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January 22, 2004

Peter G. McCabe
Secretary of Committee on Rules & Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544
fax: (202) 502-1755

In re: *Proposed Rule To Allow The Citation of Unpublished Memorandum Dispositions*

Dear Secretary McCabe:

My name is Lara Bazelon and I am a Deputy Federal Public Defender in the Central District of California. I practice exclusively in federal court. I write to state my opposition to the proposed rule that would allow the citation of unpublished memorandum dispositions as binding precedent.

The caseload borne by federal appellate judges is staggering. Moreover, the majority of the cases that come up for federal appellate review are relatively straightforward, and require little more than checking to ensure that the lower court "got it right." It is those cases, which raise no new questions of law and require no expansion, modification, or significant explication of existing law, that are designated memorandum dispositions. This approach makes sense because it frees appellate judges to focus on the complex cases that require more careful attention.

As the former clerk to a judge on the Ninth Circuit, I have observed firsthand the pressure on federal appellate judges to maintain control over a docket. Most judges manage very well, in part because they rely, to some degree, on their law clerks to handle the more routine cases – the cases that cannot be cited as precedent. If every case, no matter how basic, was suddenly deemed to have precedential value, federal judges would not be able to delegate their workload in this manner, and would find themselves stretched very thin. As a result, judges might not have the time or energy to rigorously scrutinize the cases that need it most.

There is a second problem with adopting a rule that would accord precedential value to all

federal appellate decisions: it would disadvantage poor litigants. Hunting down every single potential precedent requires money and resources – such as Westlaw or Lexis – that are unavailable to many people pressing claims in federal court, particularly those who are proceeding *pro se*.

Please consider the negative impact on judges and litigants alike and decline to adopt the proposed rule according precedential value to all judicial appellate decisions.

Sincerely,

Lara A. Bazelon
Deputy Federal Public Defender