02.14 CLOSING INSTRUCTIONS — VIDEOTAPE DEPOSITIONS

The deposition testimony of [a witness] [some witnesses] was shown to you on videotape.

[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 ask any questions].]

The law does not distinguish between videotape depositions and live testimony. Both are valid forms of testimony. Deposition testimony should be weighed by you as you would any other testimony.

# Use Note

This instruction should be used if videotape depositions are presented to the jury. If the only depositions in a case are on videotape, this instruction should be given exclusively, Instruction 2.13 should not be given, and the bracketed paragraph should be used. But if there are ordinary depositions as well as videotape depositions, then both instructions should be given to the jury. Audiotape depositions are covered by Instruction 02.15.

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

In many places videotape depositions have become more common. Their advantage over traditional depositions is that the videotaped witnesses can be observed by the jury while testifying, even though they are not physically present in the courtroom. Some demeanor evidence is preserved. See 8 C. Wright & A. Miller, Federal Practice and Procedure § 2115 (1994).

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