

**From:** Devin Arkema

**Sent:** Saturday, February 28, 2026 1:23 AM

**To:** RulesCommittee Secretary

**Subject:** Suggestion for New Federal Rule of Evidence 615.1 — Differential Information Tribunal Pilot for Coordination-Prone Cases

Dear Secretary Dubai and Members of the Advisory Committee on Evidence Rules,

I am writing as a tool-and-die maker by trade (precision machining in Grand Haven, Michigan) and an occasional procedural tool-maker by night to respectfully submit a complete package for a proposed new Federal Rule of Evidence 615.1, together with supporting materials for a voluntary 36-month pilot program.

The proposal addresses a well-documented gap in multi-defendant cases involving alleged coordinated conduct (conspiracies, RICO enterprises, complex fraud, trafficking networks, etc.): the open courtroom functions as a real-time coordination channel among co-defendants who elect to testify. Existing tools (Rule 615 sequestration, severance, Bruton redactions, and limiting instructions) address only fragments of this problem. The enclosed materials offer a narrowly tailored, constitutionally bounded solution — informational isolation under Rule 611(a) mode-and-order authority — that temporarily neutralizes testimonial adaptation while preserving all constitutional rights and equalizing information before any adjudicative use.

The package consists of four interlocking documents dated February 2026:

1. Doctrinal Theory of Isolation — the constitutional and procedural justification
2. Standing Order for a District-Level Pilot Program (Implementing Proposed Rule 615.1)
3. Proposed Rule 615.1 (full rule text with Advisory Committee Notes)
4. Differential Information Tribunal Design Document v1.0 — the operational blueprint

All materials emphasize strict safeguards: separate counsel, mandatory equalization intervals, silence-removal from artifacts, Special Master oversight, Technical Officer integrity logs, reversion protocol on any safeguard breach, and robust Rule 403 + jury-instruction protections. The proposal is explicitly designed as a time-limited pilot to generate real data on effectiveness, administrability, and constitutional durability.

I am not affiliated with any organization, law firm, or litigant. This is offered in the spirit of constructive contribution to the Rules process. I would be happy to provide editable Word versions, answer any questions, or participate in any informal discussion the Committee may find useful.

Thank you for the extraordinary work you do maintaining the integrity and adaptability of the Federal Rules of Evidence. I am grateful for your time and consideration.

Sincerely,  
Devin Arkema

# DOCTRINAL THEORY OF ISOLATION

## Why Temporary Court-Maintained Informational Asymmetry Is Permissible When Equalized Before Adjudicative Use

February 2026

### I. The Problem of Jointly Produced Testimony

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In multi-defendant cases involving coordinated conduct, the courtroom is not merely a venue for testimony. It is an information channel through which defendants can observe, interpret, and adapt to one another's accounts in real time. Every word spoken by one defendant becomes available to every other defendant who shares the courtroom. This availability is not incidental; it is structural. The open trial, designed to constrain state power through transparency, simultaneously creates conditions under which coordinated defendants can synchronize fabricated accounts, repair narrative gaps exposed by earlier testimony, and converge on a shared story not because it is true but because each participant has heard the others tell it.

Existing procedural tools address fragments of this problem. Witness sequestration under Rule 615 prevents non-party witnesses from hearing one another. Jury instructions attempt to cabin the inferential use of co-defendant statements. Severance separates defendants entirely, at the cost of duplicating trials. But none of these tools addresses the core mechanism: real-time testimonial feedback among co-defendants who elect to testify about shared conduct.

### II. The Nature of Informational Isolation

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A Differential Information Tribunal responds to this problem by temporarily regulating the informational environment in which testimony is given. During the isolation phase, each defendant who elects to testify does so without access to any other defendant's testimony. The court controls what each defendant knows, when they know it, and in what sequence information is revealed.

This creates a condition that must be named directly: the court is manufacturing epistemic asymmetry between defendants. Each defendant operates under a different informational state, and those differences are not accidental—they are designed, maintained, and instrumentally useful. The asymmetry is the diagnostic mechanism. Without it, the procedure has no truth-finding value.

This distinguishes informational isolation from every other information-control mechanism in existing procedure:

**Defensive information control** (sealed identities, CIPA substitutions, grand jury secrecy, Rule 615 sequestration) protects a source, process, or deliberative space from contamination. The withholding is a side effect of protection. The court does not use the ignorance it creates; it merely tolerates it as a cost of safeguarding something else.

**Diagnostic information control** (informational isolation under Rule 615.1) uses the asymmetry itself as an instrument. The court withholds information not to protect it but to observe what testimony looks like without it. The ignorance is not a cost. It is the method.

This distinction must be acknowledged, not concealed. A procedure that engineers epistemic conditions and then denies doing so is indefensible. A procedure that engineers epistemic conditions, names them, bounds them, and equalizes them before any adjudicative consequence attaches is a different object entirely.

### III. The Permissibility Principle

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The theory of isolation rests on a single claim:

*A court may temporarily regulate informational access among parties to a proceeding when necessary to preserve the integrity of jointly produced testimony, provided that (1) the regulation operates within the court's existing authority over the mode and order of examining witnesses, (2) the resulting asymmetry is bounded by a defined equalization interval, and (3) no adjudicative consequence attaches to any informational state that has not been equalized before use.*

Each element does necessary work:

**Mode-and-order authority (Rule 611(a)).** The isolation determination governs the sequencing of testimonial interaction rather than the admissibility of substantive evidence. The court is not deciding what testimony means; it is deciding the conditions under which testimony is given. This is testimonial management, not investigation. The distinction matters because investigatory authority over defendants triggers heightened constitutional scrutiny, while mode-and-order authority over testimony is reviewed for abuse of discretion. If isolation is recharacterized as investigatory—the court extracting information from defendants through controlled conditions—the preponderance standard for ordering isolation becomes inadequate and clear-and-convincing review becomes the floor. Anchoring isolation in 611(a) prevents that recharacterization.

**Bounded equalization.** The equalization interval is the maximum permissible duration of court-maintained informational asymmetry between defendants. It is not merely a fairness safeguard. It is a structural limit on the degree to which the procedure may deviate from the baseline condition of informational parity that due process presumes. When the interval expires, the court must either equalize the disclosure or exclude the affected testimony from the consistency record. There is no third option. The interval functions as a curvature limit: it constrains how far the procedure may bend the informational environment away from parity before the distortion itself becomes the source of unfairness rather than the instrument of truth-finding.

**No un-equalized adjudicative use.** This is the principle that converts engineered asymmetry from a due process violation into a permissible diagnostic condition. If a defendant's answer was given under informational conditions that differ from those of other defendants, and that

difference has not been equalized before the answer enters the consistency record, the answer cannot be used as part of any comparative artifact shown to the factfinder. The asymmetry may exist during questioning. It may not persist into adjudication. The court may create differential informational states for diagnostic purposes. It may not allow those states to become the basis of inferential disadvantage.

## IV. The Analogy and Its Limits

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Informational isolation belongs to the family of court-administered information restrictions that includes witness sequestration, grand jury secrecy, sealed proceedings, and classified-evidence substitutions under CIPA. All share a common structure: the court restricts the flow of information among participants in order to protect the integrity of a judicial process. All impose informational costs on at least one party. All are justified by the claim that unrestricted information flow would compromise the adjudicative function the court is performing.

But informational isolation differs from these precedents in one respect that must be stated plainly: in every existing mechanism, the information restriction is a means to an end other than the restriction itself. Sequestration prevents tailoring, but the court does not study what testimony looks like under sequestration as a diagnostic output. Grand jury secrecy protects the investigation, but the secrecy itself is not offered as evidence. CIPA substitutions protect classified sources, but the substitution is not an inferential instrument.

