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Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle
Washington, D.C. 20036

Re: Proposed Amendments to the Federal Rules of Appellate Procedure

Dear Members of the Advisory Committee:

Dershowitz, Eiger & Adelson submits these comments on the proposed amendments to the Federal Rules of Appellate Procedure currently being considered by the Committee, and appreciate the opportunity for comment. Members of our firm have been practicing in federal appellate courts across the country since 1968, and we have filed hundreds of briefs in those forums on behalf of our appellant clients, in primarily criminal matters. We write to share our deep concerns about the proposed reductions in the word limitations.

Some of our cases have involved a one-count indictment, presenting one or two narrow issues on appeal. But far more have involved multi-defendant trials with 10,000 pages of transcripts, hundreds of exhibits, multiple pre-trial motions and hearings, jury deliberations that last for days, and multi-day sentencing proceedings. Some indictments are ninety counts, with verdicts split irrationally on the counts of conviction. Sometimes argument by trial counsel over an evidentiary or expert issue will spread over many days of transcript, and frequently the district court will revisit an issue repeatedly during a trial. It is not uncommon for such large and complex cases to involve eight or ten meritorious issues on appeal.

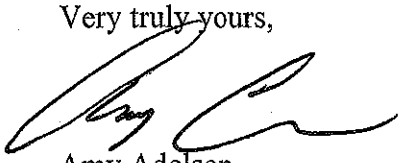
As appellate counsel, we strive for clean and to-the-point briefs, being conscious of the constraints on the time and resources of the appellate courts. However, when the facts are complex and the legal issues manifold, we struggle to square a concise presentation with an analysis that is thorough and comprehensive. Very often we are required to dedicate several days

to a substantial editing process in order to meet the current word limits. Of course, we must also be sure to satisfy our obligations to preserve issues or risk waiver -- particularly given that, in our experience, the government's claims of waiver by appellants seem to have increased substantially. The consequences of an appellate waiver can be severe: the client may lose the right to assert, in a subsequent collateral proceeding, a newly-decided issue that is not adequately preserved on direct appeal.

Additionally, courts of appeals do not limit their analysis of issues just to materials presented in the parties' briefs. On too many occasions, decisions have been written relying upon a proposition which we as appellate counsel intended to address and dispose of but which we were compelled to eliminate due to space constraints. Further, appellate courts are more frequently finding harmless error, a claim that is difficult to address under severe word limitations.

In short, we do our best to weed out repetitious material and to present a brief that will facilitate the Court's review, but the current word limits frequently make that a challenge; imposing still narrower word limits will mean a substantially greater burden on appellate counsel, and will work a grave detriment to our clients. We urge the Committee to withdraw the current proposals for a blanket reduction in word limits.

Very truly yours,



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