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03-AP-128

January 7, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Proposed Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

As any late night television viewer knows, the *Miranda*[1] warning admonishes, "you have the right to remain silent. If you give up the right to remain silent, anything you say can and will be used against you in a court of law." If Proposed FRAP 32.1 is approved, that warning will be heeded by our federal appellate judiciary.

My concern is this: Unpublished decisions, which make up the bulk of appellate opinions, are typically written for a very limited audience. They briefly explain who wins and why. Because a full disposition of the facts and law is not required, such decisions allow our federal appellate judiciary to resolve thousands of cases a year. These appellate opinions, however, because of their brevity, may not fully address the complexities of a given issue of law. Citation to such decisions would only convolute the law.

Because federal appellate judges simply lack the resources to make all opinions precedential, they will simply adhere to *Miranda's* admonishment. Rather than write an opinion which could be used against them, they will simply remain silent and author one word opinions which say "Affirmed," or "Reversed." This already occurs in some federal circuits.

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1 *Miranda v. Arizona*, 384 U.S. 436 (1966)

Once a party has incurred the expense of participating in an appeal, it wants a reasoned explanation for the outcome on appeal. The proposed rule will deprive parties of that right. For that reason, proposed FRAP 32.1 should be consigned to scrap heap of bad ideas.

Sincerely yours,

H. Joseph Nourmand, Esq.
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