In informational isolation, the restriction is the instrument. The court studies what testimony looks like under conditions of regulated ignorance, and the study's output enters the trial as a procedural finding. This is a novel use of an established power. The novelty does not make it impermissible, but it does impose a higher obligation of procedural discipline. The equalization requirement, the silence-removal rule, the dual-presentation mandate, and the reversion protocol are not optional safeguards layered onto a procedure that would work without them. They are constitutive. Without them, informational isolation is an interrogation technique. With them, it is a judicial process.

## V. The Constitutional Location

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Informational isolation is permissible because it occupies a specific and narrow constitutional location:

**It is not compulsion.** No defendant is required to testify. Isolation applies only to defendants who elect to testify about shared conduct. The right to silence is absolute and unaffected.

**It is not denial of confrontation.** Defendants retain the right to confront all evidence and witnesses in open proceedings. Isolation applies only during the testimonial phase and does not limit cross-examination, rebuttal, or any other adversarial mechanism available at trial.

Confrontation prompts used during isolation are procedural stimuli, not testimony offered for truth.

**It is not deprivation of counsel.** Counsel is present throughout the isolation phase and receives updated disclosure logs and artifact states during mandatory consultation breaks. Isolation prevents counsel from knowing co-defendant testimony—the same condition that exists in any trial where co-defendants have not yet testified—but does not prevent counsel from knowing the state’s case.

**It is not a general investigatory power.** It is a testimonial-management power exercised under Rule 611(a), limited to the sequencing and conditions of testimony, and subject to abuse-of-discretion review.

What informational isolation does restrict is a single capacity: the ability of co-defendants to adapt testimony to one another’s accounts in real time. That capacity is not constitutionally protected. It is the precise behavior that witness sequestration already targets in non-party witnesses. The extension of anti-tailoring protection to co-defendants who function as mutually interested witnesses of shared conduct is a principled application of an established rationale, not the creation of a new power.

## VI. Summary

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The doctrinal theory of isolation is:

*Courts possess inherent authority and Rule 611(a) authority to regulate the informational conditions under which testimony is given, including by temporarily maintaining differential informational states among co-defendants who elect to testify about shared conduct. This authority is bounded by the equalization principle: no informational asymmetry created by the court may persist into adjudicative use. So long as asymmetry is temporally bounded, equalized before the factfinder encounters its products, and subject to reversion upon safeguard failure, the procedure operates within the court’s established power to control the mode and order of examining witnesses and does not infringe any defendant’s constitutional rights.*

This theory justifies informational isolation not as an exception to due process but as an exercise of judicial authority that due process permits—subject to the structural constraints that make it an exercise of authority rather than an exercise of power.

**UNITED STATES DISTRICT COURT  
[DISTRICT]**

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**STANDING ORDER No. [\_\_\_\_]-[\_\_\_\_]**

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IN RE: PILOT PROGRAM FOR ISOLATION OF  
DEFENDANT TESTIMONY IN MULTI-DEFENDANT  
COORDINATION-PRONE CASES

*Implementing Proposed Rule 615.1  
Federal Rules of Evidence*

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Effective Date: [\_\_\_\_\_]

Sunset Date: [\_\_\_\_\_]

[Chief Judge Name]

Chief Judge, United States District Court

[District]

## Preamble

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**WHEREAS** the Court recognizes that in multi-defendant cases involving alleged coordinated conduct—including but not limited to conspiracies prosecuted under 18 U.S.C. § 371, enterprise corruption under 18 U.S.C. §§ 1961–1968 (RICO), complex fraud schemes, and trafficking conspiracies—defendants who elect to testify may have incentive and opportunity to coordinate, adapt, or synchronize their accounts based on exposure to one another’s testimony;

**WHEREAS** existing procedures, including witness sequestration under Federal Rule of Evidence 615 and standard jury instructions, may be insufficient to prevent testimonial adaptation among co-defendants who observe one another’s testimony in real time;

**WHEREAS** the Court further recognizes that any procedure controlling informational access during testimony must be bounded by constitutional safeguards including the right to counsel, the right to confront witnesses, the right to silence, and the guarantee of fundamental fairness;

**WHEREAS** the Advisory Committee on Evidence Rules has identified a proposed Rule 615.1 providing for isolation of defendant testimony in coordination-prone cases, and has recommended pilot implementation to assess the procedure’s effectiveness, administrability, and constitutional durability;

**NOW, THEREFORE**, it is hereby ORDERED that this Court shall implement a pilot program for defendant testimony isolation, under the terms and conditions set forth below.

## I. Establishment and Duration

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**1.1** This Standing Order establishes a Pilot Program for Isolation of Defendant Testimony in Multi-Defendant Coordination-Prone Cases (“Pilot Program”) within this District.

**1.2** The Pilot Program shall take effect on [effective date] and shall remain in effect for a period of thirty-six (36) months, terminating on [sunset date], unless extended, modified, or terminated by subsequent order of this Court.

**1.3** At or before the expiration of the Pilot Program, the Court shall issue a public report evaluating the Program’s operation, incorporating the reports of special masters appointed under Section VII, and making recommendations regarding continuation, modification, or termination.

**1.4** Nothing in this Standing Order creates a right in any party to demand or refuse isolation-phase testimony. The decision to invoke the procedure rests with the presiding judge in each eligible case, subject to the preconditions of Section III.

## II. Eligible Cases

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**2.1** A case is eligible for the Pilot Program if it meets all of the following criteria:

- (a)** The case involves two (2) or more defendants;
- (b)** At least one count charges conduct arising from alleged coordination among defendants, including but not limited to:
  - (i) Conspiracy under 18 U.S.C. § 371 or any specific conspiracy statute;
  - (ii) RICO enterprise offenses under 18 U.S.C. §§ 1962–1963;
  - (iii) Wire fraud, mail fraud, bank fraud, or securities fraud involving two or more participants in an alleged scheme;
  - (iv) Drug trafficking conspiracies under 21 U.S.C. § 846; or
  - (v) Any other offense in which the indictment alleges joint enterprise, shared concealment, or coordinated conduct among multiple defendants;
- (c)** The Government has indicated its intention to proceed to trial on at least one coordination-based count; and
- (d)** No fewer than two (2) defendants have counsel of record who are not jointly retained.

**2.2** The assigned judge, the Government, or any defendant may identify a case as potentially eligible and request a screening conference under Section III. The Clerk’s Office shall flag cases meeting the criteria of §2.1(a)–(b) at the time of arraignment and notify the assigned judge.

## III. Screening and Authorization

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**3.1** Before ordering isolation-phase testimony in any eligible case, the presiding judge shall conduct a screening conference, on the record, at which all parties may be heard.

**3.2** The court may authorize isolation-phase testimony only upon finding, by a preponderance of the evidence, that:

- (a)** There is a credible risk that defendants will coordinate or adapt testimony based on exposure to one another's accounts;
- (b)** The alleged conduct is structurally coordinated, involving multiple roles, shared concealment, or joint enterprise;
- (c)** The Court can implement the procedural safeguards required by Section V of this Order; and
- (d)** Isolation will not disproportionately impair any defendant's ability to comprehend the proceedings or participate in their defense, after accounting for any necessary accommodations.

**3.3** In making these findings, the court may consider the nature and structure of the charged conspiracy or enterprise, the number of defendants and their alleged roles, the volume and complexity of shared conduct, any prior history of witness coordination or obstruction in the case, and representations by counsel regarding the anticipated scope of defendant testimony.

