

**Benjamin Mills (Benj)
Evidence T/Th (Law 605)**

Extra Credit: Motion *in limine* Hearing

Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data.

I observed a hearing involving 12 motions *in limine* in a criminal case. The hearing lasted nearly the entire day and was a great opportunity to see the rules of evidence in action. I will only comment on a few of the motions because some of the motions did not allow for much argument or really strayed far from the rules of evidence.

Background

The case stems from the manufacture and use of bombs in the military confrontation in Iraq from the years 2005 to 2007. The government charges the defendant with multiple counts. In preparation for trial, the defense filed 12 motions *in limine* to try to limit the scope of evidence the government could admit during trial.

Noteworthy Motions

The following three motions were the most well-argued and relatable to our course thus far. All three were motions to preclude some sort of the government's potential evidence.

1. Motion to preclude any witnesses from wearing military or law enforcement uniforms or medals: GRANTED.

The government argued that precedent has established that it is not an abuse of discretion to allow law enforcement officers in a criminal trial to wear their uniforms and that many military personnel have requirements to wear their uniforms to formal proceedings. Furthermore, the government argued that the defendant shouldn't be allowed to choose what the witnesses can and cannot wear. On the other hand, the defense made a typical Rule 403 argument. First, the defense argued that the probative value of the uniforms would be little to none and that testimony could be elicited to know a witness's occupation or rank. Second, the defense argued that the uniforms would have a prejudicial effect on the jury since the case is about Americans dying from bombs in Iraq. I think the defense's argument was a persuasive Rule 403 argument, and the government knew the weakness of its position, so it argued precedent and policy.

I agree with the ruling to grant the motion because of the 403 balance and the fact that the government could still get the military personnel's occupation and rank into evidence through testimony. I liked that the Judge said to the prosecutors, in response to their precedent argument, that as a judge he doesn't want to just not abuse his discretion, he wants to use wise discretion.

2. Motion to preclude photographs and descriptions of injuries caused by improvised explosive devices (IEDs): DENIED WITHOUT PREJUDICE.

The government argued the well-established principle of its right to present the case as it sees fit and quoted *Old Chief v. United States*. The defense argued that some of the pictures the government may attempt to admit are highly prejudicial due to their grotesquely graphic nature. The judge denied the motion without prejudice and said that this would be an issue he would rule on at trial as it came up. He explained that this type of evidence was a matter of degree, ranging from testimony to black-and-white photos to detailed, colored photos. I think this was an appropriate ruling because excluding all of the evidence would have been too sweeping of a conclusion and denying the motion completely (admitting all of the evidence) could have been prejudicial to the defendant. As the judge said, ultimately it depends on what evidence the government in fact presents at trial.

3. Motion to preclude testimony and evidence regarding Defendant's transfer to U.S. custody: DENIED WITOUT PREJUDICE.

The argument here revolved around whether the government would prove venue while admitting other evidence. The judge ruled that the government would be able to present non-prejudicial evidence to prove venue or the defense could stipulate that venue is satisfied. It appeared that the defense and the government will stipulate that venue was satisfied because of the defense's fear of the government admitting certain evidence and the government's disinterest in proving venue. This reminded me of our section on stipulations, specifically the *Old Chief v. United States*. I think the judge's ruling was correct given the dichotomy he presented.