

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 [hear][heard] is controlling. [[After] [Now that] the recording has been played, the transcript will be taken from you.]

Comment

See United States v. Franco, 136 F.3d 622, 626 (9th Cir. 1998).

The Committee recommends that this instruction be given immediately before a recording is played so that the jury is alerted to the fact that what they hear is controlling. It need not be repeated if more than one recording is played. However, the judge should remind the jury that the recording and not the transcript is the evidence, and that they should disregard anything in the transcript that they do not hear. Further, the transcripts should not be left with the jury after the recording has been played.

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