

2.5 Deposition as Substantive Evidence

When a person is unavailable to testify at trial, the deposition of that person may be used at the trial. A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

The deposition of [*name of witness*], which was taken on [*date*], is about to be presented to you. You should consider deposition testimony in the same way that you consider the testimony of the witnesses who have appeared before you. [Do not place any significance on the behavior or tone of voice of any person reading the questions or answers.]

Comment

Use this instruction only when the court concludes that testimony by deposition may be received as substantive evidence in light of the rules of evidence and the defendant's confrontation rights. The Committee recommends that it be given immediately before a deposition is read. The bracketed last sentence of the instruction would not be used when the deposition is presented by video or audio recording.

See Fed. R. Crim. P. 15.

Revised Dec. 2017