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To: <Rules\_Comments@ao.uscourts.gov>  
cc:  
Subject: Comments re Proposed FRAP 32.1



03-AP-240

Please accept this email in opposition to the proposed amendment of FRAP 32.1.

My name is Bruce Livingston, and I am an attorney with the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho. My office is in Moscow, Idaho within the United States Court of Appeals for the Ninth Circuit. I am licensed to appear before the Sixth, Seventh, Eighth and Ninth Circuits of the United States Court of Appeals, as well as the Supreme Court of the United States, and I have practiced in all of those courts and argued before all them with the exception of the Sixth Circuit.

I am opposed to the proposed amendment of FRAP 32.1 for several reasons.

First, my understanding of the workload of federal appellate judges leads me to believe that they properly place priorities in the time spent on different cases depending upon the complexity and importance of the issue. There are some obvious reasons for placing the less important decisions in a category of unpublished opinions which may not be cited. Less time is devoted to those opinions at present; judges may feel constrained to spend more time on these less important decisions if they may be cited to the court. Judges may cease issuing opinions in these less important cases, thereby depriving the parties of a statement of the reasons for the decision and replacing it with the one line opinion stating that the case is "affirmed" or "reversed."

Second, I fear that the use of the vastly expanded caselaw (that would necessarily occur if unpublished opinions could be cited) will expand the costs of litigation and place an unfair burden on the poor, tilting the scales of justice toward the government. As someone who was a CJA practitioner before I became a Federal Defender, I can see the possibility that the Government and the well-heeled defendants may be better able to marshal the larger sea of cases that may be cited.

In sum, it seems to me that the workload of the federal judiciary and the uneven position of all litigants both militate against the passage of the proposed amendment to FRAP 32.1

Sincerely,

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