

PLAYBACK OF TESTIMONY¹

Members of the jury, you have requested a playback of the testimony of [name of witness(es)]. The recorded testimony has been played for you. In your deliberations, you are instructed to consider all of the evidence presented, and not give undue weight to the testimony you have heard [and seen] played back.

¹ In State v. Miller, 205 N.J. 109 (2011), the Court addressed the presence of different media within a single trial and pronounced guidelines to accommodate juror requests for play back of testimony for courts that use video and digital recording equipment to create the entire record, rather than court reporters. While acknowledging and embracing advances in technology, as well as addressing the practical concerns they raise, the Court authorized the presumptive use of video playbacks but outlined precautionary steps to guard against undue prejudice, including requiring trial judges to give this instruction to jurors at the time the testimony is played back. Id. at 123. Judges retain the discretion to ask the jury if they want to hear part or all of a witness's testimony. Id. at 122-23.