2.00

INSTRUCTIONS DURING TRIAL

2.01 Evaluation of Deposition or Prior Testimony

The testimony of [(name) (several witnesses)] [is now going to be] [will be] [was] presented by [video tape] [and] [the reading of his/her testimony]. You should give this testimony the same consideration you would give it had the witness personally appeared in court.

Notes on Use

If only one evidence deposition or videotape is going to be used during trial, the court may want to give this instruction immediately before the presentation of this testimony and to identify this witness. When the testimony of more than one witness is to be presented in this manner, the court may elect to provide a more generic description of these witnesses in order to avoid repetition and the need to submit several similar written instructions to the jury. In such case, this instruction can be given before trial or before the first such witness is presented. When reading this instruction during trial, the court should use the parenthetical phrase "is now going to be." The written instruction submitted to the jury before deliberations should use the term "was."

Comment

This instruction replaces former IPI 2.11.

Informing the jury that evidence depositions are to receive no greater or lesser consideration than live testimony has been approved. *Olcese v. Mobile Fruit & Trading Co.*, 211 Ill. 539, 545; 71 N.E. 1084, 1087 (1904); *Powell v. Myers Sherman Co.*, 309 Ill.App. 12, 22; 32 N.E.2d 663, 668 (2d Dist.1941); *Pozdro v. Dynowski*, 83 Ill.App.2d 79, 88; 226 N.E.2d 377, 381 (1st Dist.1967); *Brubaker v. Gould*, 34 Ill.App.2d 421, 443; 180 N.E.2d 873, 882-883 (1st Dist.1962).

Under certain circumstances, the former testimony of a witness who is now unavailable may be admitted. *George v. Moorhead*, 399 Ill. 497, 500; 78 N.E.2d 216, 218 (1948).

2.02 Evidence Admitted For a Limited Purpose

The [following] [preceding] evidence concerning [(describe evidence)] is to be considered by you [solely as it relates to [(limited subject matter)]] [only as to [(name the party or parties)]]. It should not be considered [for any other purpose] [as to any other party].

Notes on Use

This instruction formerly appeared as IPI 1.01[7]. The only difference is that it is designed for use contemporaneously with admission of the evidence to which it is applicable. The Committee realizes that limiting instructions are routinely given at the time the evidence is elicited and that this practice is encouraged by the Supreme Court. *See People v. Anderson*, 113 Ill.2d 1, 5; 495 N.E.2d 485, 486; 99 Ill.Dec. 104, 105 (1986). One court has indicated that the preferred practice is to repeat the instruction after closing argument. *Atwood v. CTA*, 253 Ill.App.3d 1, 14; 624 N.E.2d 1180, 1189; 191 Ill.Dec. 802, 811 (1st Dist.1993). If repeated, the instruction should be given in the form found in IPI 3.07.

Comment

Examples of evidence admitted for a limited purpose are found in *Eizerman v. Behn*, 9 Ill.App.2d 263, 279-280; 132 N.E.2d 788, 795-796 (1st Dist.1956) (use for impeachment but not as substantive evidence); *Dallas v. Granite City Steel Company*, 64 Ill.App.2d 409, 423-424; 211 N.E.2d 907, 913-914 (5th Dist.1965) (limited use of post-incident clean-up); and *Atwood v. CTA*, 253 Ill.App.3d 1, 624 N.E.2d 1180, 1185; 191 Ill.Dec. 802, 807 (1st Dist.1993) (driving record introduced only to show negligent entrustment by owner). Examples of evidence admitted only against one party are found in *Clark v. A. Bazzoni & Co.*, 7 Ill.App.2d 334, 338; 129 N.E.2d 435, 437 (1st Dist.1955); *Chapman v. Checker Taxi*, 43 Ill.App.3d 699, 713, 357 N.E.2d 111, 121, 2 Ill.Dec. 134, 144 (1st Dist.1976); *Fedt v. Oak Lawn Lodge*, 132 Ill.App.3d 1061, 1070-1071, 478 N.E.2d 469, 477-478, 88 Ill.Dec. 154, 162-163 (1st Dist.1985).

2.03 Dismissal of Party or Directed Verdict In Favor of a Defendant

[(Name of dismissed party)] is no longer a party to this case. [You should not speculate as to the reason nor may the remaining parties comment on why [(name of dismissed party)] is no longer a party.]

