

August 26, 2026

VIA EMAIL (RulesCommittee_Secretary@ao.uscourts.gov)

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: Proposal to Amend Rule 15 of the Federal Rules of Criminal Procedure

Dear Ms. Dubay:

I write in support of amending Rule 15 of the Federal Rules of Criminal Procedure. In that regard, I have reviewed “A Proposal to Amend Rule 15 of the Federal Rules of Criminal Procedure” submitted by Mr. Michael Kelly and Mr. Sergio Acosta, Akerman LLP (letter submitted on February 25, 2025). The proposed amendment would take a large step to promote fairness in federal criminal cases.

I began my career in federal district court in September 1994. As an Assistant United States Attorney, I prosecuted violent crimes that arose in Indian Country. I took a brief period working for the Southern Ute Indian Tribe, where I am a citizen. I returned to the United States Attorneys Office to prosecute violent crimes until I became state district court judge in Albuquerque, New Mexico. I have represented hundreds of defendants in federal court as a member of the Criminal Justice Act (“CJA”) Panel. I also have previously served as a member of the Tribal Issues Advisory Group, a subcommittee to the United States Sentencing Commission. I am currently a member of the newly formed Tenth Circuit Tribal Relations Advisory Committee. I am currently an Associate Professor at the University of New Mexico School of Law. I have been a faculty member for the past seven years. I also serve as the Director of the Southwest Indian Law Clinic (“SILC”). In SILC, I have supervised over eighty (80) students over the past eleven semesters.

In the spring of 2019, I experienced first-hand experience trying a high-profile case in federal court where I was “ambushed” with testimony from a government witness who testified regarding a matter that the federal prosecutors never provided. During the direct testimony of the government’s key witness, I objected and asked the Court to approach the bench. I explained to the court that the adduced testimony had never been set forth in any of FBI 302s. The judge said that the information set forth in FBI 302 is only a summary of a witness interview. The judge set forth that I could address the matter on cross-examination. I let the judge know that I was aware that the FBI 302s is only a summary, but the testimony of a salient issue set forth in the direct examination was not in the discovery. I tried to do my best to address the matter in cross examination. However, it was challenging to address the salient issues raised in the testimony but never set forth in the FBI 302s. I felt ambushed.

After this incident, I spoke with another attorney who mentioned that a similar issue had arisen in one of his cases in federal court. The attorney brought this issue to the judge. The court did nothing to address the issue in the murder case.

In New Mexico, there are two methods where parties can question potential trial witnesses. Those methods are “statements” (pretrial interviews) and formal depositions. As set forth in a September 2, 2025, letter from John D. Cline, the procedures promote “fairness in federal criminal trials” and “provide defendants and their counsel a more informed basis on which to decide whether to plead guilty or go to trial.” Mr. Cline concludes there should be an amendment to Rule 15 of the Federal Rules of Criminal Procedure.

As a state district court judge, I ordered pretrial interviews for interviews of trial witnesses. Upon motion by a party, I excluded proposed testimony if pretrial interviews did not occur.

An amendment to the Federal Rules of Criminal Procedure requiring depositions would also address potential *Brady* violations. In an April 22, 2026, letter in support of permitting limited discovery depositions in federal criminal cases, the Honorable Salvador Mendoza, Jr. Circuit Judge for the United States Court of Appeals for the Ninth Circuit, wrote that “allowing pre-trial depositions under Rule 15 may help reduce such due process issues...”

I highlighted a potential *Brady* in a matter that I defended in federal court in a law review article. In the law review article, I set forth a case that could have resulted in the conviction of a crime if exculpatory evidence had not discovered by my criminal investigator. Specifically, I defended an Indian¹ in federal court charged with a violent crime. The two federal prosecutors did not disclose exculpatory evidence that was set forth in the alleged victim’s full autopsy report. Prior to trial, I requested the federal prosecutors provide a full autopsy report. The federal prosecutors never provided a full autopsy report, *despite my request*. The federal prosecutors informed me that they had provided the full autopsy report in the discovery. Through our criminal investigation, we were able to obtain the *full autopsy report* of the victim. If I had the right to depose the doctor who performed the autopsy, there is a high likelihood that I would have uncovered the exculpatory evidence in the deposition. If my criminal investigator had not obtained the full autopsy report, there is a high likelihood that a jury would have found my client guilty of the alleged violent crime and sentenced to 16 years imprisonment. Upon receipt of the full autopsy report, uncovered by the defense’s criminal investigation, I provided the full autopsy report to the federal prosecutors. Obviously, the federal prosecutors should have had the full autopsy report and provided the full autopsy report with their discovery obligations. The federal prosecutors dismissed the federal charges based upon the findings set forth in the full autopsy report.

In New Mexico there are twenty-three tribes where all tribes have tribal courts. I have supervised clinical law students in over eight tribal courts over the past six years. In the tribal courts, tribal judges *require pretrial interviews*; I have spoken with tribal court judges, tribal prosecutors, and defense attorneys. All believe that pretrial interviews are a benefit to all parties.

Based upon my experience in tribal, state, and federal court, I strongly believe that the proposed amendment would help avoid an unfair ambush. My experience led me to write a law review article entitled, “*Trial by Ambush: The Prosecution of Indians in Federal Court*,” published in the Loyola of Los Angeles Law Review, <https://digitalcommons.lmu.edu/llr/vol57/iss2/5>. In my article, I address the Federal Rules of Criminal Procedure’s “unjust impact in the prosecution of Indians in federal court.” The federal prosecution of Indians in federal court is based upon the Major Crimes Act and the General Crimes Act. I

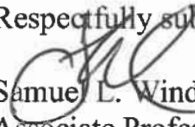
¹ I use the term “Indian” based upon the nomenclature used in federal statutes and federal cases.

set forth that pretrial interviews and depositions in federal court would “prevent a party from being caught by surprise or ambushed in federal court.” I argue that the Federal Rules of Criminal Procedure “should be modified to require pretrial interviews or depositions to ensure that Indians prosecuted in federal court are not unjustly ambushed.”

The goal of *“Trial by Ambush: The Prosecution of Indians in Federal Court”* was to promote a discussion of the unfairness I saw based upon my experience prosecuting and defending Indians in federal court. However, the unfairness occurs in all federal prosecutions of Indians and non-Indians.

Based upon my experience practicing law in federal court over the past 32 years, I recommend the Committee adopt the proposed amendment to Rule 15 to the Federal Rules of Criminal Procedure to permit a limited number of depositions. The amendment would ensure that Indians and non-Indians prosecuted in federal court are not unjustly ambushed.

Respectfully submitted,



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