

March 12, 2026

VIA EMAIL (RulesCommittee_Secretary@ao.uscourts.gov)

Carolyn A. Dubay, Secretary
Committee on Rule of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Re: The Need to Amend Rule 15 of the Federal Rules of Criminal Procedure to Expand the Bases for Depositions in Criminal Cases

Dear Ms. Dubay:

We write to express our strong support for amending the Federal Rules of Criminal Procedure to expand the use of depositions in criminal cases. We are attorneys practicing primarily in the District of Connecticut and the founding members of Spears Manning & Martini LLC. Each of us has practiced in the area of federal criminal law for more than twenty-five years; and each of us served as federal prosecutors at prior points in our careers. We have tried dozens of federal criminal cases as well as numerous federal civil cases. Attorneys Martini and Spears served on the Advisory Committee for the Local Rules of Criminal Procedure in the District of Connecticut, which led to significant improvements to local procedures in criminal cases.

Numerous highly qualified federal practitioners have already voiced to the Rules Committee their overwhelming support for expanding the use of depositions in criminal cases and have advanced compelling arguments for why the time has come to address this need. We write to offer further perspective drawn from our own experiences.

First, no one would dispute that our system of justice should strive to provide every criminal defendant with a fair trial. Nor can one credibly dispute that an imbalance exists in our criminal justice system that favors the government and that the imbalance, in part, results from the government's far superior access to witnesses. In nearly every case that proceeds to trial, defense lawyers experience an unfortunate lack of access to witnesses. Witnesses often decline to speak with defense counsel or defense investigators. Defense counsel has no recourse. By contrast, the government has an arsenal of tools to leverage witnesses to meet with them and even testify in advance of trial, including grand jury subpoenas, immunity orders, and non-prosecution agreements.

In a criminal antitrust case that Attorney Spears tried in 2023, the government interviewed its witnesses sometimes as many as half a dozen times or more and used the grand jury to lock in one-sided testimony for most of its key witnesses. Defense counsel, in contrast, was unable to speak with *any* of the nearly thirty witnesses on the government's witness list. This is just one of many examples of an unlevel playing field that the expanded use of depositions would directly improve.

Second, all can agree that criminal defendants must receive exculpatory information in the government's possession, including exculpatory statements from witnesses. In practice, however, defendants are frequently unaware of the existence of exculpatory information that may otherwise be very accessible if defense counsel were permitted even a limited inquiry of certain key witnesses before trial. Federal prosecutors and agents interview and examine witnesses with an eye to building their case and often do not prioritize investigating defense theories. Consequently, even assuming that the government adheres to its ethical obligations and provides exculpatory information to the defense—which regrettably does not always happen—the government often does not possess exculpatory information because it does not ask its witnesses defense-oriented questions. This is another undeniable fact that leads to a system that leans heavily in the government's favor. Expanded deposition use would squarely address the need to ensure that defense counsel has a real opportunity to discover and investigate exculpatory information.

Third, a fair criminal trial requires providing a defendant with meaningful opportunities to confront and cross-examine the witnesses against him or her. This basic value finds its roots in the Confrontation Clause among other provisions of the Constitution designed to protect the accused. Expanding the use of depositions will surely further this goal. Any lawyer who has represented a defendant in a criminal trial can relate to the harrowing experience of cross-examining important government witnesses without any sworn statements and often with barely *any* information. And any such lawyer who has engaged in cross-examination during a civil trial knows that the information imbalance between a criminal trial and a civil trial is staggering—they are completely different experiences because of the limited availability of useful information in the criminal defense context. A criminal defendant, in theory, has many additional constitutional protections as compared to a civil litigant. In reality, a civil litigant benefits from a much more favorable set of rules—most notably, the availability of taking testimony under oath in advance of trial.

Fourth, while the expanded use of depositions will require judicial oversight, our District Judges and Magistrate Judges are well-equipped to perform these tasks. Our District Courts have deep experience in ensuring the proper application of discovery principles. The daily responsibilities of federal judges already include protecting confidentiality, entering orders to safeguard witness identities and ensure witness safety, and ruling on discovery disputes. In the context of expanded depositions, courts can apply many of these same principles to fashion appropriate protections that balance an accused's right to a fair trial with the government's need to protect the identity and safety of all witnesses—whether testifying for the prosecution or the defense.

It is encouraging that the Rules Committee is addressing the need for expanded deposition use in criminal cases. We appreciate the work being done and the opportunity to share our views on the subject. If more specific anecdotal information is needed, we would be happy to share it.

Very truly yours,

A handwritten signature in blue ink, appearing to read "B. E. Spears".

Brian E. Spears

A handwritten signature in blue ink, appearing to read "Stephen V. Manning".

Stephen V. Manning

A handwritten signature in blue ink, appearing to read "J. W. Martini".

Joseph W. Martini