**3.4** The court shall issue a written Isolation Order specifying the terms of the isolation phase. The Isolation Order shall include, at minimum, the items enumerated in Section IV.

**3.5** Any party may challenge the Isolation Order by interlocutory motion. The court shall rule on such motions before the isolation phase commences. Denial of a challenge is reviewable on appeal from the final judgment under the abuse-of-discretion standard.

## IV. Isolation Order Requirements

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Each Isolation Order entered under this Standing Order shall specify:

- 4.1** The defendants subject to isolation and the specific conduct giving rise to coordination risk;
- 4.2** The physical isolation arrangements, including the location and configuration of separate questioning spaces, and the identity of the Technical Officer responsible for isolation integrity;
- 4.3** The maximum duration of the isolation phase, stated in court days;
- 4.4** The maximum number of questioning cycles permitted for each defendant;
- 4.5** The equalization interval applicable to Class 3 (tribunal-injected facts) and Class 4 (contradiction statements) disclosures, expressed as a number of questioning cycles, with a written justification of the chosen interval;
- 4.6** The schedule and minimum duration of counsel consultation breaks between questioning cycles;
- 4.7** Whether a Special Master shall be appointed under Section VII, and if so, the scope of the Special Master's authority;
- 4.8** The presumptive format for presentation of consistency records to the factfinder (judicial narrative, redacted matrix with accompanying narrative, or both), subject to modification at the admissibility stage;
- 4.9** The information disclosure classification applicable to each category of material that may be presented to defendants during the isolation phase, using the classification scheme set forth in Section VI; and
- 4.10** The conditions under which the isolation phase shall terminate and proceedings shall revert to standard format, as specified in Section IX.

## V. Safeguard Requirements

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### A. Counsel Access

- 5.1** Each defendant subject to isolation must be represented by separate counsel. No attorney or firm may represent more than one defendant in an isolation-phase proceeding.
- 5.2** Counsel must be present in the isolation space or connected by secure, monitored channel that prevents any cross-defendant communication.
- 5.3** The court must provide consultation breaks between questioning cycles. During each break, counsel shall receive:
  - (a)** The current disclosure log showing all questions, exhibits, and disclosures directed to their client, with timestamps;
  - (b)** The current state of any consistency record being compiled; and
  - (c)** The complete history of tribunal prompts directed to their client.

**5.4** Consultation breaks shall be no less than [30] minutes in duration and shall occur no less frequently than every [90] minutes of active questioning. The court may extend these minimums but may not reduce them.

## **B. Equalization of Disclosures**

**5.5** If the court discloses a material fact (Class 3 or Class 4) to any defendant during isolation-phase questioning, the court must either:

- (a) Disclose the same fact to all defendants within the equalization interval specified in the Isolation Order; or
- (b) Exclude any response influenced by the disclosure from the consistency record.

**5.6** The equalization interval must be stated on the record with a written justification addressing the tradeoff between diagnostic value and procedural fairness. The interval may not exceed [5] questioning cycles unless the court makes a specific finding that an extended interval is necessary for a stated diagnostic purpose and that the extension does not materially prejudice any defendant's ability to testify on an informed basis.

## **C. Right to Silence**

**5.7** No defendant may be compelled to participate in isolation-phase questioning beyond what is permitted under applicable constitutional and statutory provisions.

**5.8** A defendant's refusal to answer, invocation of privilege, or limited participation shall be recorded in the isolation-phase record as "non-responsive" but:

- (a) Shall not be treated as divergence, inconsistency, or admission in any consistency record;
- (b) Shall not be communicated to the factfinder in any form; and
- (c) Shall be removed from any artifact before presentation, such that no cell, entry, or notation reflecting non-participation appears in any material shown to the jury.

## **D. Isolation Integrity**

**5.9** The court shall appoint or designate a Technical Officer responsible for ensuring that no defendant has access to information outside the scope permitted by the Isolation Order. The Technical Officer shall:

- (a) Verify that each isolation space is visually and acoustically separated from all other defendants and from general courtroom proceedings;
- (b) Confirm that no electronic devices, unauthorized communications channels, or external information sources are accessible to any defendant during the isolation phase;
- (c) Monitor compliance continuously during active questioning; and
- (d) Maintain an Isolation Integrity Log documenting compliance at each stage.

## VI. Information Disclosure Classification

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All information disclosed to defendants during the isolation phase shall be classified according to the following scheme:

Class	Content	Authorization	Equalization
0	Legal instructions, rights advisements	No restriction; mandatory	Not applicable
1	Neutral prompts (no evidence content)	No restriction	Not applicable
2	Exhibits already in discovery	Standard admissibility rules	Not required
3	Tribunal-injected facts (new, sensitive)	Court approval required; must satisfy independent admissibility	Required within equalization interval or excluded from record
4	Contradiction statements derived from other testimony	Court approval; Special Master approval if appointed; must comply with confrontation-prompt limitations	Required within equalization interval or excluded from record

**6.1** No Class 3 disclosure may introduce facts not otherwise admissible under the Federal Rules of Evidence, summarize co-defendant testimony before an independent admissibility ruling, or functionally substitute for cross-examination.

**6.2** No Class 4 confrontation prompt may be offered for the truth of the matter asserted. Confrontation prompts are court-generated analytical conditions used to test testimonial stability. They must be framed as procedural consistency tests, and the underlying testimony may not be introduced for its truth value unless confrontation rights are independently satisfied in open proceedings.

**6.3** If any prompt would be inadmissible under the Federal Rules of Evidence if offered as impeachment, hearsay, or character evidence, it may not be introduced through the isolation procedure.

## VII. Special Master

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**7.1** In each case in which an Isolation Order is entered during the Pilot Program, the court shall appoint a Special Master to oversee the fairness of the isolation procedure.

**7.2** The Special Master shall:

- (a) Attend or monitor all isolation-phase questioning sessions;
- (b) Review all disclosures for compliance with the information classification scheme and confrontation-prompt limitations;
- (c) Verify that equalization intervals are observed;

**(d)** Receive and investigate complaints from any party regarding procedural fairness;

**(e)** Report to the presiding judge, immediately and in writing, any concern that the isolation procedure is being used to deny discovery, introduce inadmissible material, impair counsel access, or otherwise compromise the safeguards of Section V; and

**(f)** Prepare a post-trial report for inclusion in the Pilot Program evaluation under Section XI.

**7.3** The Special Master shall have access to the complete isolation-phase record, all disclosure logs, all consistency record materials, and the Isolation Integrity Log. The Special Master's reports shall be filed under seal and made available to all parties and to the Pilot Program Evaluation Committee.

**7.4** The reasonable costs of the Special Master shall be borne equally by the Government and the defendants, unless the court determines that an alternative allocation is warranted by the circumstances of the case. Indigent defendants shall not be required to bear Special Master costs; those costs shall be allocated to the Government or to the court's general fund.

## VIII. Consistency Records and Admissibility

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### A. Preparation

**8.1** The court may direct preparation of a consistency record summarizing convergences, divergences, and changes in defendants' responses during the isolation phase. The record may include a consistency matrix, a drift profile, and an entailment graph.

**8.2** Consistency records shall be prepared by court technical staff under the supervision of the presiding judge. They shall be disclosed simultaneously to all parties upon completion, and no later than [14] days before any hearing on their admissibility.

### B. Classification

**8.3** A consistency record is a judicial finding of procedural fact. It is not substantive evidence, expert opinion, or a summary under Rule 1006. It reflects only the output of a court-administered procedure and does not assert the truth or falsity of any underlying statement.

