

FEDERAL PUBLIC DEFENDER
NORTHERN AND SOUTHERN DISTRICTS OF IOWA

NICHOLAS DREES
FEDERAL PUBLIC DEFENDER

300 Walnut Street, Suite 295, Des Moines, IA 50309-2255
Telephone: 515-246-1761 Fax: 515-246-1862

03-AP-418
2/17/04

Assistant Federal Defenders
Des Moines
B. John Burns
Angela Campbell
Timothy Ross-Boon
James Whalen
Cedar Rapids
Jane Kelly
JoAnne Lilledahl
Sioux City
Priscilla Forsyth
Robert Wichser
Davenport
Phil MacTaggart
Terence McAtee
Research & Writing Attorney
John Messina

February 16, 2004

Via 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: Proposed FRAP 32.1

Dear Mr. McCabe:

I write in opposition to proposed FRAP 32.1. I think the proposed rule's costs will substantially outweigh its potential benefits.

Here in the Eighth Circuit, our local rules prohibit citation to unpublished opinions, with limited exceptions. See 8th Cir R 28A(i). The committee's note on the proposed rule mentions that about 80% of recent opinions by the courts of appeal have been unpublished, and I suppose that figure reasonably approximates the Eighth Circuit's practice.

By authorizing citation to these thousands of cases, the proposed rule will impose a significant cost on our office. Our assistant federal defenders, like our local assistant U.S. attorneys, are conscientious lawyers. If the circuit's unpublished opinions become available for citation, our lawyers will expand their computerized legal research to include those opinions. For the most part, these searches will produce little aside from wasted time and money.

In general, the Eighth Circuit's unpublished opinions are not intended to be a

FEDERAL PUBLIC DEFENDER

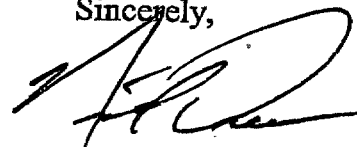
February 16, 2004

Page 2

thorough, precise statement of the facts underlying the case. For that reason, if we cite an unpublished opinion for its broad statement of the law, the assistant U.S. attorney opposing us will dig into the case's underlying facts in an effort to distinguish the case. If the government cites an unpublished opinion, we will feel compelled to make the same search. In the long run, both sides will spend considerable time and money trying to distinguish cases that, in the end, prove inapplicable. With our increasing caseloads and tightening budgets, we do not have the spare time or money to devote to this fruitless effort. I suspect that the courts also lack the necessary resources to accommodate this change.

Thank you for considering my views.

Sincerely,



Nicholas Drees
Federal Defender