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January 23, 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  
N.E. Washington, D.C., 20544

Re: Proposed Rule Change to Permit Citation of Unpublished  
Opinions

Dear Mr. McCabe:

I hope this letter finds you well.

I am writing to express my strong opposition to the proposed rule that would permit the citation of unpublished opinions. I am the Directing Attorney for the Riverside Branch of the Federal Public Defender's Office for the Central District of California. I have also been a member of the Federal Public Defender's Office for the Central District of California since 1991.

I believe that the proposed rule would do nothing to increase the reliability of criminal adjudications. While decisions which are meant for publication are deeply and closely reasoned, decisions not meant for publication often times are not. To allow the citation to an unpublished opinion would be to give the unpublished opinion the same weight of authority as a published opinion. Due to the disproportionate number of unpublished opinions relative to published opinions, the unpublished opinion would in some circumstances overwhelm the more carefully reasoned published opinion.

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Letter re: Proposed Rule Change

January 23, 2004

Page 2

Additionally, as has been expressed by other fellow Deputy Federal Public Defenders, I am troubled by the economic and social aspects of allowing the citation of unpublished decisions. Most indigent litigants do not have access to the computerized databases that provide unpublished decisions. They will be at a huge disadvantage when compared to corporate or governmental litigants who have unlimited access to such decisions. The impact of this would be seen most clearly in the pro per litigants who are attempting to challenge their convictions. Many of these litigants are facing the death penalty or life sentences and do not have the financial resources to hire appellate counsel. As a result, such litigants would only have access to antiquated legal materials and resources, while their adversaries in the offices of the United States Attorney or the Attorney Generals of the various states would have access to sophisticated state of the art computerized databases for legal research. Given the financial impossibility of providing such sophisticated legal resources free of charge to all of the custodial facilities in the United States and the disadvantage indigent litigants would have in accessing legal materials, applying unpublished law would be yet another step towards setting one standard of justice for the wealthy and another for the indigent.

I thank you and the Committee for your kind consideration.

Sincerely,



OSWALD PARADA  
Deputy Federal Public Defender

CC: Maria Stratton, Federal Public Defender