

Transcript of a Recording¹

(Issued January 2018)

Members of the jury, exhibit (specify number or letter) in evidence, a recording, will now be played. At the same time, you will be given a transcript of that recording.

The transcript is not evidence.

The transcript is intended only as an aid in listening to the recording.

Therefore, you may only consider what you hear and understand the contents of the recording to be. That means if you perceive a difference between the recording and the transcript, you must rely on the recording.

¹ *People v. Mendez*, 26 N.Y.3d 1004, 1005 (2015) (The transcripts themselves were not admitted into evidence but were used as an aid to the jurors while they listened to the recordings”); *People v. Johnson*, 151 A.D.3d 1462 (3d Dept. 2017) (Court properly instructed the jury that the transcripts were not evidence and “that it was for the jury to draw its own conclusions as to the correct interpretation of the recordings and the weight, if any, to give to them”); *People v. Morris*, 32 A.D.3d 561(3d Dept. 2006) (“each time the tape was played for the jury and in its final charge the court properly advised the jury, without objection, that portions of the tape may be inaudible and that it was for the jury to decide, as the factfinder, the weight, if any, to be given this evidence. Nothing in the court’s charge precluded the jury from determining that portions of the tape were insufficiently audible to be relied upon” [citation omitted]; *People v. Martino*, 244 A.D.2d 875 (4th Dept. 1997) (“the court properly exercised its discretion in permitting the jury to use a transcript of the audiotapes as an aid while listening to them and properly charged the jury that the transcripts are not evidence”); *People v. Mitchell*, 220 A.D.2d 813, 814 (3d Dept. 1995) (“Since it is within County Court’s discretion to admit a transcript when it will serve as an assistance to the jury, and the record reflects that the court instructed the jurors that the transcripts were to be used only as an aid if they found the tapes audible, we find no error” [citation omitted]).