*, 220 N.W.2d 919 (Iowa 1974); *Hartford Accident & Indem. Co. v. McCardell*, 369 S.W.2d 331 (Tex. 1963); *Bridges v. City of Richardson*, 354 S.W.2d 366 (Tex. 1962).

52. *Fenimore v. Donald M. Drake Constr. Co.*, 87 Wash. 2d 85, 549 P.2d 483 (1976); *Mixis v. Wisconsin Pub. Serv. Co.*, 26 Wis. 2d 488, 132 N.W.2d 769 (1965).

53. The majority of the case law concerning motions in limine comes from Texas. For discussions of the history of motions in limine in Texas, see *Burdick v. York Oil Co.*, 364 S.W.2d 766, 770 (Tex. Ct. App. 1963); Comment, 1977 ARIZ. ST. L.J., *supra* note 5, at 451; Comment, 29 ARK. L. REV., *supra* note 5, at 224-29.

54. *Roosth & Genecov Prod. Co. v. White*, 152 Tex. 619, 629, 262 S.W.2d 99, 104 (1953), where the court stated: "Nor can it be said that the objection was waived by such defensive steps as the petitioner took by way of cross-examination and explanatory testimony once the objectionable evidence was admitted."

55. Generally, violation of the court's order will only inject error into the case, which may or may not be reversible error. However, two noteworthy cases have suggested other sanctions. In *Charbonneau v. Superior Court*, 42 Cal. App. 3d 505, 116 Cal. Rptr. 153 (1974), counsel was held in contempt of court. The court stated: "While a counsel has every right to protest rulings which he believes to be erroneous, he has no right to willfully disobey with impunity a valid order of the court." *Id.* at 514, 116 Cal. Rptr. at 160. In *Burdick v. York Oil Co.*, 364 S.W.2d 766 (Tex. Ct. App. 1963), the court simply reversed the case because of the actions of the defense counsel who criticized the plaintiff for exercising his federally-granted privilege to withhold matters from his Veterans Administration record. In all, counsel violated the court's various rulings and instructions 38 times. The court observed that: "This was accomplished, not by indirection or an inadvertent mistake, it was the calculated theory of trial." *Id.* at 767. In addition to reversing the judgment, the court indicated that counsel's conduct was in violation of the profession's legal standards.

56. In *Stroud v. Dorr-Oliver, Inc.*, 112 Ariz. 574, 575, 544 P.2d 1089, 1090 (1979), the court stated: "A properly made motion *in limine* will preserve appellant's objection on appeal without need for further objection if it contains specific grounds for the objection. . . ." (quoting *State v. Briggs*, 112 Ariz. 379, 542 P.2d 804 (1975)). In *Fenimore v. Donald M. Drake Constr. Co.*, 87 Wash. 2d 85, 89, 549 P.2d 483, 486-87 (1976), the court stated: "Pretrial motions to exclude evidence are designed to simplify trials and avoid the prejudice which occurs when a party is forced to object in front of the jury to the introduction of inadmissible evidence."

the evidence.⁵⁷ Although Texas courts require the objection to be renewed, this renewal does not necessarily cure the violation.⁵⁸ In other words, even if the renewed objection is sustained, the violation of the court's order could result in a new trial or reversal on appeal. Some courts have held that in certain factual situations a proper admonition to the jury may render the error harmless, and that failure to request such an instruction may damage the offended party's position on appeal.⁵⁹ For the practitioner with no case law to guide him, as is true in Missouri, caution should be exercised. Consequently, if the order is violated, the moving party should ask the court for an on-the-record conference out of the presence of the jury. The attorney should then object to the violation of the order and the offering of the evidence and request the court to instruct the jury to disregard any mention of the offensive evidence. If counsel believes his case has been damaged beyond repair, he should also seek a mistrial.

