

2.6 Transcript of Recording in English

You [are about to [hear] [watch]] [have [heard] [watched]] a recording that has been received in evidence. [Please listen to it very carefully.] Each of you [has been] [was] given a transcript of the recording to help you identify speakers and as a guide to help you listen to the recording. However, bear in mind that the recording is the evidence, not the transcript. If you [hear] [heard] something different from what [appears] [appeared] in the transcript, what you heard is controlling. [After] [Now that] the recording has been played, the transcript will be taken from you.

Comment

See United States v. Delgado, 357 F.3d 1061, 1070 (9th Cir. 2004), *abrogated on other grounds by United States v. Katakis*, 800 F.3d 1017, 1028 (9th Cir. 2015) (holding that the district court properly instructed the jury that transcripts were only aids to understanding and that the recordings themselves were evidence); *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998) (noting that recording itself is evidence to be considered; transcript is merely aid); *see also* Instructions 2.7 (Transcript of Recording in Foreign Language), 2.8 (Disputed Transcript of Recording in Foreign Language), and 2.9 (Foreign Language Testimony).

The Committee recommends that this instruction be given immediately before a recording is played so that the jurors are alerted to the fact that what they hear is controlling. It need not be repeated if more than one recording is played.