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12/9/03

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4025 Gelding Lane
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December 2, 2003

03-AP-030

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

Dear Mr. McCabe:

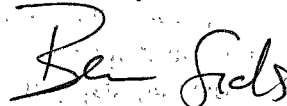
I am an attorney and a member of the bars of the U.S. Courts of Appeals for the Fourth, Ninth, and District of Columbia Circuits and of the Supreme Court of the United States. I write to express my opposition to proposed Federal Rule of Appellate Procedure 32.1.

The proposed rule would have unintended, but deleterious effects on the practice of law in the federal courts of appeals. First, the new rule would require attorneys to incorporate into their legal analyses a great number of judicial decisions that, by design, lack careful reasoning and explanation. The availability of such a large collection of decisions, without accompanying reasoning, could diminish the clarity of many areas of federal jurisprudence. Second, by requiring courts to permit citation of all unpublished decisions, the rule will compel panels to spend a great deal more of their (already scarce) time crafting such decisions. Accordingly, I fear that the rule could result in a decrease in the amount of time courts have to craft full opinions for publication.

If an individual court of appeals is willing and able to permit the citation of unpublished decisions without risking such negative effects, that court may do so by local rule. But a national rule compelling all courts of appeals to adopt this procedure is unwise. I therefore oppose proposed FRAP 32.1.

Thank you for considering my views.

Sincerely,



Benjamin I. Sachs