If the motion in limine is granted, the prohibitive order is violated, and the violation is properly preserved for appeal, one may still have to confront the harmless error rule.⁶⁰ If it becomes necessary to overcome the harmless error rule, the favorable pretrial ruling is an indication "that a judge at the trial level concluded that the evidence was so inflammatory that its very mention should be suppressed to insure a fair trial."⁶¹ Should the motion be denied, the record may indicate that the "trial was tainted"⁶² because the trial court allowed prejudicial evidence to come before the jury from the start. Although the harmless error rule is not always applied, there is insufficient authority regarding its applicability to motions in limine in most jurisdictions to ignore this possibility.⁶³

An attorney who is precluded from offering evidence because a motion in limine is granted should first object at the time the ruling is made.

57. *Hartford Accident & Indem. Co. v. McCardell*, 369 S.W.2d 331 (Tex. 1963) (failure to renew objection held to be waiver of objection).

58. *Burdick v. York Oil Co.*, 364 S.W.2d 766 (Tex. Ct. App. 1963).

59. *Montgomery v. Vinzant*, 297 S.W.2d 350 (Tex. Ct. App. 1956). Cf. *Tate v. Gray*, 292 So. 2d 618 (Fla. Dist. Ct. App. 1974) (proper instruction to jury to disregard the question and answer was held to have properly corrected any prejudice which had occurred from a slight violation of the court's exclusionary order). *Contra*, *Crane v. Woodbury*, 41 Mich. App. 11, 199 N.W.2d 577 (1972) (opponent of evidence excused from requesting limiting instruction); *Lapasinskas v. Quick*, 17 Mich. App. 733, 170 N.W.2d 318 (1969) (error was too prejudicial to be excused, even with the trial court's limiting instruction).

60. *Tate v. Gray*, 292 So. 2d 618 (Fla. Dist. Ct. App. 1974) (harmless error where slight violation was followed by proper instruction to jury to disregard the question and the answer); *Schoellmann v. Ammann*, 352 S.W.2d 920 (Tex. Ct. App. 1962) (citing *Condra Funeral Home v. Rollin*, 158 Tex. 478, 314 S.W.2d 277 (1958)); *Valdez v. Yellow Cab Co.*, 260 S.W.2d 715 (Tex. Ct. App. 1953) (precedent for the harmless error rule in Texas); Comment, 29 ARK. L. REV., *supra* note 5, at 225-26.

61. 20 AM. JUR. TRIALS 451 (1973).

62. *Id.*

63. See, e.g., MO. R. CIV. P. 84.13 (b).

In addition to objecting to the court's order, one should make an offer of proof out of the presence of the jury⁶⁴ and show why the previously excluded evidence is relevant.⁶⁵ This showing is necessary because the granting of a motion in limine is not in itself error.⁶⁶ Finally, counsel must be certain to preserve this error in his motion for a new trial.⁶⁷

In spite of an adverse ruling from the trial court, one initially precluded from offering particular evidence may still be able to get similar information before the jury during other portions of the trial. One possibility arises when the court order does not preclude mention of the excluded evidence during all portions of the proceedings or where the order does not prohibit mention of such evidence by the opposing party, his counsel, and his witnesses.⁶⁸ The other possibility presents itself when the moving party inadvertently waives the prohibitive motion in limine by referring to the excluded evidence or by alluding to its absence.⁶⁹ If one believes that the moving party has waived his motion in limine, it would be wise to request the trial court to so rule on the record. Thereafter, should the opposing counsel object to the offer of the previously excluded evidence and subsequently appeal the trial court's ruling on such objection, the trial court's ruling as to the waiver would greatly enhance one's position on appeal.

Resourceful attorneys employ motions in limine in numerous situations. "Only a lack of imagination on the part of counsel will limit the situations in which a motion in limine may legitimately be employed."⁷⁰ The following is a discussion of some situations where motions in limine may be successfully utilized in civil litigation.⁷¹

Motions in limine are frequently offered to prohibit the introduction of prejudicial evidence which specifically affects liability. For instance, motions in limine have been used to preclude reference to a defendant's traf-

64. See cases cited note 5 *supra*. However, it has been noted that such an offer of the previously excluded evidence is not necessary when the court has issued an absolute prohibitive order. 20 AM. JUR. TRIALS 508 (1973).

