

7 THE COURT: I don't disagree with any of that. But I
8 don't remember ever making any change to a transcript of any
9 substance whatever. I may have stuck in a comma. I may have
10 stuck in a dash. But I don't remember ever changing anything
11 of substance. Now, if you want to tell me, you say --
12 MR. ARMSTRONG: Your Honor, I believe the primary one
13 of issue on substance is February 22, 2002. It goes to pages 9
14 and 10.

Judge Richard Owen - September 23, 2003 - Page 22
Admitting Publicly to Altering Transcripts

U.S. v. Zichettello

Opinion

Nos. 98-1376(L), 98-1377, 98-1378, 98-1379, 98-1380.

Argued: June 8, 1999.

Decided: March 30, 2000.

5) SDNY Practice

The problem in the instant case has led lawyers on both sides to highlight a problematic practice in the Southern District of New York and has prompted one of them to ask this court to order that the practice be eliminated. *See* Leiwant Decl. at 2. According to lawyers for both the government and defense, as well as Bologna, the "standard practice" in the Southern District is for a court reporter to submit the transcript of jury instructions to the district court before releasing it to the parties. *See id.*; Pomerantz Affirm. ¶ 11; Bologna 4/99 Aff. ¶ 3. The district court is free to alter the transcript, and any changes are incorporated in the "official" transcript without disclosing such changes to the parties. *See* Bologna 4/99 Aff. ¶ 3. According to counsel, the Southern District is somewhat unique in this practice. *See* Leiwant Decl. at 2.

98 Courts do not have power to alter transcripts *in camera* and to conceal the alterations from the parties.¹¹ Given *98 the issues that arose in this case as a direct result of this practice, there appears to be little justification for continuing the practice in its present form. To be sure, a procedure that corrects obvious mistakes in transmission is useful, and the parties have little interest in closely monitoring such a procedure so long as the alterations are cosmetic. Monitoring by the parties, however, provides some assurance that only cosmetic changes will be made or, if not, that changes will correctly reflect what transpired in the particular proceeding. Moreover, there is little cost in informing the parties of cosmetic changes or at least of directing court reporters to give parties access to the original transcript when they request it.