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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: Proposed Federal Rule of Appellate Procedure 32.1

Dear Mr. McCabe:

This letter is to encourage the Committee to reject the proposed new Rule to the Federal Rules of Appellate Procedure, Rule 32.1, which if approved will allow citation to unpublished opinions.

The current limitation on citation to unpublished cases originally was enacted in response to the increase in cases and the limited judicial resources available. In 1964, the U.S. Judicial Conference recommended limiting publication to those opinions containing precedential value. *Judicial Conference of the United States*, Report 11 (1964). The recommendation was adopted by the Judicial Conference in 1973. *Judicial Conference of the United States*, Report 12 (1973). Since the inception of this decision, the problem of increased case loads and limited judicial resources has not been assuaged; indeed, it has been exacerbated.

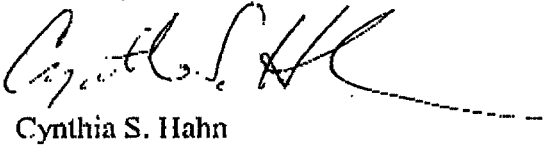
Unpublished opinions often contain little of precedential value and are of interest only to the parties embroiled in the legal controversy at hand. Watershed cases rarely, if ever, disappear into the netherworld of unpublished opinions. When a case is shunted to the area of the unpublished opinion, it is usually because that case is either based on firmly established legal precedent, or contained less than the solid legal reasoning needed to create new precedent. *See* Boyce, Jr., Martin R., *In Defense of Unpublished Opinions*, 60 Ohio St. L.J. 177, 181 (1999):

> A large proportion of the opinions that have been coming out of American courts add essentially nothing to the corpus of the law. They are of interest and significance to the parties only. Yet they fill large quantities of pages in the reports. Lest the thirteen federal circuits become a Tower of Babel, we need a way to sift opinions for publication. Unpublished opinions act as a pressure valve in the system, a way to pan for judicial gold while throwing the less influential opinions back into the stream.

Should a case of legal significance slip into the realm of unpublished cases in error, the United States Supreme Court will continue to correct such errors and bring the case into the arena of binding precedent.

In short, allowing the citing of repetitious or poorly-reasoned unpublished case law would cause unprecedented burdens upon the judiciary, particularly in large circuits, such as the Ninth Circuit. Allowing a flood of unpublished opinions into the briefs submitted to already overburdened Circuits most likely will result in the breakdown of a system already on the edge.

Sincerely,



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