65. In *Aetna Cas. & Sur. Co. v. Finney*, 346 S.W.2d 917 (Tex. Ct. App. 1961), the court held that the offering party had the burden of proving the relevance of the excluded evidence.

66. See notes 48-50 and accompanying text *supra*.

67. See note 47 *supra*.

68. In *Dutcher v. Lewis*, 260 N.W.2d 404 (Iowa 1977), the court granted plaintiff's motion in limine to preclude mention of her remarriage during the trial for the wrongful death of her former husband. During voir dire, defense counsel made reference to plaintiff's new married name. However, this was not error because the court order did not encompass the voir dire examination.

69. *United States v. Fishel*, 324 F. Supp. 429 (S.D.N.Y. 1971).

70. 20 AM. JUR. TRIALS 458 (1973).

71. Additional examples and authorities may be found in *Davis*, *supra* note 5, at 234-39; *Traster*, *supra* note 5, at 152-64; *Comment*, 1977 ARIZ. ST. L.J., *supra* note 5, at 452-68; 20 AM. JUR. TRIALS 458-79 (1973).

fic citations,⁷² post-accident repairs,⁷³ and settlement offers⁷⁴ as evidence of liability. Defendants have also been prevented from referring to a prior finding of negligence of a third party.⁷⁵

Motions in limine are also used to prohibit evidence that may affect damages. These situations include prohibiting plaintiff's counsel from referring to defendant's insurance coverage⁷⁶ and prohibiting defendant's counsel from referring to any compensation which plaintiff may have derived from collateral sources,⁷⁷ or to certain family relationship such as a subsequent remarriage.⁷⁸ Motions in limine have also been granted in condemnation cases⁷⁹ to prevent reference to the possibility of future

72. *Kyser v. Porter*, 261 Ark. 351, 548 S.W.2d 128 (1977); *Schoellmann v. Ammann*, 352 S.W.2d 920 (Tex. Ct. App. 1962) (defendant's motion in limine granted to preclude reference to fine assessed against him for failure to yield right-of-way during the personal injury action which arose from his automobile intersectional collision with plaintiff); *Montgomery v. Vinzant*, 297 S.W.2d 350 (Tex. Ct. App. 1956) (during a personal injury action arising out of automobile intersectional collision, defendant's motion in limine was granted to preclude reference to defendant being charged with aggravated assault, where such charge was later dismissed).

Kyser presented a personal injury action where it was alleged that the defendant son was negligent in the operation of his father's car, and the father's estate was liable for the father's negligent entrustment of the automobile to the son. The estate conceded that a finding of negligence on the part of the son would be imputed to it. With the negligent entrustment issue settled, the court granted the defendant-son's motion in limine to preclude reference to his past driving record. The court of appeals held that such evidence was now irrelevant and was properly excluded. The result of *Kyser* may well have been different had plaintiff sought punitive damages.

73. *Roosth & Genecov Prod. Co. v. White*, 152 Tex. 619, 262 S.W.2d 99 (1953).

74. *Cantlin v. Pavlovich*, 580 S.W.2d 190 (Ark. 1979); *Hartford Accident & Indem. Co. v. McCardell*, 369 S.W.2d 331 (Tex. 1963); *McClintock v. Travelers Ins. Co.*, 393 S.W.2d 421 (Tex. Ct. App. 1965); *Bridges v. City of Richardson*, 349 S.W.2d 644 (Tex. Ct. App. 1961).

75. *Roadmacher v. Cardinal*, 264 Minn. 72, 117 N.W.2d 738 (1962).

76. *Ferguson v. Graddy*, 263 Ark. 413, 565 S.W.2d 600 (1978); *Burrus v. Silhavy*, 155 Ind. App. 558, 293 N.E.2d 794 (1973); *Mixis v. Wisconsin Pub. Serv. Co.*, 26 Wis. 2d 488, 132 N.W.2d 769 (1965).

77. *Wagner v. Larson*, 257 Iowa 1202, 136 N.W.2d 312 (1965) (social security and other pension benefits); *McClintock v. Travelers Ins. Co.*, 393 S.W.2d 421 (Tex. Ct. App. 1965) (unemployment compensation); *Burdick v. York Oil Co.*, 364 S.W.2d 766 (Tex. Ct. App. 1963) (veteran's benefits); *Aetna Cas. & Sur. Co. v. Finney*, 346 S.W.2d 917 (Tex. Ct. App. 1961) (veteran's benefits).

