02.15 CLOSING INSTRUCTIONS — AUDIOTAPE DEPOSITIONS

The deposition testimony of [one witness] [some witnesses] was played to you on audiotape.

[When a deposition is taken, the witness takes an oath that is identical in purpose to the oath given to the witnesses who testify before you in the courtroom. All parties are given an opportunity to ask questions of a witness during a deposition [although some parties may have chosen not to do so].]

The law does not distinguish between audiotape testimony and live testimony. Both are valid forms of testimony. Audiotape testimony should be weighed by you as you would any other testimony. However, you may consider that you have not seen the witness testify. It is for you to decide whether this is significant.

# Use Note

This instruction should be used when tape-recorded depositions are played for the jury. If the only depositions in a case are tape recorded, this instruction should be given exclusively; and Instructions 02.13 and 02.14 should not be given. If only tape-recorded depositions are used, then the bracketed paragraph of this instruction should be given. If other forms of deposition also are used at trial, then either Instruction 02.13 or Instruction 02.14, or both, should be used, and the bracketed paragraph of this instruction should not be given.

If one party had an opportunity to ask questions during a deposition but chose not to do so, the trial court should include the bracketed clause in the second paragraph.

# Comment

Alaska R. Civ. P. 30(b)(4) authorizes a court to take a deposition by audio and audiovisual means. The rule includes detailed provisions concerning the taking of such depositions. Such a deposition can be used by any party for any purpose at trial. Alaska R. Civ. P. 32(a)(3)(F).

See also Comment to Instruction 02.14.