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September 26, 2026

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: Federal Rule of Criminal Procedure 15 — Discovery Depositions (25-CR-B and Supporting Suggestions)

Dear Ms. Dubay:

I write in support of amending Federal Rule of Criminal Procedure 15 to permit a limited number of judicially supervised discovery depositions in federal criminal cases. My view is informed by having practiced on both sides of the federal criminal justice system. For more than six years, I served as an Assistant United States Attorney in the Southern District of West Virginia and the District of Columbia, where I investigated, prosecuted, and tried federal criminal cases. I now practice in the private sector and represent individuals charged with federal crimes.

That change in perspective has made the disparity in the parties' pretrial access to witnesses particularly apparent to me. As a prosecutor, I could rely on federal agents to interview witnesses, use the grand jury to compel testimony when appropriate, and direct additional investigation as questions arose. By the time a case reached trial, the prosecution ordinarily had substantial information concerning what its important witnesses knew and how they were likely to testify.

Defense counsel occupy a very different position. A witness generally has no obligation to speak with the defense, much less answer questions under oath. Counsel may therefore be required to make consequential decisions—whether to recommend a plea, whether to pursue a particular defense, whether to file a motion, or whether to call a witness at trial—without knowing what an important witness will actually say.

That disparity does not depend on prosecutorial misconduct or any failure by the government to satisfy its disclosure obligations. Even conscientious prosecutors and investigators approach witnesses from the perspective of the government's investigation. They cannot reasonably be expected to identify and explore every factual issue that may matter to a defense theory they do not share and may not fully understand. An interview memorandum or

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agent's report is therefore not a substitute for permitting defense counsel, in an appropriate case, to ask the witness relevant questions directly and under oath.

That is why I support a carefully limited mechanism for pretrial depositions. Where a witness's testimony is important and voluntary access to the witness is unavailable, a court-supervised deposition could permit counsel to obtain information necessary to make informed decisions about motions, plea negotiations, trial strategy, and the presentation of evidence. Appropriate numerical limits and judicial supervision would preserve the exceptional nature of the procedure while addressing the informational imbalance that currently exists.

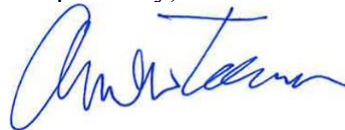
I recognize legitimate concerns about burden, delay, witness harassment, and safety. But those concerns support careful limits and judicial supervision, not a categorical prohibition. A rule permitting a small number of depositions upon court approval, with authority to impose protective conditions or deny unnecessary or improper requests, would preserve the district court's ability to protect witnesses and manage its docket.

Federal criminal prosecutions involve the most serious consequence our courts routinely impose: the potential loss of liberty. Providing a carefully controlled mechanism for obtaining reliable information from critical witnesses would improve the accuracy of pretrial decisionmaking, assist counsel in advising their clients, narrow disputes, and enhance the truth-seeking function of criminal trials.

For those reasons, I respectfully encourage the Committee and the Rule 15 Subcommittee to continue their work toward an amendment permitting limited discovery depositions in federal criminal cases.

Thank you for your consideration.

Respectfully,



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