### C. Silence Encoding

**8.4** Any entry in a consistency record reflecting a defendant's refusal to answer, invocation of privilege, or non-participation must be removed entirely from any artifact before presentation to the factfinder. No cell, row, notation, symbol, color, or spatial indicator of non-participation may appear in any material shown to the jury.

### D. Admissibility

**8.5** A consistency record is admissible only if the court finds, after balancing under Federal Rule of Evidence 403, that the probative value of observing testimonial stability under isolation is not substantially outweighed by the danger of unfair prejudice arising from the isolation procedure itself.

**8.6** In conducting the Rule 403 analysis, the court shall consider:

- (a) Whether isolation plausibly reduced testimonial adaptation;
- (b) The duration of any differential disclosure window and whether equalization intervals were observed;
- (c) The degree of informational asymmetry between defendants during questioning;
- (d) The adequacy of counsel consultation access during the isolation phase; and
- (e) Whether silence was properly removed from all artifacts.

### E. Form of Presentation

**8.7** There is a presumption that consistency records shall be presented to the factfinder in the form of a Judicial Narrative Summary, delivered by the court.

**8.8** At the request of any party, the court may also present a Redacted Consistency Matrix, subject to the following conditions:

- (a) All entries reflecting silence, non-participation, or invocation of privilege have been removed;
- (b) Disclosure-state annotations are included for each question, showing what information each defendant had received at the time of answering;
- (c) No color coding, symbolic notation, or visual encoding implying evaluative weight is used;
- (d) The Redacted Matrix is accompanied by the Judicial Narrative Summary; the matrix may never be the sole vehicle through which the factfinder encounters isolation-phase results; and
- (e) The court makes an express finding, on the record, that the accompanying Judicial Narrative sufficiently mitigates the risk that the factfinder will treat visual consistency patterns as independently probative.

**8.9** The court may permit expert testimony to explain the methodology of isolation testing. An expert may not offer conclusions regarding the credibility of any defendant or the truth of any statement.

**8.10** Any party may challenge a consistency record or artifact on grounds of methodology, statistical interpretation, or framing. The court must rule on all challenges before presentation to the factfinder.

## F. Jury Instructions

**8.11** If a consistency record is admitted in a jury trial, the court must instruct the jury that:

- (a) The isolation procedure does not suggest that any defendant is more or less credible, or more or less likely to be guilty;
- (b) Consistency artifacts may be considered only in evaluating the internal consistency of a defendant's statements and are not evidence of any fact in dispute;
- (c) Consistent statements may be false and inconsistent statements may be true;
- (d) Silence or non-participation during the isolation phase may not be considered for any purpose;
- (e) Differences in responses may result from differences in information available to each defendant at the time of questioning;
- (f) The consistency record is a summary and does not replace the testimony, exhibits, or the jury's independent judgment;
- (g) The burden of proof remains on the prosecution and is not altered by the isolation procedure; and
- (h) The consistency record may be considered only as one part of the jury's overall assessment of credibility.

## IX. Reversion Protocol

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**9.1** The court shall terminate the isolation phase and revert to standard proceedings if any of the following conditions occurs:

- (a) The equalization of disclosures required by §5.5 cannot be maintained;
- (b) Counsel access as required by §§5.1–5.4 is materially impaired;
- (c) The limitations on confrontation prompts under §6.2 are breached; or
- (d) Isolation integrity is compromised, as determined by the Technical Officer, the Special Master, or the court.

**9.2** Upon reversion, any portion of the consistency record generated after the triggering event is inadmissible unless independently admissible under other provisions of the Federal Rules of Evidence.

**9.3** The court shall state on the record the specific event triggering reversion, the time of occurrence, and the portions of the consistency record (if any) that remain admissible.

**9.4** Reversion does not prejudice any party's right to move for mistrial, severance, or other relief based on events occurring during the isolation phase.

## X. Record Preservation

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**10.1** The court shall maintain a complete sealed record of the isolation phase, including:

- (a) Every question posed to each defendant, with timestamp;
- (b) Every answer given by each defendant, with timestamp;
- (c) Every exhibit, fact, or instruction disclosed to each defendant, with timestamp and information-class designation;
- (d) A per-question disclosure log showing the informational state of each defendant at the time of each answer;
- (e) The Isolation Integrity Log maintained by the Technical Officer;
- (f) All Special Master reports;
- (g) The complete consistency record, including all working materials and intermediate drafts; and
- (h) Audio or video recordings of all isolation-phase sessions, maintained under seal.

**10.2** The sealed record shall be preserved for the duration of any appeal and for no less than [7] years following the final disposition of the case, including any post-conviction proceedings.

**10.3** The complete sealed record must be included in the record on appeal from any conviction in a case where isolation-phase testimony was conducted.

## XI. Pilot Program Evaluation

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**11.1** The Chief Judge shall designate a Pilot Program Evaluation Committee consisting of no fewer than three (3) judges of this Court, at least one of whom has presided over an isolation-phase proceeding under this Order.

**11.2** The Evaluation Committee shall collect and review the following data from each case conducted under this Order:

- (a) The Special Master's post-trial report;
- (b) The presiding judge's assessment of the procedure's effectiveness in revealing testimonial inconsistency, and any difficulties encountered in administering the isolation phase;
- (c) The adequacy of counsel access protections, as assessed by defense counsel and by the Special Master;
- (d) The factfinder's response to consistency records and limiting instructions, to the extent ascertainable through post-trial interviews, juror questionnaires (where permitted by local rule), or observed deliberation behavior;
- (e) The frequency and cause of reversion events;
- (f) Any constitutional challenges raised and their disposition; and
- (g) Any other information the Committee determines is relevant to assessing the Program's operation.

**11.3** The Evaluation Committee shall issue a public report no later than [90] days after the sunset date. The report shall address:

- (a) Whether the "judicial findings of procedural fact" classification of consistency records survived any appellate scrutiny;
- (b) Whether jurors could meaningfully comply with the limiting instructions;
- (c) Whether the equalization principle operated as designed, and whether the intervals chosen proved workable;
- (d) Whether any unanticipated forms of strategic adaptation or procedural gaming were observed;
- (e) Whether the procedure produced information of diagnostic value that would not have been available through conventional cross-examination; and
- (f) A recommendation regarding continuation, modification, expansion to other districts, or termination of the program.

**11.4** The Evaluation Committee report shall be transmitted to the Judicial Conference Advisory Committee on Evidence Rules, the Administrative Office of the United States Courts, and the Federal Judicial Center.

## XII. Relationship to Existing Authority

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**12.1** This Standing Order is issued pursuant to the Court's inherent authority to manage its proceedings, its authority under Federal Rule of Evidence 611(a) to exercise reasonable control over the mode and order of examining witnesses and presenting evidence, and its authority under Federal Rule of Evidence 615 to order exclusion of witnesses.

**12.2** Nothing in this Standing Order limits any defendant's rights under the Fifth or Sixth Amendments to the United States Constitution, including but not limited to the right to counsel, the right to confront witnesses, the right against self-incrimination, and the right to compulsory process.

**12.3** Nothing in this Standing Order limits any party's rights under the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, or any other applicable statute or rule.

**12.4** In the event of any conflict between this Standing Order and any constitutional provision, federal statute, or Federal Rule of Evidence or Criminal Procedure, the constitutional provision, statute, or Rule shall control.

## XIII. Modification and Termination

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**13.1** This Standing Order may be modified or terminated at any time by order of the Chief Judge, after consultation with judges who have presided over isolation-phase proceedings under this Order.

