

2.12 Evidence for Limited Purpose

You are about to hear evidence that [*describe evidence to be received for limited purpose*]. I instruct you that this evidence is admitted only for the limited purpose of [*describe purpose*] and, therefore, you must consider it only for that limited purpose and not for any other purpose.

Comment

Federal Rule of Evidence 105 provides that when evidence is admitted for a limited purpose, the court, when requested, must provide a limiting instruction. Furthermore, the court must provide an appropriate limiting instruction sua sponte if failure to do so would affect the defendant's "substantial rights." See *United States v. Armijo*, 5 F.3d 1229, 1232 (9th Cir. 1993). For example, in *United States v. Sauza-Martinez*, 217 F.3d 754, 760 (9th Cir. 2000), the Ninth Circuit held the trial court "had no alternative" but to give the jury a limiting instruction sua sponte when a testifying codefendant's post-arrest statements were admitted as substantive evidence against her under Fed. R. Evid. 801(d)(2)(A) but were not admissible against another codefendant "under *any* theory" (emphasis in original). Under the circumstances of the case, it was plain error to fail to give the limiting instruction sua sponte. *Id.* at 761.

The Committee recommends judges use limiting instructions whenever evidence is received for a limited purpose. "We have repeatedly held that a district court's careful and frequent limiting instructions to the jury, explaining how and against whom certain evidence may be considered, can reduce or eliminate any possibility of prejudice arising from a joint trial." *United States v. Fernandez*, 388 F.3d 1199, 1243 (9th Cir. 2004) (internal citations omitted).

Revised Mar. 2018