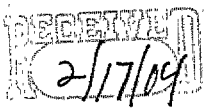
RAMSEY CLARK

LAWRENCE W. SCHILLING

03-AP-431



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February 13, 2004

Peter G. McCabe, Secretary
Committee on Rules of Practice
and Procedure
Administrative Office of the
United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Re: Proposed Rule 32.1 to the Federal Rules of Appellate Procedure

Dear Mr. McCabe,

I write to oppose the addition of proposed Rule 32.1 to the Federal Rules of Appellate Procedure.

Having watched the proliferation of law, including appellate opinions by state and federal courts, for more than fifty years and the consequent obscurity and complexity of law and specialization of law practice, I believe the rule of law has no greater challenge than to simplify, clarify and limit the principles of law and their exposition so that rights may be known and understood. A people who do not know their rights have little advantage over a people who have no rights.

With about 80% of the opinions issued by the courts of appeals in recent years designated unpublished, it is clear the practice of non publication is extremely important in limiting the body of precedent to be considered to determine law and rights.

The judiciary has the constitutional responsibility to determine law and establish precedent and is best able to evaluate what parts of its own product should be considered of precential value. To open the flood gates to citation for all its product would lend to proliferation and tend further to incoherence in law.

If an opinion designated unpublished by a judicial officer contains thorough research, or persuasive reasoning a lawyer can employ its substance in his argument without citing the unpublished source and thereby burdening judges and cluttering appellate records with analyses of prior judicial decisions not deemed worthy of publication by their judicial authors. Under these circumstances, the only weight added to the reasoning in an unpublished opinion by its citation is the identity of its judicial authorship which opposed publication.

The Department of Justice does not need to bring to bear in its appellate advocacy the rulings in unpublished cases, among which it is far and away the most frequent party, at the expense of judicial resources and simplification and clarity of the law. The reduction of numbers in the universe of arguable precedent is essential to a coherent body of law.

Fewer, clearer controlling appellate opinions should be a major commitment of the judiciary. Its hands, in this exceedingly difficult challenge, should not be tied by the proposed rule.

Sincerely,

Ramsey Clark

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