**1A.05 STRIKING EARLIER TESTIMONY**

Earlier in this case, (name of witness) testified that (summarize inadmissible testimony). It is now clear that the law does not allow this testimony to be used as evidence in this case. Therefore, you must proceed as if this testimony had not been given in this case. [However, you may consider other portions of this witness' testimony.]

Use Note

The bracketed sentence should be included if the witness' testimony is stricken in part only.

Comment

It is difficult to tell a jury to disregard earlier testimony. The problem is that the jury is reminded of what the witness said at the same time it is told to disregard the testimony. This instruction attempts to minimize the problem of repetition by having the judge summarize what the inadmissible testimony was, rather than reading it to the jury.