**13.2** If appellate review of any case conducted under this Order results in reversal or remand on grounds related to the isolation procedure, the Chief Judge shall convene the Evaluation Committee within [30] days to assess whether modifications to this Order are necessary before further cases proceed.

**13.3** Any judge of this Court may decline to implement the isolation procedure in any eligible case assigned to that judge. Refusal to implement the procedure shall not be reviewable and shall not be considered in case assignment.

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**SO ORDERED.**

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[Chief Judge Name]  
Chief Judge, United States District Court  
[District]  
Dated: [\_\_\_\_\_]



## Attachment A: Isolation Order Checklist

Before entering an Isolation Order, the presiding judge should confirm that each of the following items has been addressed:

<input type="checkbox"/>	Item	Reference
<input type="checkbox"/>	Screening conference held on the record	§3.1
<input type="checkbox"/>	Preponderance findings made on all four preconditions	§3.2(a)–(d)
<input type="checkbox"/>	All defendants have separate counsel	§5.1
<input type="checkbox"/>	Physical isolation spaces identified and inspected	§5.9
<input type="checkbox"/>	Technical Officer appointed	§5.9
<input type="checkbox"/>	Maximum isolation-phase duration specified (court days)	§4.3
<input type="checkbox"/>	Maximum questioning cycles specified	§4.4
<input type="checkbox"/>	Equalization interval specified and justified on record	§§4.5, 5.6
<input type="checkbox"/>	Counsel consultation schedule specified (min. 30 min / 90 min)	§§4.6, 5.4
<input type="checkbox"/>	Special Master appointed	§7.1
<input type="checkbox"/>	Presumptive presentation format selected	§4.8
<input type="checkbox"/>	Information disclosure classes assigned to anticipated materials	§4.9
<input type="checkbox"/>	Reversion conditions and procedures specified	§4.10
<input type="checkbox"/>	Accommodations assessed for any defendant with language or cognitive needs	§3.2(d)
<input type="checkbox"/>	Written Isolation Order filed	§3.4

## Attachment B: Pilot Program Timeline

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Milestone	Action
Effective Date	Standing Order takes effect; Clerk's Office begins flagging eligible cases
Month 6	Evaluation Committee convenes; reviews any early-stage cases for procedural issues
Month 12	Interim assessment: Committee reviews completed or ongoing cases; issues interim guidance if needed
Month 24	Second interim assessment: Committee evaluates appellate activity, juror response data, and Special Master reports
Month 36 (Sunset)	Pilot Program terminates; no new Isolation Orders may be entered
Month 39 (Sunset + 90 days)	Evaluation Committee issues public report; transmits to Judicial Conference and FJC

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**END OF STANDING ORDER**

# **PROPOSED RULE 615.1**

FEDERAL RULES OF EVIDENCE

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Defendant Testimony Isolation  
in Coordination-Prone Cases

Pilot Rule Draft with Advisory Committee Notes  
February 2026

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*Companion to: Differential Information Tribunal — Design Document v1.0*

## Part I: Rule Text

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### **Rule 615.1. Isolation of Defendant Testimony in Multi-Defendant Cases**

**(a) Authority to Order Isolation.** In a case involving two or more defendants charged with offenses arising from alleged coordinated conduct, the court may, on motion of any party or on its own initiative, order that the testimony of each defendant who elects to testify be taken under conditions of informational isolation from the testimony of other defendants.

**(b) Preconditions.** The court may order isolation under this rule only if it finds, by a preponderance of the evidence, that:

- (1)** There is a credible risk that defendants will coordinate or adapt testimony based on exposure to one another's accounts;
- (2)** The alleged conduct is structurally coordinated, involving multiple roles, shared concealment, or joint enterprise;
- (3)** The court can implement the procedural safeguards required by subdivision (f); and
- (4)** Isolation will not disproportionately impair any defendant's ability to comprehend the proceedings or participate in their defense, after accounting for any necessary accommodations.

**(c) Scope of Isolation.** A defendant subject to an order under this rule:

- (1)** Must be questioned in a separate space, visually and acoustically isolated from all other defendants;
- (2)** May receive only questions posed by the court or by counsel as permitted under subdivision (f)(1), exhibits admitted or identified for use in the proceeding, and legal instructions issued by the court;
- (3)** May not receive, during the isolation phase, any testimony or statements of any other defendant, live or recorded courtroom proceedings involving other defendants, or communication from any source outside the isolation space except as provided in subdivision (f).

**(d) Questioning Procedure.** The court may employ any combination of the following methods during the isolation phase:

- (1)** Baseline individual testimony, in which each defendant provides an account or responds to a common template;
- (2)** Group-synchronized prompts, in which the same question is posed to all defendants without disclosure of any other defendant's answer;
- (3)** Differential follow-up questions, generated from divergences observed across defendants' responses;
- (4)** Consistency challenges, in which a defendant is asked the same question in varied form, at different times, or under conditions requiring internal coherence; and
- (5)** Confrontation prompts, in which the court presents a statement attributed to or derived from another source to test the stability of the defendant's account, subject to the limitations of subdivision (e).

**(e) Limitations on Confrontation Prompts.** A confrontation prompt under subdivision (d) (5):

- (1) Must be framed as a procedural consistency test, not as a statement offered for the truth of the matter asserted;
- (2) May not introduce facts that would be inadmissible if offered as impeachment, hearsay, or character evidence under these Rules;
- (3) May not summarize or disclose the substance of any co-defendant's testimony unless and until confrontation rights are independently satisfied in open proceedings; and
- (4) Must be disclosed to all parties in the isolation-phase record required by subdivision (g)(1).

**(f) Safeguards.** An order under this rule must provide for the following:

- (1) *Counsel access.* Each defendant must be represented by separate counsel. Counsel must be present in the isolation space or connected by secure channel that prevents cross-defendant communication. The court must provide consultation breaks between questioning cycles, during which counsel receives the current disclosure log, current state of any consistency record, and the full history of tribunal prompts directed to their client.
- (2) *Equalization of disclosures.* If the court discloses a material fact to any defendant during isolation-phase questioning, the court must either disclose the same fact to all defendants within a defined interval specified in the isolation order, or exclude any response influenced by the disclosure from the consistency record. The court must state the equalization interval on the record and justify its duration.
- (3) *Right to silence.* No defendant may be compelled to participate in isolation-phase questioning beyond what is permitted under applicable constitutional and statutory provisions. A defendant's refusal to answer, invocation of privilege, or limited participation may not be treated as divergence, inconsistency, or admission in any consistency record or before the factfinder.
- (4) *Isolation integrity.* The court must appoint or designate a technical officer responsible for ensuring that no defendant has access to information outside the scope permitted by the isolation order. The court must maintain an isolation integrity log documenting compliance.
- (5) *Fairness oversight.* On motion of any party or on the court's own initiative, the court may appoint a special master to audit compliance with this rule and report any concerns regarding abuse of informational control.

**(g) Record Requirements.** The court must maintain, and make available to all parties, a sealed record of the isolation phase that includes:

- (1) Every question posed to each defendant, with timestamp;
- (2) Every answer given by each defendant, with timestamp;
- (3) Every exhibit, fact, or instruction disclosed to each defendant, with timestamp and information-class designation;

(4) A per-question disclosure log showing the informational state of each defendant at the time of each answer; and

(5) An isolation integrity log confirming that no unauthorized communication occurred.

