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## LETTER TO THE EDITOR: Academic Doesn't Understand Reality

Professor Stephen **Barnett** provides an academic's response to the views of Justice William Rylaarsdam against permitting the citation of unpublished opinions ("Publishing All Opinions Will Improve Judicial System in State," March 10). **Barnett** makes unfair attacks on Rylaarsdam and other jurists who face the real-world challenge of creating our common law. Here, I give the perspective of a practicing attorney who faces that real-world challenge of advising clients about what the law is, and presenting the law to courts.

Professors have the luxury of toiling in the vineyards of the law oblivious to the constant ticking of the billable hour clock. For them, more case law must always be better than less case law. For me, a practicing lawyer, our California law sometimes seems like an overabundance of grapes on the vine, sitting there in excess, threatening to intoxicate us into a stupor. The sheer volume of statutory, regulatory and case law in our state sometimes seems no longer to clarify the law but rather to cloud it with too many nuances, distinctions and variations.

Citizens of our democracy need quick answers at low cost. And in the real world, there is the risk of malpractice when an attorney in the trenches misses a nuanced legal point buried in the vast array of cases to be harvested.

The difference between an academic's view and the real-world view is revealed in the points **Barnett** attempts to make. He asks: "[S]hould an attorney be prohibited from telling a court how another court has ruled in a prior case involving similar facts?" Absolutely! I hope he would agree that we can properly prohibit the citation of trial court decisions. Surely in our democracy, we should have the ability to define our law by determining which decisions are citable and therefore precedential in our common law.

He unfairly suggests that cases are not citable so that "judges wield judicial power largely free of accountability." This is insulting and absurd. Unpublished opinions are available for review by the public, and by professors. Rather than defame our judiciary with unfounded charges, **Barnett** should spend his time scouring unpublished decisions to find support for his claim of "untrammelled power free of accountability." Surely such accountability could be achieved with a law review article by **Barnett** himself criticizing the holdings of any unpublished opinion he chooses to review! No prohibition prevents that accountability.

**Barnett** finds comfort in the fact that the vast array of opinions he would make citable would have an unknown precedential value short of being controlling. I find more obscurity and uncertainty. Should I cite unpublished opinions to Justice Rylaarsdam, who would have every right to ignore the citations?

**Barnett** scoffs at Rylaarsdam's fear of "a tenfold increase in the database." The professor's solution is computers. As President of the Public Law Center and as a member of the Self-Represented Litigants Task Force, I know that in the real world, computers are not always available to citizens of our democracy. Only an academic could think that access to justice comes to all via access to computers.

The burden of researching unpublished opinions that are citable and thus precedential goes beyond merely the pages of an opinion. Each page of an opinion spawns many multiple extra pages of summaries and digests in a vast paper chase. Perhaps the world will end not with a bang or a whimper, but with the soft flutter of additional case law floating down with summaries and digests to crush us. The wealthy may use electronics to escape this plight. The poor will simply be buried.

**Barnett** argues that since his proposal seems to work in other jurisdictions, California should fall in line. But this state has an abundance of law that provides a unique justification for limiting the sources of our law. Case law is somewhat like water, which is necessary part of sustaining life when we drink it in moderation, but which becomes unusable and destructive when forced to drink it from a fire hose. In the real world, we need rules prohibiting citation as a reasonable effort to limit the law that comes streaming at us.

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