



Barry Berke
Partner
T: +1 212.351.3860
bberke@gibsondunn.com

March 2, 2026

VIA EMAIL

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: Support for Amending Federal Rule of Criminal Procedure 15 to Expand the Use of
Depositions in Criminal Cases for Trial Preparation

Dear Ms. Dubay:

We are attorneys at Gibson, Dunn & Crutcher LLP with deep experience in criminal defense work. Over the years, our practices have included, among other things, work on behalf of criminal defendants in federal court and work as federal prosecutors in the U.S. Attorneys' Offices for the Southern District of New York and the District of New Jersey, as well as work as a federal public defender for the Southern District of New York. We write to add our voices to the chorus of practitioners who have written the Committee on Rules of Practice and Procedure (the "Committee") in overwhelming support of a proposal to amend Federal Rule of Criminal Procedure 15 ("Rule 15") to expand the use of depositions for criminal defendants in connection with trial preparation.

In our view, amending Rule 15 to permit defendants in federal court to take a limited number of judicially authorized depositions would serve to lessen a long-standing and unfair structural imbalance in our criminal justice system. As it stands today, the government has far greater access to witnesses in criminal cases as compared to defendants whose liberty is at stake. As others have ably explained, prosecutors have many, potent tools at their disposal to obtain information and testimony from witnesses—they can send federal agents to speak with witnesses, issue grand jury subpoenas to compel testimony, and even offer immunity to witnesses who may have engaged in criminal activity themselves. By contrast, counsel for defendants can only ask witnesses if they would be willing to speak and, all too often, they simply decline to do so.

Our own experience representing criminal defendants in federal court places this structural imbalance in stark relief. In recent years, for example, we defended Bill Hwang against charges of racketeering conspiracy, market manipulation, and wire fraud. As part of our trial preparation, we sought to speak with numerous witnesses to better understand the government's case and to build our defense case. Although we were able to speak with a few witnesses who still worked for Bill Hwang's charitable foundation, the government repeatedly suggested that these individuals were hired to work at the foundation to influence their testimony—an assertion that had no basis

in reality. This inappropriate saber rattling had a chilling effect on multiple witnesses, putting our client at an unfair disadvantage at trial. With the benefit of an amended Rule 15 that allows defendants to depose witnesses for purposes of trial preparation, future defendants in federal court will have, among other things, far greater pretrial access to witnesses, and thereby a far better understanding of the strengths and weaknesses of both the government's and their own cases.

Apart from providing defendants with greater access to witnesses, an amended Rule 15 that permits the expanded use of defense depositions for trial preparation will also promote the due-process principles underlying the government's obligations under *Brady v. Maryland* and its progeny. Put simply, the current framework, under which prosecutors unilaterally decide which government-produced materials to disclose to defendants falls short. To take just one example, FBI 302s, which prosecutors regularly disclose in connection with their *Brady* obligations, are often inaccurate and incomplete. These documents and others like them, such as grand jury transcripts and other interview summaries, often reflect only the *government's* theory of the case and, as a result, fail to address issues that may reveal exculpatory evidence, merely because it is not in the government's interest to explore those issues. Giving defense counsel more latitude to depose witnesses would help to address this gap in the criminal justice system. Specifically, in contrast to prosecutors, defense counsel would probe witnesses on areas germane to their theory of the case that could be critical to their defense. In doing so, they also could uncover exculpatory evidence that the government may have missed, or expose potential *Brady* violations.

The salutary benefits of an amended Rule 15 do not end there. Expanding the use of depositions for trial preparation in criminal cases would also give defense counsel far greater insight into the credibility and demeanor of witnesses well in advance of trial. Together with more complete access to information for defendants, this benefit would provide defense counsel with a better sense of what may happen at trial, leading to more informed plea negotiations and more effective trial preparation. More broadly, in our adversarial system, providing a mechanism such as the greater use of depositions for trial preparation in criminal cases that helps to put all parties on equal footing will ultimately result in fairer case resolutions.

To be sure, prosecutors will assert that allowing increased depositions under an amended Rule 15 would, at minimum, be an inappropriate strain on government resources that would unnecessarily prolong criminal cases. Those concerns, however, are overwrought. The front-end investment in time and resources that depositions may require would provide both parties crucial insight into the strengths and weaknesses of their respective cases, as well as the key factual issues in dispute. As others have argued, this will lead to efficiencies throughout the remainder of the case, especially in connection with trial preparation, more targeted motion practice, and the trial itself. Indeed, multiple states—serving in their vital capacity as laboratories of democracy—have already expanded the use of depositions by defendants in criminal cases to great effect.

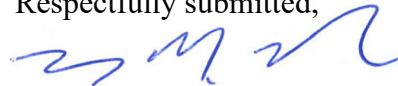
GIBSON DUNN

March 2, 2026

Page 3

In short, we urge the Committee to endorse a long overdue amendment to Rule 15 that would permit the expanded use of depositions in criminal cases for trial preparation. Such a change would help to make our federal criminal justice system a far more just one. Thank you for taking the time to consider our views.

Respectfully submitted,

A handwritten signature in blue ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Barry H. Berke

Reed Brodsky

Jordan Estes

Dani R. James

Michael Martinez