**(h) Consistency Record and Artifacts.**

(1) *Preparation.* The court may direct preparation of a consistency record summarizing convergences, divergences, and changes in defendants' responses over the course of isolation-phase questioning. The record may include a consistency matrix, a drift profile tracking changes across questioning cycles, and an entailment graph mapping logical commitments arising from each defendant's responses.

(2) *Classification.* A consistency record and any artifact derived from it is a judicial finding of procedural fact. It is not substantive evidence, expert opinion, or a summary under Rule 1006. It reflects only the output of a court-administered procedure and does not assert the truth or falsity of any underlying statement.

(3) *Silence encoding.* Any entry reflecting a defendant's refusal to answer, invocation of privilege, or non-participation must be removed from any artifact before presentation to the factfinder.

(4) *Disclosure.* The consistency record and all underlying data must be disclosed simultaneously to all parties and are subject to challenge under subdivision (i).

**(i) Admissibility and Presentation.**

(1) *Standard.* A consistency record is admissible only if the court finds, after balancing under Rule 403, that the probative value of observing testimonial stability under isolation is not substantially outweighed by the danger of unfair prejudice arising from the isolation procedure itself. In conducting this analysis, the court must consider the duration of any differential disclosure window, the degree of informational asymmetry during questioning, and the adequacy of counsel consultation access.

(2) *Form of presentation.* There is a presumption that consistency records will be presented to the factfinder in the form of a judicial narrative summary, delivered by the court. The court may, at the request of any party, also present a redacted consistency matrix from which all silence entries have been removed and which includes disclosure-state annotations for each question. No color coding, symbolic notation, or visual encoding implying evaluative weight may be used. If a redacted matrix is presented, it must be accompanied by the judicial narrative.

(3) *Expert explanation.* The court may permit expert testimony to explain the methodology of isolation testing. An expert may not offer conclusions regarding the credibility of any defendant or the truth of any statement.

(4) *Challenges.* Any party may challenge a consistency record or artifact on grounds of methodology, statistical interpretation, or framing. The court must rule on such challenges before presentation to the factfinder.

**(j) Jury Instructions.** If a consistency record is admitted in a jury trial, the court must instruct the jury that:

(1) The isolation procedure does not suggest that any defendant is more or less credible or more or less likely to be guilty;

- (2) Consistency artifacts may be considered only in evaluating the internal consistency of a defendant's statements and are not evidence of any fact in dispute;
- (3) Consistent statements may be false and inconsistent statements may be true;
- (4) Silence or non-participation during the isolation phase may not be considered for any purpose;
- (5) Differences in responses may result from differences in information available to each defendant at the time of questioning;
- (6) The consistency record is a summary and does not replace the testimony, exhibits, or the jury's independent judgment;
- (7) The burden of proof remains on the prosecution and is not altered by the isolation procedure; and
- (8) The consistency record may be considered only as one part of the jury's overall assessment of credibility.

**(k) Reversion.** The court must terminate the isolation phase and revert to standard proceedings if:

- (1) The equalization of disclosures required by subdivision (f)(2) cannot be maintained;
- (2) Counsel access as required by subdivision (f)(1) is materially impaired;
- (3) The limitations on confrontation prompts under subdivision (e) are breached; or
- (4) Isolation integrity is compromised.

Upon reversion, any portion of the consistency record generated after the triggering event is inadmissible unless independently admissible under other provisions of these Rules.

**(l) Appellate Review.** An order granting or denying isolation under this rule, and any ruling on the admissibility of consistency records, is reviewed for abuse of discretion. The complete isolation-phase record required by subdivision (g) must be included in the record on appeal.

## Part II: Advisory Committee Notes

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### General Note

Rule 615.1 extends the principle underlying Rule 615—that exposure to other testimony risks tailoring—from witnesses to co-defendants in cases involving alleged coordinated conduct.

Rule 615 has long authorized courts to exclude witnesses from the courtroom so that they cannot hear other witnesses' testimony.<sup>1</sup> The rationale is that courtroom proceedings are themselves a coordination channel, and controlling informational exposure is a legitimate truth-seeking measure. Rule 615.1 recognizes that in conspiracy, racketeering, and complex fraud cases, co-defendants function epistemically as mutually interested witnesses—their accounts of shared conduct are interdependent, and each has incentive to align testimony with the others. The Rule extends anti-tailoring protections to this context.

The Rule does not treat defendants as witnesses. It applies only when defendants elect to testify regarding shared conduct. It preserves the right not to testify, the right to confront evidence, and operates exclusively within the testimonial phase. The limiting principle is deliberate: Rule 615.1 is an anti-coordination safeguard, not a compulsion mechanism.

### Note to Subdivision (a): Scope and Authority

The term “informational isolation” is chosen to distinguish this procedure from physical exclusion. Defendants are not excluded from trial; they are questioned under conditions where they cannot hear or receive one another's testimony during the isolation phase. The procedure does not restrict any defendant's participation in any other phase of trial.

The phrase “alleged coordinated conduct” is intentionally broader than “conspiracy” to encompass RICO enterprise liability, complex fraud with multiple participants, trafficking organizations, and other cases where the coordination incentive exists regardless of whether a conspiracy count has been charged.

### Note to Subdivision (b): Preconditions

The preconditions are cumulative. A court may not order isolation merely because a case involves multiple defendants; it must find both coordination risk and structural coordination in the alleged conduct. The fourth precondition—requiring that isolation not disproportionately impair comprehension—ensures that defendants with language barriers, cognitive impairments, or other needs receive appropriate accommodations before isolation is imposed.

The preponderance standard reflects the procedural rather than substantive nature of the determination. The court is not finding that coordination has occurred, but that there is sufficient risk to justify procedural safeguards.

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<sup>1</sup>Fed. R. Evid. 615 authorizes courts to order witnesses excluded from the courtroom so that they cannot hear other witnesses' testimony. The rule's rationale—that exposure to other testimony risks tailoring, conscious or unconscious—is the doctrinal foundation for Rule 615.1.

## Note to Subdivision (d): Questioning Procedure

The five questioning methods listed in subdivision (d) are tools available to the court; no particular sequence is required. The court has discretion to employ them in any order and combination suited to the case. However, questioning must operate within the safeguards of subdivision (f) and the confrontation-prompt limitations of subdivision (e).

Group-synchronized prompts—asking the same question to all defendants without sharing answers—are the primary diagnostic mechanism. Because defendants cannot observe one another's responses, convergence in their answers is more likely to reflect shared experience, and divergence is more likely to reflect independent recollection or fabrication. The evidentiary value depends on isolation integrity, which is why subdivision (g)(5) requires an integrity log.

## Note to Subdivision (e): Confrontation Prompts and the Crawford/Bruton Interface

Subdivision (e) addresses the most constitutionally sensitive aspect of isolation-phase questioning. When the court presents a statement derived from another defendant's testimony to test the stability of the current defendant's account, the procedure approaches the boundary of the Confrontation Clause.<sup>2</sup>

The Committee's view is that properly administered confrontation prompts do not violate the Confrontation Clause because they are not offered for the truth of the matter asserted. A confrontation prompt is a court-generated analytical condition—a procedural stimulus designed to test testimonial stability, not to prove that the underlying statement is true. The distinction is between using a statement as evidence and using it as a diagnostic instrument.

The Committee further notes that Rule 615.1 can be understood as addressing, rather than creating, Confrontation Clause concerns. In a conventional joint trial, jurors may hear a co-defendant's confession or testimony and attribute it across defendants despite limiting instructions—the problem identified in *Bruton v. United States*.<sup>3</sup> Under Rule 615.1, the jury never hears the co-defendant's raw testimony. It sees only the court's procedural record of how testimony behaved under isolation. This substitutes a procedurally mediated credibility assessment for uncontrolled testimonial spillover that courts have recognized as incurably prejudicial.

