

## Verbatim Reporting of Read Backs

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Question has arisen recently regarding the proper procedure to be followed with respect to making a verbatim record pursuant to *R. 1:2-2* when testimony is read back to a jury, in light of *State v. Grecco*, 187 *N.J. Super.* 421 (App. Div., 1982), *certif. denied*, 97 *N.J.* 651 (1984). In the case, involving a press challenge to the trial judge's denial of its motion for a transcript of tape recordings played during pretrial hearings, the court stated: "[e]ven testimony read back to the jury during deliberations must be recorded." In so stating, the court relied upon *Eden v. Conrail*, 175 *N.J. Super.* 263 (App. Div. 1980), *aff'd*, 87 *N.J.* 467 (1981).

In *Eden*, it was impossible to determine from the record which portions of concededly critical testimony had been read back to the jury during its deliberations. There was no indication in the transcript and neither the judge nor the court reporters could certify with specificity what testimony had been repeated. The appellate court thus had an incomplete record for review. In reversing and remanding, the court admonished trial judges and court reporters to use care and foresight in establishment of the record.

In the commentary to *R. 1:2-2*, *Eden* has been cited as requiring the "recording" of the reading back of testimony so as to provide a complete record of the proceedings. The *Grecco* court, citing *R. 1:2-2*, found that the trial court erred when it did not include what was said on the tape recordings in the trial transcript.

To comply with the requirements cited above, judges are reminded that the court reporter should be instructed to note on the reporter's official stenographic notes exactly those portions of the transcript which are read back, thus making the record required by *Eden* and *Grecco*. This will enable the reporter, when preparing the transcript, to reiterate those portions of the reporter's notes which were read back.

### EDITOR-S NOTE

The citation to *State v. Grecco*, 187 *N.J. Super.* 421 (App. Div. 1982), *certif. denied*, 97 *N.J.* 651 (1984), has been inserted. No other changes have been made.