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February 13, 2004

BY FIRST CLASS MAIL

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

Re: Proposed FRAP 32.1

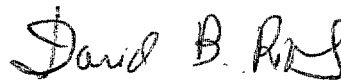
Dear Mr. McCabe:

I believe that proposed FRAP 32.1 should not be adopted. This rule would require every United States Court of Appeals to permit the citation of "unpublished" opinions. No compelling, or credible, reason has been advanced to justify the imposition of such a rule. Suggestions that lawyers are somehow "burdened" by the current system, where different Circuits follow different local rules, can hardly be taken seriously. Indeed, this logic undercuts the justification for all local rules.

In addition, requiring every Circuit, regardless of its workload or the number of unpublished opinions already issued, to permit the citation of unpublished opinions will create a positive incentive for more summary dispositions. In such instances, litigants will be deprived of a reasoned explanation for the result in their cases. This *will* burden the Bar, and will undercut faith in the system as a whole.

The current system is both reasonable and sensible. It should be left in place. These views, of course, are my own, and do not necessarily represent the view of my Firm or any of my partners.

Sincerely,



David B. Rivkin, Jr.