

**63 TRANSCRIPTS NOT AVAILABLE FOR DELIBERATIONS; READING BACK TESTIMONY**

You will not have a written transcript of the trial testimony to use during your deliberations. [You may ask to have specific portions of the testimony read to you.] You should pay careful attention to all the testimony because you must rely on your memory of the testimony and evidence when you are deliberating.

**COMMENT**

This instruction was approved in 2003 and revised in 2010. For suggestions on using this instruction, see the commentary to Wis. JI-Criminal 58.

In some cases, the trial judge may want to add the following: “You may ask to have specific portions of the testimony read to you.”

This is not intended to encourage jury requests for the rereading of testimony. However, the jury does have a right to have testimony read. The extent is within the discretion of the trial judge. State v. Cooper, 4 Wis.2d 251, 253-54, 89 N.W.2d 816 (1958).

The judge may choose to summarize the testimony in lieu of having it read. Salladay v. Town of Dodgeville, 85 Wis. 318, 323, 55 N.W. 696 (1893). But the Wisconsin Supreme Court has indicated that it may be "the far better practice" to have the testimony read back. Kohloff v. State, 85 Wis.2d 148, 160, 270 N.W.2d 63 (1978). For other cases applying these standards, see State v. Tarrell, 74 Wis.2d 647, 659, 247 N.W.2d 696 (1976); and Jones v. State, 70 Wis.2d 41, 57-58, 233 N.W.2d 430 (1975).