78. *Leaseco, Inc. v. Bartlett*, 257 So. 2d 629 (Fla. Dist. Ct. App. 1971) (in action for wrongful death of former spouse, plaintiff's motion in limine granted to exclude evidence of subsequent remarriage). *Accord*, *Dutcher v. Lewis*, 260 N.W.2d 404 (Iowa 1977); *Bell Aerospace Corp. v. Anderson*, 478 S.W.2d 191 (Tex. Ct. App. 1972).

79. *United States v. Certain Tracts of Land*, 57 F. Supp. 739 (S.D. Cal. 1944) (ruling on permissive motion in limine that comparable sales could be used in federal condemnation action in spite of California law to the contrary); *Fritz v. Iowa State Highway Comm'n*, 270 N.W.2d 835 (1978) (excluded evidence of

hazards⁸⁰ and to the difficulty of access to adjoining, but otherwise unaffected, land.⁸¹

Certain matters adversely affecting a party's credibility have been excluded by motions in limine. Examples of this type of excluded evidence include: prior or subsequent injuries that are irrelevant to the injury involved in the suit or reference to claims, settlements, or payments relating to those irrelevant injuries;⁸² prior lawsuits, to prevent the implication that the plaintiff is a professional litigant;⁸³ a party's prior criminal record⁸⁴ or bad acts;⁸⁵ the use of alcohol or drugs;⁸⁶ and immoral conduct.⁸⁷

In addition to the foregoing examples, motions in limine have been or may be properly employed in the following situations to preclude: unnecessary cumulative offerings of evidence;⁸⁸ introduction of irrele-

compensation awarded to fee owner in condemnation action against leaseholder); *City of Corpus Christi v. Nemece*, 404 S.W.2d 834 (Tex. Ct. App. 1966) (excluded evidence of an easement over drainage ditch that city could, at its will, grant to the condemnee as evidence of special benefits to remainder of his now severed property). However, in *Pan American Gas Co. v. Lobit*, 450 S.W.2d 877 (Tex. Ct. App. 1969), the court denied the condemnor's motion in limine to preclude reference to easements obtained from other landowners.

80. *Sacramento & San Joaquin Drainage Dist. v. Reed*, 215 Cal. App. 2d 60, 29 Cal. Rptr. 847, modified on other grounds, 217 Cal. App. 2d 611, 31 Cal. Rptr. 754 (1963).

81. *State v. Baker Bros. Nursery*, 366 S.W.2d 212 (Tex. 1963) (circuitry of travel).

82. *St. Paul Fire & Marine Ins. Co. v. Murphree*, 163 Tex. 534, 357 S.W.2d 744 (1962); *Burdick v. York Oil Co.*, 364 S.W.2d 766 (Tex. Ct. App. 1963); *McCardell v. Hartford Accident & Indemn. Co.*, 360 S.W.2d 831 (Tex. Ct. App. 1962); *Goodell v. ITT-Federal Support Servs., Inc.*, 89 Wash. 2d 488, 573 P.2d 1292 (1978).

83. *McClintock v. Travelers Ins. Co.*, 393 S.W.2d 421 (Tex. Ct. App. 1965).

84. *Wagner v. Larson*, 257 Iowa 1202, 136 N.W.2d 312 (1965); *McClintock v. Travelers Ins. Co.*, 393 S.W.2d 421 (Tex. Ct. App. 1965). Cf. *Ayers v. Christiansen*, 222 Kan. 225, 564 P.2d 458 (1977) (in civil suit for battery, plaintiff's motion in limine was granted to preclude defendant from mentioning that he was not criminally prosecuted).

