



STRADLING YOCCA CARLSON & RAUTH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

660 NEWPORT CENTER DRIVE, SUITE 1600

NEWPORT BEACH, CA 92660-6422

TELEPHONE (949) 725-4000

FACSIMILE (949) 725-4100

LYNN C. MERRING

DIRECT DIAL: (949) 725-4023

LMERRING@SYCR.COM

SAN FRANCISCO OFFICE
44 MONTGOMERY STREET, SUITE 4200
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE (415) 283-2240
FACSIMILE (415) 283-2256

SANTA BARBARA OFFICE
302 OLIVE STREET
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE (805) 564-0065
FACSIMILE (805) 564-1044

February 5, 2004

03-AP-481

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: Comments re Proposed FRAP 32.1

Dear :Mr. McCabe,

I write to you as a law librarian with almost 25 years experience . I hold both a Masters Degree in Library Science and Juris Doctor from Indiana University. In the course of my career I have worked in a wide variety of law libraries (county, corporate, law firms of various sizes.) in 3 states. In that time I have worked with attorneys, judges, law clerks, paralegals, lay people and librarians all trying to research case law to find "the" pertinent case. I have even taught legal research in a paralegal program at the university level. In other words, I know an awful lot about how people find and use federal judicial opinions.

In considering the proposed changes to FRAP 32.1 I have tried to come up with a single argument in favor of requiring the publication of all opinions and I simply cannot find one.

In the last 25 years the sheer size and number of opinions has become overwhelming. Printed case reporter volumes have grown in size and are issued more frequently. It has reached the state where it is almost impossible for most libraries to justify the space required to house the opinions. Yes, law schools still struggle to do so – but almost no one else can afford the space. I am quite certain of this because of our own firm's recent experience. Within the last few months we cancelled ALL the Federal case reporters and tried to find good homes for the volumes we wished to discard. They were free for the asking : Fed Supp and Fed Supp 2d, Fed 2d & 3d, FRD – all available for the cost of transport. Not a single taker, although we contacted libraries, law schools and legal aid agencies across the country. There simply is no more room to house this massive body of text.

Well, after all WE decided to discard them because they are available online. And in spite of the reticence of some of our older attorneys one might even say they are MORE accessible online. That is, of course, assuming you can afford to subscribe to a system which provides them electronically.

Peter G. McCabe, Secretary
February 5, 2004
Page Two

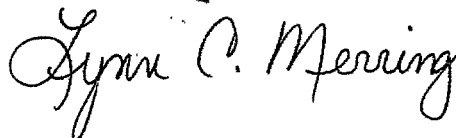
Not a problem for large firms or corporations, not a problem for the courts or most government agencies. But what about the average person? As costs of legal services escalate more and more people find they cannot afford legal representation and proceed pro se. That may or may not be a good choice, but it is fact. At least with the material in hard copy there was a hope they could, with time, learn to use the resources, read the cases and have some hope of making a cogent presentation of their case. But if your only access to case law is via subscription to Westlaw or Lexis (or even less expensive services like Versalaw or LexisOne) how long is it before the lay person simply has no access to case law? And at what point does that mean no meaningful access to the courts?

At least those who can afford online access would finally be able to access every single decision ever rendered by a federal judge! Why is that a good thing? Judges and their clerks spend countless hours crafting the language in published decisions to say precisely what they intend because they know how important these statements of the law are. Do we really believe that every repetition of the same legal theory applied to virtually identical facts requires or deserves the same painstaking craftsmanship? Perhaps more importantly if we insist on that level of care (which certainly must be exercised if all case law is citable) where are we going to find the additional judges to handle the cases which will be backlogged even further than the already overcrowded dockets?

In many years of searching a wide variety of legal issues I have retrieved (and read) many unreported cases. Some of them did contain language that was useful. but I cannot think of a single instance when I was not able to find a reported decision that made the very same point, even if the language varied slightly. In fact, limiting me research to only reported decisions usually means I find what I need far more quickly.

Sincerely,

STRADLING YOCCA CARLSON & RAUTH



Lynn C. Merring
Librarian