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Via Post & Fax: (202)502-1755

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: *FRAP 32.1*

Dear Mr. McCabe:

I would like to add my small voice to the chorus of practicing attorneys concerned that the proposed rule change which would permit lawyers to cite as precedent even those opinions which courts specifically designate as "unpublished" or "non-precedential." While initially intrigued and pleased with the prospect of utilizing some of the cases I regretfully, at the time, was forced to discard because they were so branded, I came to realize that such dubious precedent often bore language which appeared to contradict more thoughtful cases and precedent, and should not be read as applicable outside the specific context of the matter addressed.

It was also sobering to learn that only twenty percent of judicial decisions were "published" and that multiplying the available precedent by a factor of five would truly tip the scales in favor of the large firms and their *scorched earth* policy of litigating by burying the opposition in paper. This, I submit, would take *justice* out of *justiciable* and substitute raw power in its stead. Finally, I would suggest that the courts as currently constituted have more than enough to do without placing upon them the burden of preparing every controversy they handle for the record books. Selectivity is as important in choosing cases to be published as in choosing a mate. The *more the merrier* should not be either's *leitmotif*.

Very truly yours,

Albert S. Golbert
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