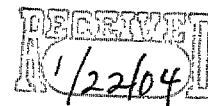


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Direct Dial

January 22, 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Unpublished Opinions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 am a Deputy Federal Public Defender in the Eastern Division of the Central District of California. I am strongly opposed to the proposed rule that would permit the citation of unpublished opinions.

Generally speaking, my objections are that the proposed rule would make the defense of criminal cases even more expensive and time consuming than the present. It would do nothing to increase the reliability of criminal adjudications. Finally, the proposed rule change would result in a *de facto* discriminatory hierarchy of legal research.

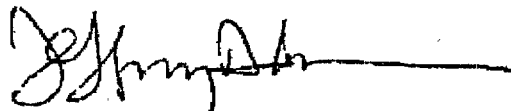
The unfortunate reality of appellate practice is that judges cannot possibly give deep and closely reasoned scrutiny to every decision. Thus, some decisions are meant for publication and are deeply and closely reasoned; others are not. If the proposed rule were in effect, the well reasoned decisions would have to contend with other less well reasoned decisions. The proposed cure, a provision that would allow courts to designate some of their decisions as "nonprecedential," may well be worse than the disease. This halfway measure will only make practice more confusing and arbitrary -- the exact opposite of what lawyers and judges should aspire to achieve. Some courts may stop writing opinions in many cases and resolve the matter with a blanket "affirmed" or "reversed." Thus, the guidance lawyers come to expect from the appellate bench may become even more rare.

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I am also troubled by the economic and social aspects of allowing the citation of unpublished decisions. Most poor litigants do not have access to the computerized databases that provide unpublished decisions.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 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,



Jeffrey A. Aaron
Deputy Federal Public Defender