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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
Via Email: rulescommittee_secretary@ao.uscourts.gov

Re: Comment on Proposed Rule Permitting Pretrial Depositions in Federal Criminal Cases

Dear Members of the Committee:

I write to you as a criminal defense attorney practicing in the Southern District of Florida and as a member of the Criminal Justice Act panel who regularly represents indigent defendants in federal court. This April, I will mark nearly twenty-one years in the practice of criminal defense. My career began as a young assistant public defender, where I learned—very quickly and very concretely—that access to meaningful pretrial discovery tools often determines whether the defense can test the government's case or is forced to fly blind into trial.

For that reason, I strongly support the Committee's consideration of a rule change that would permit pretrial depositions in federal criminal cases, subject to appropriate judicial oversight and safeguards.

In state court practice, particularly early in my career, depositions were not a luxury. They were the primary mechanism by which the defense could understand the actual contours of the prosecution's evidence, assess witness credibility, preserve testimony, and make informed strategic decisions about motions, trial, or resolution. Time and again, depositions revealed inconsistencies, exposed weaknesses in investigations, and clarified what a witness truly knew versus what was assumed or summarized in police reports. Just as importantly, they prevented surprises that can distort the truth-finding function of a trial and unfairly prejudice a defendant.

By contrast, in federal practice, discovery is often document-heavy but witness-opaque. We receive reports, summaries, and recordings, but we rarely have a meaningful opportunity to probe a witness's recollection, biases, or limitations before trial. While *Jencks*, *Brady*, and Rule 16 of the Federal Rules of Criminal Procedure provide important protections, they do not substitute for a structured, court-supervised opportunity to examine key witnesses in advance of trial—particularly in complex cases, multi-defendant prosecutions, or cases that turn on the testimony of cooperating witnesses, informants, or law enforcement officers interpreting technical evidence.

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From the perspective of a CJA practitioner, this gap has real consequences. Appointed counsel are tasked with providing the same zealous, effective representation as any retained lawyer, often with limited time and resources and against increasingly complex prosecutions. A narrowly tailored deposition rule would promote efficiency, not undermine it. Early, focused testimony can sharpen the issues, reduce unnecessary motions practice, encourage more informed resolutions, and in many cases shorten trials by eliminating surprise and narrowing disputes to what truly matters.

I recognize and respect the concerns traditionally raised about pretrial depositions in criminal cases—witness intimidation, fishing expeditions, delay, and increased costs. But these risks are not insurmountable, and they are already managed every day in other contexts. A rule that vests discretion in the district court, limits depositions to material witnesses or discrete issues, permits protective orders, and provides for cost and scope controls can address these concerns while still delivering the core benefit: a fairer, more transparent adversarial process.

In my experience, the absence of meaningful pretrial testimony often advantages only one side—the side that has already interviewed witnesses repeatedly before charges are filed. The defense, particularly in CJA cases, is left to reconstruct the government's case from paper and to test credibility for the first time in front of a jury, where the stakes could not be higher. That dynamic does not enhance accuracy, fairness, or public confidence in the system.

After nearly twenty-one years in criminal defense, and having started my career in a system where depositions frequently made the difference between an informed defense and guesswork, I am convinced that a carefully crafted rule permitting pretrial depositions would strengthen, not weaken, federal criminal practice. It would promote fairness, improve case management, and better serve the truth-seeking function of our courts.

Thank you for considering these comments and for your continued work in improving the administration of justice in the federal courts.

Respectfully submitted,

Maggie Arias
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CJA Panel, Southern District of Florida