Subdivision (e)(2) provides a categorical bar: any fact that would be inadmissible under these Rules if offered through conventional channels may not be introduced via confrontation prompt. This prevents the isolation procedure from being used to launder otherwise inadmissible material.

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<sup>2</sup>*Bruton v. United States*, 391 U.S. 123 (1968) (holding that admission of a non-testifying co-defendant's confession violates the defendant's Confrontation Clause rights, and that limiting instructions are insufficient to cure the prejudice).

<sup>3</sup>*Crawford v. Washington*, 541 U.S. 36 (2004) (holding that testimonial statements of witnesses absent from trial may not be admitted unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine).

## Note to Subdivision (f): Safeguards

### Counsel Access

The requirement of separate counsel is absolute. Shared counsel in a multi-defendant isolation proceeding creates an irreconcilable conflict: counsel would simultaneously possess information about multiple clients that the procedure is designed to keep separate. The consultation-break requirement ensures that isolation of testimony does not become isolation of strategic capacity.<sup>4</sup> During breaks, counsel receives current disclosure logs and artifact states, enabling informed strategic advice without access to co-defendant testimony.

### Equalization of Disclosures

The equalization principle addresses the most difficult due process question raised by informational isolation: whether asymmetric disclosure between co-defendants is itself unfair. Existing doctrine does not provide a clean framework for evaluating fairness between defendants in a joint proceeding; Rule 615.1 creates one.

The equalization interval—the period during which the court may maintain differential disclosure for diagnostic purposes—represents a deliberate tradeoff between truth-finding value and procedural fairness. If the interval is too short, the procedure loses diagnostic power. If too long, defendants make testimony decisions on materially different informational footing. The requirement that the court state and justify the interval on the record ensures appellate reviewability and forces the court to confront this tradeoff explicitly rather than implicitly.

### Right to Silence

Subdivision (f)(3) codifies two distinct protections. First, no defendant may be compelled to participate beyond existing constitutional limits. Second, non-participation may not be converted into evidentiary disadvantage through the consistency record. The silence encoding rule in subdivision (h)(3) implements this protection at the artifact level by requiring removal of non-responsive entries before any artifact is shown to the factfinder.

## Note to Subdivision (h): Consistency Records

### Classification as Judicial Findings of Procedural Fact

The classification of consistency records as judicial findings of procedural fact is the doctrinal cornerstone of the Rule's admissibility framework.<sup>5</sup> The Committee considered and rejected three alternative classifications:

- **Substantive evidence** would trigger Confrontation Clause scrutiny of every underlying statement and require independent foundation for each entry.
- **Expert opinion** would subject the consistency record to Daubert gatekeeping, methodology challenge, and adversarial expert dueling—producing complexity that would likely exceed the evidentiary problem the procedure was designed to solve.

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<sup>4</sup>See Fed. R. Evid. 1006 (permitting summaries of voluminous records). Rule 615.1 artifacts differ from Rule 1006 summaries in that they are not admitted as substantive evidence but as procedural records of court-administered processes.

<sup>5</sup>This classification is analogous to judicial findings on voluntariness of confessions, non-suggestiveness of identification procedures, and adequacy of voir dire—all of which are process-based determinations reviewed under abuse-of-discretion standards.

- **Summary under Rule 1006** would carry full substantive force—precisely the status the Rule rejects.<sup>6</sup>

By classifying consistency records as procedural findings, Rule 615.1 places them in the same doctrinal category as judicial determinations on the voluntariness of confessions, non-suggestiveness of identification procedures, and adequacy of voir dire. These are process-based determinations made by the court about procedures the court administered, reviewed under abuse-of-discretion standards, and not subject to Confrontation Clause challenge because they are not “testimonial statements” offered for truth.

### **Silence Encoding**

The requirement that non-responsive entries be removed—not merely coded or flagged—reflects the Committee’s judgment that any visual representation of silence in a consistency matrix, however labeled, carries implicit connotation that the factfinder will interpret adversely despite limiting instructions. A blank cell, a grayed cell, and a cell marked “declined” all differ in appearance, but all invite inference. Removal eliminates the cell entirely, which is the approach most consistent with the Fifth Amendment protection codified in subdivision (f)(3).

### **Note to Subdivision (i): Admissibility and Presentation**

#### **Presumptive Format**

The presumption favoring judicial narrative summary reflects the Committee’s assessment that this format best balances transparency against prejudice risk. A judicial narrative—delivered as the court’s own description of what its procedure produced—is the most natural vehicle for a procedural finding. It mirrors how courts communicate other procedural determinations and avoids the risk that jurors will treat a raw matrix as quasi-forensic output.

The availability of the redacted matrix on any party’s request preserves transparency. But the requirement that the matrix always be accompanied by the judicial narrative ensures that the matrix is never the sole vehicle through which the factfinder encounters the isolation-phase results. This dual-presentation requirement prevents the defense’s own request for transparency from inadvertently creating the prejudice the instructions are designed to prevent.

#### **Rule 403 Balancing**

The Rule’s 403 analysis is unusual in that it requires the court to weigh the probative value of the procedure’s output against prejudice created by the procedure itself—not merely by the evidence. This reflects the reality that in a DIT proceeding, the court is both the administrator of the process and the gatekeeper of its output. The factors listed—duration of differential disclosure, degree of informational asymmetry, and adequacy of counsel access—are designed to make this balancing concrete and reviewable.

### **Note to Subdivision (k): Reversion**

The reversion protocol reflects the Committee’s view that an isolation procedure that cannot maintain its own safeguards must terminate rather than continue in degraded form. The four triggering conditions correspond to the four core safeguards: equalization, counsel access,

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<sup>6</sup>Cf. *Strickland v. Washington*, 466 U.S. 668 (1984). The consultation window requirement ensures that isolation of testimony does not become isolation of strategic capacity.

confrontation-prompt limitations, and isolation integrity. Any breach of these conditions means the procedure is no longer operating as designed, and its outputs are no longer reliable indicators of testimonial independence.

The rule that post-breach artifacts are inadmissible unless independently admissible prevents the prosecution from benefiting from a procedure that failed its own fairness requirements. This is a strict rule, and the Committee intends it to be strict. The alternative—salvaging some artifacts from a compromised procedure—would create incentives to tolerate marginal compliance.

### **Note on Unresolved Design Questions**

The Committee identifies one adversarial scenario that the Rule does not fully address: a defense attorney who does not refuse the procedure but coaches their client to exploit the information asymmetry itself—giving answers calibrated not to truth or to a coordinated narrative, but to what the attorney knows the other defendants cannot hear. This is a strategic adaptation that operates within the rules rather than violating them.

The Committee does not believe this scenario undermines the Rule's utility. No procedural mechanism defeats all strategic behavior; the relevant question is whether the procedure introduces structural unfairness. Strategic adaptation by individual defense counsel to known procedural conditions is a feature of adversarial proceedings generally, not a defect specific to this Rule. The Committee notes the issue here to constrain future claims about the procedure's effectiveness and to invite further study.

