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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, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: A Missouri Case Study in Support for Amendment to Federal Rule of Criminal Procedure 15 to Permit Broader Use of Depositions

Dear Ms. Dubay and Members of the Advisory Committee:

We respectfully urge the Advisory Committee to approve an amendment to Federal Rule of Criminal Procedure 15 that would allow for broader use of depositions in federal criminal cases. Such reform is necessary to enhance the fairness and efficiency of criminal proceedings, ensure the preservation of key testimony, and reduce the risk of evidentiary surprises that can undermine justice. In criminal cases—where liberty interests are at stake—the advantages of depositions are especially salient.

Our experience (as outlined below based on public records and reporting) in successfully defending former Missouri Governor Eric Greitens provides a concrete illustration of how depositions will strengthen the integrity of the federal criminal process. In the Greitens case—which proceeded in state court under Missouri criminal procedural rules—depositions materially advanced truth-finding by exposing serious credibility and evidentiary issues, and ultimately led to exclusion of expert testimony, the prosecution's dismissal of the indictment against the sitting governor, and the federal indictment of the lead investigator for perjury and evidence tampering. This case demonstrates why Rule 15 should be modernized to permit the use of depositions in federal criminal litigation.

Missouri Supreme Court Rule 25.12 authorizes depositions of witnesses in Missouri state criminal cases.¹ By contrast, in federal criminal cases in Missouri (and elsewhere), depositions are permitted only to preserve testimony of a witness who is unavailable for trial. This state–federal divergence is unjustifiable and outcome-significant. Had the Greitens allegations been

¹ Missouri Rule 25.12 provides: “A defendant in any criminal case pending in any court may obtain the deposition of any person on oral examination or written questions. The manner of taking such depositions shall be governed by the Rules relating to the taking of depositions in civil actions. The deposition of any person confined in prison shall be taken where such person is confined, unless otherwise ordered by the court.”

charged in federal court in Missouri, the parties would not have been able to take the critical discovery depositions described below.

The St. Louis Circuit Attorney's Office charged then-sitting Governor Greitens with felony invasion of privacy arising from allegedly photographing an individual referred to in public filings as "K.S." and transmitting the photo. At least three depositions in that case are illustrative here.

First, in her sworn deposition, K.S. testified that she did not actually see a camera or phone in a position to capture an image and that she was never shown any photograph. Having seen neither a photograph nor a camera positioned to take a photo, K.S. ultimately acknowledged uncertainty about whether a photograph was taken at all, much less the content of any photograph. K.S. also testified that she had no personal knowledge of any sharing or posting of a photograph and could not identify any device on which an image existed. K.S.'s testimony was corroborated by the facts that no photo was produced by the government and no witness reported seeing any such photo.

Second, as publicly reported, the State disclosed an expert who was expected to opine on whether any photograph was captured and—critically for the felony element—whether it was transmitted. Under Missouri law, the "transmittal" of a photograph is what elevates an invasion of privacy charge from misdemeanor to felony. In his sworn deposition, the State's expert testified that "transmission" from the pixels to the memory card of a mobile phone is a "transmission," a theory that would treat all ordinary internal processing of cellphone photos as satisfying the felony's transmittal element even absent any evidence of sharing or posting. Based on this deposition testimony, the court excluded the proposed expert from testifying at trial.

Third, during sworn deposition testimony, the prosecution's investigator, William Tisaby, made representations about whether he took notes during key interviews including interviews of K.S., the extent of his communications and coordination with the Circuit Attorney's Office, and the steps he took to search for, collect, and preserve potential digital evidence. Subsequent materials—including recordings and documents produced in discovery—were inconsistent with aspects of that sworn testimony. The deposition provided a structured forum to probe these topics with precision, lock in testimony, and test credibility in a manner fully reviewable by the court. The clarity created by the deposition record was consequential: a federal grand jury later returned an indictment charging the investigator with multiple counts of perjury and evidence tampering arising from his statements and conduct in the state case. This trajectory underscores the deposition's function as a safeguard against testimonial abuse and as a tool that allows courts and the public to police credibility through a transparent record.

By eliciting clarifications outside the heat of trial, these depositions advanced accuracy, reduced the risk of juror confusion, and guided subsequent evidentiary rulings. In the end, the deposition-based developments had practical consequences for our client and changed the landscape of the case: the elected state prosecutor, Kim Gardner, dismissed the invasion-of-privacy case. The dismissal avoided a trial built on uncertain or inadmissible proof, conserved judicial resources, and preserved the integrity of the process. The broader arc reveals a simple proposition: depositions make the litigation process more transparent and reliable. Weak or flawed cases are narrowed or resolved; strong cases are better prepared and more likely to result in guilty pleas, which also conserve judicial resources.

The Greitens matter is not a template for every case, but it is an instructive example of how depositions can change the course and outcome of a case by exposing unreliable testimony, illuminating discovery and evidentiary shortcomings, and protecting the integrity of the criminal process. It is bizarre that, had our client been charged by federal prosecutors in Missouri rather than state prosecutors in Missouri, we would have never learned these facts through depositions. The foundational weaknesses that those depositions exposed—regarding the non-existence of any photograph or transmittal, faulty expert methodologies, and investigative credibility—might have remained concealed until trial, increasing pressure on our client to either plead to a felony or to endure a public trial to uncover the failures of proof.

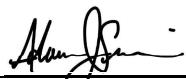
Amending Rule 15 to permit broader use of depositions need not open the floodgates. The Committee could fashion measured guardrails that safeguard both defendants' confrontation rights and the government's legitimate interests.

For these reasons and the reasons articulated in correspondence from our esteemed colleagues across the country, we respectfully urge the Committee to adopt an amendment to Rule 15 to promote accuracy, fairness, and efficiency across federal criminal practice.

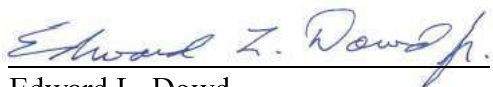
Respectfully submitted,



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