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ATTN: 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

Dear Ms. Dubay:

Please consider my support for the proposed amendment to Rule 15 of the Federal Rules of Criminal Procedure to permit limited pretrial discovery by defendants in the form of depositions, with court approval and in the interest of justice. I served as an AUSA in the Southern District of West Virginia and am currently in private practice. My practice includes civil and criminal work, as well as service as our district's Criminal Justice Act (CJA) Panel Representative. I represent clients in complex white-collar prosecutions, as well as gun possession and drug-trafficking cases.

As a criminal defense attorney, I resolve cases by plea far more often than by trial. My ability to effectively represent and counsel my clients depends on a full and frank review of the government's discovery and the evidence I anticipate will be introduced at trial. In most cases, the record discovery is sufficient to make an informed decision about whether to negotiate a plea deal. In some cases, however, the anticipated testimony of a case agent, government witness, or other fact witness may carry significant weight on a charge, an element, or a potential defense. When the available discovery does not reliably reveal what that witness would say, the decision whether to proceed to trial involves guesswork and speculation, which serves neither the defendant nor the government.

Interviewing witnesses before trial is an option, but witnesses are under no obligation to cooperate, and any statements they provide are generally unsworn. Permitting depositions in limited circumstances would give the defense a fuller picture of the evidence anticipated at trial and allow defendants to assess defenses, evaluate prospective witnesses, and weigh the strengths and weaknesses of the evidence. This can be a favorable alternative to tossing out ideas at trial to see what sticks—or forgoing witnesses altogether out of fear that their testimony may prove unfavorable.

In my civil cases, discovery shines a light on both sides' allegations, defenses, evidence, and theories. It ultimately brings the parties closer to settlement or narrows the issues for trial. The proposed amendment would not create routine civil-style discovery in criminal cases. Depositions

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would require court approval under the interest-of-justice standard, and the presumptive limit of five depositions—with additional depositions permitted only in exceptional circumstances—would ensure that their use remains limited.

Amending Rule 15 will not result in depositions in every typical criminal case. But when strategically appropriate and approved by the court, depositions can advance many of the same purposes by promoting informed plea decisions, identifying material evidence before trial, and narrowing the issues that remain in dispute.

Thank you for your consideration.

Respectfully yours,



Gabriele Wohl

GW/pfl