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By e-mail to 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: Proposed Amendment to Rule 15 of the Fed. R. Crim. P.

Dear Members of the Committee:

I write in support of amending Rule 15 of the Federal Rules of Criminal Procedure to permit discovery depositions in criminal cases. I'm delighted that the Committee is seriously considering doing so.

I am a law professor at the University of Georgia, where I teach and study criminal adjudication.¹ My interest in this proposal is not only academic. Before beginning my academic career, I practiced law in Iowa, so I know first-hand that depositions can be a valuable aid to the criminal process. But I'll leave it to those closer to the daily practice of law to comment on the proposal's practicalities.

Many letter-writers have explored the value of discovery depositions in criminal cases. My purpose is to add one additional point—that they would go a long way towards restoring the vitality of the Sixth Amendment's Confrontation Clause. This letter is drawn from my article *Confrontation in the Age of Plea Bargaining*, 121 COLUM. L. REV. 451 (2021), which has the details.

We are more than twenty years into the revolution in Confrontation Clause jurisprudence sparked by *Crawford v. Washington*, where the Court declared that the Sixth Amendment “commands” that the government’s case against a criminal defendant must be tested in the “crucible of cross-examination.” 541 U.S. 36, 61 (2004). The point, the Court explained, is to “ensure [the] reliability of evidence”—and thus the dependability of criminal convictions—via adversarial testing of the government’s witnesses. *Id.* The Court thus situated the confrontation right as an essential check against unjust convictions.

¹ I submit this letter in my individual capacity.

But there was always a problem with looking to the Confrontation Clause to protect the interests of criminal defendants. Before *Crawford* and after, the Court has treated confrontation as a *trial* right. So if defendants want to confront the government's witnesses, they have to go to trial. But because trials expose defendants to crushing sentences, our system famously (or infamously, depending on one's perspective²) has very few of them. *Crawford* thus created a robust constitutional right that only a tiny fraction of defendants ever access.

The problem has an obvious solution. To realize the benefits of confrontation in an age of plea bargaining, we need pretrial confrontation. In other words, we need depositions. By exposing the strengths and weaknesses of the government's case, depositions would make the negotiating table a more information-rich environment. Therein lies the path to accuracy in plea bargaining. When depositions reveal a sound prosecution case, they'll mean higher plea "prices." When they uncover problems, they'll mean lower prices or dismissals. Almost always, they'll mean more accurate outcomes.

I have argued that, properly understood, the Confrontation Clause guarantees defendants the right to depose certain government witnesses. One need not go that far to recognize that adopting a system of discovery depositions would help reconcile the values underlying the Confrontation Clause with the reality of our contemporary justice system. I urge the Committee to do so.

Sincerely,

A handwritten signature in cursive script that reads "William Ortman".

William Ortman
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² See generally *Hunter v. United States*, 146 S. Ct. 1702, 1717–19 (2026) (Gorsuch, J., concurring).