

58 TRANSCRIPTS NOT AVAILABLE FOR DELIBERATIONS; READING BACK TESTIMONY

You will not have a copy of the written transcript of the trial testimony available for use during your deliberations. [You may ask to have specific portions of the testimony read to you.]¹ You should pay careful attention to all the testimony because you must rely primarily on your memory of the evidence and testimony introduced during the trial.

COMMENT

Wis JI-Criminal 58 was originally published in 1992 and republished without substantive change in 2000.

The purpose of this instruction is to correct any misimpressions jurors may have about the immediate availability of written transcripts of the trial testimony.

1. 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).