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January 26, 2004

Peter G. McCabe, Secretary
Committees on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Washington, D.C. 20544

Re: Proposed Fed. R. App. P. 32.1

Dear McCabe:

As someone who has served as a law clerk at all three levels of the federal court system, I write this letter to explain why I oppose the proposed amendment to Federal Rule of Appellate Procedure 32.1, which would permit citation of unpublished dispositions for their persuasive value.

I am aware that there are some problems associated with the system of unpublished decisions. Sometimes courts fail to publish decisions that should have precedential value. And occasionally there are unpublished decisions within a circuit that appear to conflict with one another. However, I believe the courts, with proper encouragement and assistance from the Administrative Office, are capable of correcting these problems internally. On the other hand, the harms that would result from the proposed amendment would far outweigh any potential benefits.

With the dramatic increase in federal filings over the past several decades (largely as a result of the federalization of criminal and civil matters that had previously been left to the states) unpublished dispositions have become necessary to ensure continued efficiency of decision making in the federal courts. If these dispositions could be cited for publication, judges would likely treat them as published opinions, which would result in the development of a serious backlog of cases. Alternatively, courts might decide to replace unpublished dispositions with one-sentence orders, which would unfairly deprive the individual litigant of an explanation for a ruling about which he undoubtedly cares deeply. Either way, the federal court system would be unable to serve the public as well as it does now.

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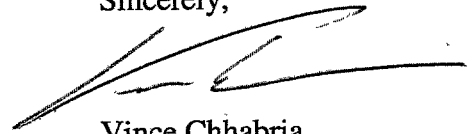
Peter G. McCabe, Secretary

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Page 2

Accordingly, I urge the Committee to decline to adopt the proposed amendment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Vince Chhabria', written over a horizontal line.

Vince Chhabria

VC/ljj