January 25, 2005

1664 Buttercup Road
Encinitas, CA 92024

Ms. Cathy Catterson, Clerk,
U. S. Court of Appeals for the Ninth Circuit
Office of the Clerk
95 Seventh Street
San Francisco, CA 94103-1526

Via Overnight Delivery
FedEx Airbill No.
8079 5396 9150

Re: Request for Publication of Panel Memorandum
Finney v. Nugent, No. 04-55769
Filed January 13, 2005

Dear Ms. Catterson:

Introduction

Pursuant to Circuit Rule 36-4, I am requesting that *Finney v. Nugent* be published.

Argument

Pursuant to Circuit Rule 36-2, the panel's memorandum satisfied Ninth Circuit criteria for publication. Moreover, it is internally inconsistent with all relevant Ninth Circuit published opinions and with controlling U.S. Supreme Court decisions. Publication will advise and warn the public that:

- Reliance on previously published Ninth Circuit ADA and Rooker-Feldman opinions is misplaced.

- Disabled persons have no remedy for constitutional injuries caused by disability discrimination, animus, coercion and retaliation by California court entities, judges, jury commissioners, and court administrators pursuant to facially unconstitutional and discriminatory court rules, policies, procedures and practices.

The panel's unpublished memorandum:

1. Alters all Ninth Circuit case law regarding exceptions to abstention pursuant to the Rooker-Feldman doctrine as applied to:

- Allegations of fraud on the state court pursuant to false declarations and obstruction of justice by opposing parties in a state lawsuit.

- The absence of a final decision by a state court due to failure to provide access to the state appeals court.

- Lack of opportunity for a meaningful review by a state court system.

- Relief from facially unconstitutional, discriminatory state policies and procedures that violate ADA Title II and the U.S. Constitution.

2. Ignores the U.S. Supreme Court's decision in *Tennessee v. Lane* that Rooker-Feldman abstention is not applicable in reviewing constitutional and ADA access to the courts and due process violations.

3. Ignores the plain law of the Ninth Circuit that ADA Title II applies to all state programs, services and activities, stating that disability discrimination that is capable of repetition, may not evade review.

4. Involves legal issues of unique interest and substantial public importance that have been suppressed to permit wholesale, lawless conflict with published precedents, e.g.:

    - That state courts can promulgate facially unconstitutional and discriminatory rules, policies, practices and procedures in violation of ADA Title II and apply them to disabled persons, injuring their fundamental constitutional rights.

    - That state courts can promulgate and publish affirmatively misleading administrative rules, policies, practices and procedures to lull disabled persons into a false sense of security regarding protection of their fundamental constitutional rights to injunctive and declaratory relief and damages from disability discrimination.

    - That disabled persons have no remedy in federal court to obtain injunctive and declaratory relief and damages from discrimination, animus, coercion and retaliation by state court systems that intentionally violate ADA Title II in court programs, services and activities.

- That state courts can violate 28 CFR 35.107 by failing to "adopt and publish grievance and complaint procedures for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part," forcing disabled persons to use judicial remedies that are intended to immunize state courts from federal review pursuant to the misapplication of the Rooker-Feldman doctrine.

Conclusion

The Ninth Circuit's criteria for publication are not applied consistently and are arguably discriminatory in that:

- A San Diego police officer's constitutional right to sell a videotape on the internet of his masturbating, wearing his police uniform, was orally argued and affirmed in a published opinion. *Roe v. City of San Diego* , 356 F.3d 1108 (9th Cir. 2004), reversed by the Supreme Court (per curiam) (2004).

- An atheist's constitutional right to delete "under God" from the Pledge of Allegiance was orally argued and affirmed in a published opinion. *Newdow v. U.S. Congress* , 292 F.3d 597 (9th Cir. 2003), reversed by the Supreme Court (2004).

- Appellant's fundamental constitutional right to be free from disability discrimination, animus, coercion and retaliation by the California Courts was "not suitable for oral argument" and was denied in an unpublished decision. *Finney v. Nugent, supra.*

Substantial justification exists for publishing *Finney v. Nugent* . Failure to publish creates substantial justification for an independent audit, as welcomed by Judge Kozinski. (See Addendum, Testimony to House Judiciary Committee.)

Thank you for your prompt attention to this request for publication of an unpublished memorandum that has exacerbated the constitutional injuries caused by the California courts to me and to all disabled Californians that are capable of repetition, yet evading review.

Sincerely,

Jacquelyn Finney
Appellant, Pro Se

Cc: Hon. James Sensenbrenner, Chairman, Committee on the Judiciary,
U.S. House of Representatives

Arlene Prater, Best Best & Krieger