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March 6, 2026

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

Re: Proposed Amendment to Federal Rule of Criminal Procedure 15 to Expand the Use of Depositions in Criminal Cases

Dear Ms. Dubay:

On behalf of Finch McCranie, LLP, the three of us write to express support for the proposal to amend Federal Rule of Criminal Procedure 15 to expand the use of depositions in criminal cases. Combined, the three of us have over 110 years of experience prosecuting and defending criminal cases in federal court. The three of us have served in varying positions, including service as the former Deputy Attorney General, a United States Attorney for the Northern District of Georgia, a federal prosecutor, and a trial attorney with the Office of the Federal Public Defender. Additionally, as defense counsel, the three of us have represented hundreds of individuals who have faced charges in federal court. In total, the three of us have tried over 50 federal criminal cases, either as federal prosecutors or as lawyers representing accused individuals. Based on our experience, we write to strongly urge the Committee to amend Rule 15 to allow for depositions in criminal cases.

As you may know, in 1974, the Advisory Committee recommended several modifications to Rule 16, including the addition of a provision that required the parties to exchange witness lists in federal criminal cases. After extensive study and consideration, the Judicial Conference adopted the proposed modifications to Rule 16 and forwarded those proposed modifications to the Supreme Court for promulgation. In April of 1974, the Court forwarded those proposed changes to Congress for review and approval. However, just days before the amendments were to go into effect, Congress – at the behest of DOJ – suspended (and later eliminated altogether) the effective date of the witness-disclosure provisions.

The proposed amendment to Rule 15 to allow a limited number of depositions in federal criminal cases would go a long way towards addressing the serious imbalance that exists in federal

court concerning witness testimony. As it stands now, the Government is not required to disclose a list of witnesses and in our experience, most witnesses that the Government plans to call at trial are reluctant or unwilling to speak with defense counsel. Although the Jencks Act requires the Government to produce witness statements after a witness testifies, the statements set forth in those reports are not the statements of the witness and are of limited use to defense counsel.

The phrase "Trial by Ambush" is often used to describe what defense counsel experience in federal criminal cases. From our many years of experience, we are confident in saying that this phrase is not an overstatement. Although the proposal before the Committee will not solve all the problems that currently exist concerning discovery in federal criminal cases, it will go a long way towards correcting the substantial, structural imbalance that currently exists. Moreover, from a purely objective standpoint, there is no credible reason for not adopting the proposed amendment.

Thank you for taking the time to consider our letter. We appreciate it.

Respectfully submitted,

Larry D. Thompson

Richard Hendrix

Carl Lietz