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03-AP-305

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Direct Dial:

January 23, 2004

Mr. Peter G. McCabe  
Secretary of the Committee on Rules of Practice and Procedure  
Administrative Office of the U.S. Courts  
One Columbus Circle

Re: Proposed Rule Change to Permit Citation of  
Unpublished Opinions

Dear Mr. McCabe:

I'm Currently a Deputy Federal Public Defender in the Eastern Division of the Central District of California. I have also been a member of the Indigent Panel for the Central District of California and have been practicing in the Federal Courts since 1979. I wish to add my strong opposition to the proposed rule that would permit the citation of unpublished opinions.

My objections are that the proposed rule would do nothing to increase the reliability of criminal adjudications. Some decisions are meant for publication and are deeply and closely reasoned; others are not. Permitting citation to unpublished opinions would overwhelm the well reasoned and carefully crafted published opinions. In essence an unpublished opinion would take on the same weight of authority as a published opinion, and due to the sheer number of unpublished opinions relative to published opinions might in some circumstances overwhelm the more carefully reasoned published opinion.

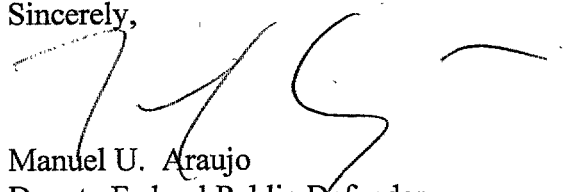
As my colleague, Jeffrey Aaron, I too am also troubled by the economic and social aspects of allowing the citation of unpublished decisions. Most poor litigants do not have access to the computerized databases that provide unpublished decisions. They will be at a disadvantage when compared to corporate or governmental lawyers who will have unlimited access to the body of unpublished law. I think the impact of this would be seen most clearly in the *pro per* litigants in this and other districts who are attempting to challenge their convictions with the use of antiquated legal materials, but whose adversaries in the offices of the United

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States Attorney or the Attorney Generals of the various states have sophisticated computerized databases for legal research. Many of these litigants are facing the death penalty or life sentences and do not have the financial resources to hire appellate counsel. It would be financially impossible to provide such resources free of charge to all of the custodial facilities in the United States, and the disadvantage poor clients would have in researching and applying unpublished law would be yet another step towards one justice for the rich, and one for the poor.

Thanking you and the Committee in advance for your kind consideration.

Sincerely,



Manuel U. Araujo  
Deputy Federal Public Defender

CC: Maria Stratton