Notes on Use

The second sentence should be given unless the court determines that it is proper for the remaining parties to comment on the dismissal. The court should make a threshold determination as to whether a settlement agreement has the potential to bias a witness' testimony. *Garcez v. Michel*, 282 Ill.App.3d 346, 350; 668 N.E.2d 194, 197; 218 Ill.Dec. 31, 34 (1st Dist.1996). In many situations this danger can exist. *See Batteast v. Wyeth Laboratories*, 137 Ill.2d 175, 184-185; 560 N.E.2d 315, 319; 148 Ill.Dec. 13, 17 (1990) (court should allow evidence of settlement agreement which requires that the dismissed party testify in a certain manner); *Lam v. Lynch Machinery Division*, 178 Ill.App.3d 229, 230; 533 N.E.2d 37, 41; 127 Ill.Dec. 419, 423 (1st Dist.1988) (third-party defendant's settlement agreement with defendant/third-party plaintiff to pay 70% of plaintiff's verdict against defendant/third-party plaintiff is admissible to show bias against plaintiff); *Reese v. Chicago, Burlington and Quincy R.R. Co.*, 55 Ill.2d 356, 363-364; 303 N.E.2d 382, 387 (1973) (evidence of loan-receipt agreement admissible if bias of witness in outcome of case is not otherwise apparent). *But see In re Guardianship of Babb*, 162 Ill.2d 153, 171; 642 N.E.2d 1195, 1204; 205 Ill.Dec. 78, 87 (1994) (loan-receipt agreements were held to violate the policies of the Contribution Act so as to preclude a finding that they may be considered a "good faith" settlement).

Comment

The Committee realizes that courts routinely comment on dismissals during trial and this instruction is intended to provide some uniformity to that practice. Dismissals may be due to settlement, directed verdict, voluntary dismissal, etc. The importance of informing the jury of directed findings was underscored in *Wille v. Navistar*, 222 Ill.App.3d 833, 839; 584 N.E.2d 425, 429; 165 Ill.Dec. 246, 250 (1st Dist.1991).

2.04 Limiting Instruction--Expert Testifies To Matters Not Admitted In Evidence

I am allowing the witness to testify in part to [books] [records] [articles] [statements] that have not been admitted in evidence. This testimony is allowed for a limited purpose. It is allowed so that the witness may tell you what he/she relied on to form his/her opinion[s]. The material being referred to is not evidence in this case and may not be considered by you as evidence. You may consider the material for the purpose of deciding what weight, if any, you will give the opinions testified to by this witness.

Notes on Use

This instruction should be given when the facts or data underlying an expert's opinion have been revealed to the jury but are not admissible in evidence.

Comment

Under *Wilson v. Clark*, 84 Ill.2d 186, 192-194; 417 N.E.2d 1322, 1326; 49 Ill.Dec. 308, 312 (1981), an expert may base opinions on facts or data which are not admissible in evidence. The facts or data underlying an expert's opinion may be revealed to a jury in order to explain the basis of the expert's opinion. When facts or data which are not admissible in evidence are used to explain the basis of an expert's opinion, it is appropriate to give this instruction to advise the jury that the facts or data should be considered only to evaluate the basis of the expert's opinion and not as evidence in the case. *People v. Anderson*, 113 Ill.2d 1, 12; 495 N.E.2d 485, 490; 99 Ill.Dec. 104, 109 (1986). When an expert's opinion is based, in part, on facts or data which have been admitted into evidence, the instruction applies only to the facts or data which have not been admitted in evidence. *Lecroy v. Miller*, 272 Ill.App.3d 925, 934; 651 N.E.2d 617, 623; 209 Ill.Dec. 439, 445 (1st Dist.1995).

2.05 Testimony through Interpreter

You are about to hear testimony from _____ who will be testifying in [language to be used] through the interpreter. You should give this testimony the same consideration you would give it had the witness testified in English.

Although some of you may know [language to be used], it is important that all jurors consider the same evidence. Therefore, you must accept the English translation of [his] [her] testimony.

If, however, you believe the interpreter translated incorrectly, let me know immediately by writing a note and giving it to the [clerk] [bailiff] [deputy]. You should not ask your question or make any comment about the translation in front of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy can be addressed. If, however, after such efforts a discrepancy remains, you must rely only on the official English translation as provided by the interpreter.

Notes on Use

This instruction should be given before a witness testifies in a language other than English and an interpreter translates that testimony for those in the courtroom, including the jury.

Comment

This instruction is premised on the principle that jurors have to decide the case based on the evidence presented in court and cannot add their own specialized knowledge to the evidence presented. *See* IPI 1.01[11] ("[Y]our verdict must be based only on the evidence presented in this courtroom . . . .").

It is misconduct for a juror to retranslate for other jurors testimony that has been translated by the interpreter. *People v. Cabrera*, 230 Cal.App.3d 300, 303, 281 Cal.Rptr. 238 (1991). "If [the juror] believed the court interpreter was translating incorrectly, the proper action would have been to call the matter to the trial court's attention, not take it upon herself to provide her fellow jurors with the 'correct' translation." *Id.* at 304.

Instruction, Notes on Use and Comment revised November 2016..