85. *Aley v. Great Atlantic & Pacific Tea Co.*, 211 F. Supp. 500 (W.D. Mo. 1962); *Cain v. Aetna Life Ins. Co.*, 360 So. 2d 322 (Ala. 1978) (husband's extramarital affairs properly excluded in suit on life insurance policy, since they were not relevant to deceased wife's mental capacity at the time that she changed beneficiaries in her life insurance policy); *McClintock v. Travelers Ins. Co.*, 393 S.W.2d 421 (Tex. Ct. App. 1965).

86. *Bradbeer v. Scott*, 193 Cal. App. 2d 575, 14 Cal. Rptr. 458 (1961); *Cook v. Philadelphia Transp. Co.*, 414 Pa. 154, 199 A.2d 446 (1964).

87. *Cain v. Aetna Life Ins. Co.*, 360 So. 2d 322 (Ala. 1978); *Carlock v. Southeastern Greyhound Lines, Inc.*, 8 Fed. R. Serv. 16,261, Case 1 (E.D. Tenn. 1944). *Contra*, *Bradford v. Birmingham Elec. Co.*, 227 Ala. 285, 149 So. 729 (1933).

88. *Independent Iron Workers, Inc. v. United States Steel Corp.*, 322 F.2d 656 (9th Cir. 1963). Cf. *Goodell v. ITT-Federal Support Servs., Inc.*, 89 Wash. 2d 488, 573 P.2d 1292 (1978) (court cited cumulative nature of the potentially relevant evidence that was excluded in motion in limine as one reason for not reversing the trial court).

vant issues,⁸⁹ evidence,⁹⁰ or statutory presumptions;⁹¹ and presentation of witnesses for purely prejudicial effect.⁹² Motions in limine have also been successfully used to preclude mention of: documents which are extremely prejudicial;⁹³ privileged matters;⁹⁴ press publicized matters;⁹⁵ sensitive

89. *Kyser v. Porter*, 261 Ark. 351, 548 S.W.2d 128 (1977) (negligent entrustment); *Good v. A. B. Chance Co.*, 565 P.2d 217 (Colo. App. 1977) (precluded evidence on issues of plaintiff's contributory negligence and assumption of the risk in products liability action); *Fritz v. Iowa State Highway Comm'n*, 270 N.W.2d 835 (Iowa 1978) (compensation awarded to fee owner was excluded as irrelevant in condemnation action against the leaseholder); *Wagner v. Larson*, 257 Iowa 1202, 136 N.W.2d 312 (1965) (marital difficulties excluded as irrelevant in personal injury action); *Ayers v. Christiansen*, 222 Kan. 225, 564 P.2d 453 (1977) (plaintiff's motion granted in civil battery action to preclude defendant from mentioning that he was not criminally prosecuted); *Lapasinskas v. Quick*, 17 Mich. App. 733, 170 N.W.2d 318 (1969) (motion in limine should have been directed toward defendant to preclude evidence of parental contributory fault in child's cause of action); *Amend v. Bell*, 89 Wash. 2d 124, 570 P.2d 138 (1977) (motion in limine properly granted to exclude seatbelt defense). *But see* *Lewis v. Buena Vista Mut. Ins. Ass'n*, 183 N.W.2d 198 (Iowa 1971) (motion in limine improperly used to choke off arson defense); *Carrithers v. Jean's Ex'r*, 259 Ky. 20, 81 S.W.2d 857 (1935).

90. *Aley v. Great Atlantic & Pacific Tea Co.*, 211 F. Supp. 500 (W.D. Mo. 1962); *Fritz v. Iowa State Highway Comm'n*, 270 N.W.2d 835 (Iowa 1978) (evidence of compensation awarded to fee owner was excluded as irrelevant in condemnation action against leaseholder); *Febert v. Upland Mut. Ins. Co.*, 222 Kan. 197, 563 P.2d 467 (1977) (in action for recovery on a fire insurance policy, plaintiff's motion in limine was granted to preclude defendant from offering evidence of vandalism); *Crane v. Woodbury*, 41 Mich. App. 11, 199 N.W.2d 577 (1972) (evidence of plaintiff's alleged speeding should have been excluded by the trial court since such conduct occurred approximately three miles from the point of the accident); *Casey v. Texgas Corp.*, 361 So. 2d 498 (Miss. 1978). *But see* *Thomas v. Guerrero*, 285 Or. 95, 589 P.2d 1112 (1979) (not error for trial court to deny motion in limine and admit evidence that defendant may have been drinking, and evidence that he left the scene of the accident; however, punitive damages were at issue and the court stressed that it still looked upon motions in limine with disfavor).

