

## Wiretap Tapes

Directive #8-82	April 5, 1983
Issued by:	Robert D. Lipscher Administrative Director
Directive #18-75	May 7, 1976
Issued by:	Arthur J. Simpson, J.A.D. Acting Administrative Director

During the course of litigation, a party may seek to play an audio tape recording in open court, either in a proceeding to determine its admissibility as evidence or to introduce it as evidence. This occurs most frequently in criminal matters where the prosecutor will seek to introduce tape recordings of a wire or oral conversation (see *N.J.S.A. 15:6A-17B*). In *State v. Grecco*, 187 *N.J. Super.* 421 (App. Div. 1982), *certif. denied*, 97 *N.J.* 651 (1984), the press challenged the trial judge's order denying its motion to receive written transcripts of tape recordings played during pretrial hearings. (Transcripts were available to the judge and jury.) The Appellate Division held that the trial judge was in error since refusal to provide the transcript effectively denied the press public access to the proceeding because of the difficulty in understanding the tapes as they were played. The appellate court further stated that it was error for the trial judge to fail to include what was said on the recordings in the trial transcript, citing *R. 1:2-2*.

Audio tapes played in open court for the purpose cited above are often difficult to understand, as in *Grecco*. There is frequently much background and electronic noise, individuals do not enunciate clearly and it is difficult to know the identities of the speakers. This makes it virtually impossible for court reporters to make accurate verbatim records of the tapes as they are played.

Therefore, any party seeking to play a tape recording before the court for any purpose may be required to provide the court, jury and all other parties with properly authenticated transcripts of the tape(s) to be played. The court shall incorporate this transcript as part of the trial record. The court reporter shall record all proceedings to verify the authenticity and any instructions to counsel regarding the playing of the tape. The reporter shall record the exact time that the playing of the tape commences and terminates and all comments made during its playing. If any portion of the tape is replayed, the reporter shall so indicate in his or her notes and shall mark in the transcript of the tape recording those sections which were replayed. The entire tape recording shall become a part of the record and shall be available for review upon appeal, where relevant (see *R. 1:7-3*).

Before an original wiretap tape or copy thereof is admitted into evidence, the court should confer with counsel and issue specific instructions to counsel and to the court reporter as to its introduction into evidence. The court reporter should record verbatim those instructions. If a wiretap tape is in evidence the court may direct the court reporter not to record verbatim the contents of the tape.

If the contents of a wiretap interception have been disclosed to the jury either by the direct testimony of witnesses or by the playing of a tape containing that interception, the judge then may accept into evidence a properly authenticated transcript of that interception and may make available to each juror a copy of that transcript.

### EDITOR-S NOTE

conversations, have been combined. The original two paragraphs of #18-75 have been inserted in the first paragraph of #8-82, replacing the paraphrased reference to #18-75. The text has been amended to render it gender-neutral.

The citation to *State v. Grecco* has been added. In the first sentence of the final paragraph, the word "shall" has been replaced with "may." Furnishing the transcript to the jury is within the discretion of the trial judge. The party seeking to play a tape is obligated to provide sufficient copies for the jury, if the court permits distribution to the jury.