

80 RECORDING PLAYED TO THE JURY

You are about to (hear an audio recording) (hear and view an audiovisual recording). Recordings are evidence and you may consider them, just as any other evidence. Listen carefully; some parts may be hard to understand.

[You may consider the actions of a person, facial expressions, and lip movements that you can observe on videotapes to help you to determine what was actually said and who said it.]

[You will be provided a transcript to help you listen to the recording. If you notice any difference between what you heard on the recordings and what you read in the transcript(s), you must rely on what you heard, not what you read.]

COMMENT

This instruction was approved by the Committee in 2010. It is based on Wis JI-Criminal 158.

This draft was based on an instruction adapted from The Pattern Jury Instructions for the 7th Circuit, 3.17. [Available online at http://www.ca7.uscourts.gov/Pattern_Jury_Instr/pjury.pdf.]

Effective January 1, 2010, SCR 71.01 (2) is amended to create new subsection (e):

(2) All proceedings in the circuit court shall be reported, except for the following:

...

(e) Audio recordings of any type that are played during the proceeding, marked as an exhibit, and offered into evidence. If only part of the recording is played in court, the part played shall be precisely identified in the record.

In the Matter of Amendment of Supreme Court Rule 71.01 Regarding Required Reporting of Court Proceedings. 2009 WI 104

If the jury requests that a recording be played back during jury deliberations, see State v. Anderson, 2006 WI 77, ¶¶30-31, 291 Wis.2d 673, 717 N.W.2d 74: the jury should return to the courtroom and the recording should be played for the jury in open court.