91. *Ross v. Alexander*, 74 Mich. App. 666, 254 N.W.2d 605 (1977) (defendant's motion in limine successfully precluded admission of his violation of city ordinance pertaining to vehicular-weight restrictions thereby eliminating plaintiff's negligence per se claim that arose when plaintiff ran into the back of defendant's parked truck); *O'Neil v. Kappesser*, 40 Misc. 2d 848, 243 N.Y.S.2d 712 (Sup. Ct. 1963); 20 AM. JUR. TRIALS 461-62 (1973).

92. 20 AM. JUR. TRIALS 462-63 (1973). However, this theory was rejected in *Nielsen v. Brown*, 232 Or. 426, 374 P.2d 896 (1962) (the court's disapproval of motions in limine in general was obvious).

93. *Fidelity & Cas. Co. v. Frank*, 227 F. Supp. 948 (D. Conn. 1964) (excluding documented accident investigation reports because they contained opinions and conclusions rather than factual matter); *Parmelee Transp. Co. v. Keeshin*, 3 Fed. R. Serv. 2d 16.261, Case 1 (N.D. Ill. 1960); *Twyford v. Weber*, 220 N.W.2d 919 (1974) (trial court properly granted defendant-doctor's motion in limine to exclude certain inflammatory photos in medical malpractice action).

94. *Burdick v. York Oil Co.*, 364 S.W.2d 766 (Tex. Ct. App. 1963). *But see* *McCoy v. Jones*, 354 So. 2d 1095 (Miss. 1978), where the motion in limine improperly extended the statutory physician-patient privilege to preclude questioning the plaintiff's doctors about matters not covered by the statute.

95. *Huff v. N.Y. Cent. R.* (1961), reported unofficially in 12 DEFENSE L.J. 310, *aff'd without reaching the issue*, 116 Ohio App. 32, 21 Ohio Op. 2d 257, 186 N.E.2d 478 (1961).

terms;⁹⁶ and the fact that parties were previously dismissed or severed from the current litigation.⁹⁷

The motion in limine may be the best method of ruling on the admissibility of potentially prejudicial evidence. The attorney who successfully employs the motion has protected his case from prejudicial evidence and has enhanced his bargaining position. Even if the motion is denied, counsel has gained insight into his opponent's case and has helped preserve his objection for appeal.

Another obvious advantage to the use of a motion in limine is that it gives the trial judge more time to rule on a difficult question of evidence. The trial judge is not "on the spot" as much as he is when he has to make an immediate ruling at the trial itself. Since the judge has more time to consider the question, he is more apt to decide correctly.

The bottom line is that motions in limine benefit both counsel and the judiciary. The length of the trial proceedings are reduced, and the courts are allowed to make more informed rulings on difficult evidentiary questions. The likelihood of a mistrial or a reversal on appeal is thereby diminished considerably. Although motions in limine will not solve all of the problems associated with sensitive evidentiary rulings, their use in appropriate situations is a progressive step toward fair and efficient judicial proceedings.

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96. *Cook v. Philadelphia Transp. Co.*, 414 Pa. 154, 199 A.2d 446 (1964) (motion granted to preclude reference to the "Crazy Bar," which was the name of the establishment nearest the scene of the accident, where there was no evidence that plaintiff had been in said bar or drinking). *Contra*, *Liska v. Merit Dress Delivery, Inc.*, 43 Misc. 2d 285, 250 N.Y.S.2d 691 (Sup. Ct. 1964) (motion in limine to preclude use of terms "whiplash" and "whiplash injury to the neck" was denied).

97. *Lapasinkas v. Quick*, 17 Mich. App. 733, 170 N.W.2d 318 (1969); *Bridges v. City of Richardson*, 349 S.W.2d 644 (Tex. Ct. App. 1961).