02.25 CLOSING INSTRUCTIONS — UNSWORN ORAL ADMISSIONS OF PARTY

You have heard evidence about unsworn oral statements made by a party outside the courtroom. Unsworn oral statements by a party can be used as evidence against that party. However, such statements should be viewed with caution.

In evaluating such statements, you might find it helpful to consider the context in which the statement was made, including:

1. whether the statements were detailed ones;

 (2) whether they were made at a time when the party knew the facts spoken about;

(3) whether when the party made the statements, there was time to make them complete;

(4) whether the party had legal assistance in making the statements; and

(5) whether the physical or mental condition of the party or the circumstances in which the statement was made impaired the party's ability to make an accurate statement.

# Use Note

Alaska R. Civ. P. 51(b)(3) requires the court to instruct the jury on all proper occasions that the unsworn oral admissions of a party ought to be viewed with caution. The committee expresses no opinion on whether this instruction should also be given when there is evidence of unsworn oral statements that do not constitute admissions, e.g., prior consistent statements.

In a case involving multiple parties, the court should instruct the jury upon request that unsworn oral statements made by a party outside the courtroom can only be used as evidence against the party who made the statements. See Evidence Rule 105 ("[W]hen evidence which is admissible as to one party . . . but not admissible as to another party . . . is admitted, the court, upon request, shall restrict the evidence as to its proper scope and instruct the jury accordingly."); see also Comment to Pattern Instruction 02.24.