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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
RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposal to Amend Federal Rule of Criminal Procedure 15

Dear Ms. Dubay,

I write in support of amending Rule 15 to permit depositions in federal criminal cases.

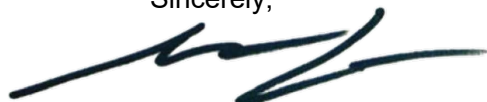
I am a lawyer based in Washington, DC, and a significant part of my practice is white collar criminal defense. I also teach Wrongful Convictions at Georgetown Law, and have devoted a substantial portion of my career to preventing and correcting convictions of innocent people.

This topic hits close to home. As I write, I am involved in a case in which a major discrepancy has arisen between an FBI 302 interview memorandum and the account of the witness who was interviewed. The discrepancy is over a significant issue—whether the agent pressured the witness not to provide financial support for the defendant’s legal defense. There is no recording. Thus, we will be asking the court to permit a deposition of the relevant agent and witness, to investigate what happened during the interview, and whether similar incidents occurred with other witnesses. We do not know whether the court will permit the deposition and, thus, may never learn the truth.

The fact that government interviews of witness are often unrecorded and generate nothing more than a 302 is the reason discovery depositions are necessary in criminal cases. Simply put, unless a witness speaks with defense counsel voluntarily (far from a sure thing), defense counsel often have no way to test the accuracy of a 302. This leaves defense counsel with an informational asymmetry, as the government has many tools to encourage or compel witnesses to speak. And, as every defense counsel knows, 302s are notoriously unreliable, often leaving out exculpatory evidence from witness interviews, because the agent assigned with typing it up may be busy, biased, or both.

This problem will persist so long as the government insists on interviewing witnesses without recording the interviews. Revising Rule 15 to permit the defense to take depositions is a natural, logical response.

Sincerely,



Andrew George