## Part III: Implementation Guidance

### Relationship to Existing Rules

Rule	Relationship
<b>Rule 615</b>	Parent rule. 615.1 extends the anti-tailoring principle from witnesses to co-defendants in coordination-prone cases.
<b>Rule 403</b>	Governs admissibility of consistency records. 615.1(i)(1) specifies factors for the 403 balancing analysis.
<b>Rule 611</b>	Court's authority over mode and order of questioning. 615.1 operates within this authority.
<b>Rule 1006</b>	Consistency records are explicitly distinguished from Rule 1006 summaries. They do not carry substantive evidentiary force.
<b>Rule 104(a)</b>	Preliminary determinations under (b) (preconditions) and (i) (admissibility) are court determinations under 104(a).
<b>Rule 105</b>	Limiting instructions under (j) operate as Rule 105 instructions restricting evidence to its proper scope.

### Information Disclosure Classes

For purposes of administering the isolation phase, the court should classify disclosures to defendants according to the following scheme:

Class	Content	Constraints
<b>0</b>	Legal instructions, rights advisements	No restriction; mandatory in all phases
<b>1</b>	Neutral prompts (no evidence content)	No restriction
<b>2</b>	Exhibits already in discovery	Standard admissibility rules apply
<b>3</b>	Tribunal-injected facts (new, sensitive)	May not introduce inadmissible facts; subject to equalization under (f)(2); requires court approval
<b>4</b>	Contradiction statements from other testimony	Subject to all limitations of subdivision (e); may require special master approval under (f)(5)

### Suggested Isolation Order Template

An order implementing Rule 615.1 should specify, at minimum:

- The defendants subject to the order and the conduct giving rise to coordination risk;
- The physical isolation arrangements and the identity of the technical officer;

- The maximum duration of the isolation phase and maximum number of questioning cycles;
- The equalization interval applicable to Class 3 and Class 4 disclosures;
- The schedule and format of counsel consultation breaks;
- Whether a special master will be appointed;
- The format for presentation of consistency records (judicial narrative, redacted matrix, or both); and
- The reversion conditions and procedures for transition to standard proceedings.

## **Pilot Implementation Considerations**

The Committee recommends initial implementation on a pilot basis in selected districts, with the following conditions:

- Pilot cases should be limited to multi-defendant RICO, enterprise fraud, or conspiracy prosecutions where the coordination risk is well-documented.
- Each pilot case should be accompanied by an appointed special master to document the procedure's operation and identify unanticipated issues.
- Post-trial reports should be collected and reviewed by the Committee, addressing the effectiveness of isolation in revealing testimonial inconsistency, the adequacy of counsel access protections, the factfinder's response to consistency records and limiting instructions, the frequency and cause of reversion events, and any constitutional challenges raised and their disposition.
- The Rule should be reviewed after a defined pilot period, with particular attention to whether the "judicial findings of procedural fact" classification survives appellate scrutiny and whether jurors can meaningfully comply with the limiting instructions.

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### **END OF PROPOSED RULE**

*Proposed Rule 615.1 — Pilot Draft — February 2026*

# DIFFERENTIAL INFORMATION TRIBUNAL

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A Procedural Framework for Testing Testimonial Independence  
in Coordination-Prone Cases

Design Document — Version 1.0  
February 2026

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## CONSTITUTIONAL PRINCIPLE

*No defendant may adapt their account based on another defendant's testimony;  
any convergence must arise from shared reality, not shared signaling.*

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# Part I: Core Framework

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## 1. Definition and Operating Principle

A Differential Information Tribunal (DIT) is a judicial procedure for cases involving multiple defendants with potential coordination incentives—such as conspiracy, racketeering, or complex fraud—where the court deliberately controls and differentiates what each defendant can know during testimony phases.

The tribunal is designed to reduce real-time collusion and story-synchronization, measure cross-account consistency under isolation, and surface contradictions as structured evidence.

**Key property:** The tribunal treats the courtroom as an information channel that can be exploited. A DIT closes that channel by isolating defendants and routing all communication through the court.

DIT uses differential access to information as an instrument of truth-testing. The Judge (or Panel) has global observability of all testimony and evidence. Each defendant has local observability: they hear only what the tribunal chooses to deliver to them. The tribunal alternates between individual interrogation and group-synchronized prompts, without allowing defendants to hear one another's answers.

Truthful accounts tend to be stable under isolation. Coordinated fabrications tend to drift, fracture, and overfit when the coalition loses feedback.

## 2. The Problem DIT Solves

In ordinary joint proceedings, defendants can coordinate via prior planning, trial observation (learning from each other's testimony), subtle signaling (body language, timing, public filings, media), and iterative narrative repair (one adapts after another reveals a slip).

DIT's purpose is to prevent the trial from becoming a coordination medium.

## 3. Scope and Applicability

DIT is justified when there is credible risk of coordinated testimony, the alleged conduct is structurally conspiratorial (multiple roles, shared concealment), and the tribunal can maintain rights safeguards.

DIT is not appropriate when defendants are not meaningfully connected, isolation would disproportionately impair comprehension (language or cognitive issues) without accommodations, or the case hinges on public facts where coordination advantage is minimal.

## 4. What Makes It “Differential”

A DIT is defined not by isolation alone, but by controlled differences in what participants can know, and the tribunal's use of those differences to test stability, coherence, and independence of accounts.

| *Isolation is the hardware. Differential disclosure is the software.*

## Part II: Entities and Architecture

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### 5. Entities and Roles

#### 5.1 Court / Tribunal

- Presiding Judge (or Panel): controls information flow; authors question schedule; issues admissibility rulings.
- Tribunal Clerk: maintains a cryptographically verifiable record (or at minimum a sealed, timestamped log).
- Technical Officer (Court-appointed): ensures isolation integrity (soundproofing, communications lockout, monitoring compliance).

#### 5.2 Parties

- Prosecution: proposes question sets, introduces evidence under standard rules, can request “consistency tests.”
- Defense Counsel: present with their client (or on secure channel) under strict conditions to preserve counsel rights. Shared counsel is forbidden; separate teams are required.
- Defendants: separated, individually addressed.

#### 5.3 Safeguard Roles

- Special Master / Ombudsperson: audits fairness, ensures no abusive information manipulation.
- Jury Liaison (if jury trial): determines what, when, and how jurors receive synthesized testimony without contamination.

## 6. Physical and Communication Architecture

### 6.1 Isolation Cells

Each defendant is placed in a separate room that is soundproofed and visually isolated, with no devices and no external communications. Rooms are monitored by video for security, with counsel-privacy protected via controlled exemptions.

### 6.2 Communication Rules

Each defendant receives only the judge’s spoken or written questions, permitted exhibits, and permitted legal instructions.

Defendants do not receive co-defendant testimony, live courtroom feed, cross-room audio, or real-time narrative of proceedings.

## Part III: Procedure Phases

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### 7. Phase Definitions

#### Phase A — Initialization and Rights Lock-in

Defendants are informed of DIT rules and limits. Counsel access is defined (see Safeguards, Part VII). Disclosure baseline is established: what evidence is already discoverable remains discoverable. DIT is not meant to become a discovery denial scheme.

#### Phase B — Baseline Individual Testimony

Each defendant provides a narrative account (freeform) or structured responses to a common template, under oath where applicable and with standard perjury consequences.

#### Phase C — Group-Synchronized Prompts (Blind)

The tribunal asks the same question to all defendants without sharing answers. Examples include timeline questions (“Where were you on X date?”), membership questions (“Who was present?”), role questions (“Who authorized Y?”), and mechanics questions (“How did money move?”).

#### Phase D — Differential Follow-ups

The judge uses divergences to generate follow-up questions: targeted contradictions, forced specificity, and controlled reveals of select facts (“We have a log showing... explain.”).

#### Phase E — Consistency Challenges

Formal “consistency tests” where defendants are asked the same question with reframing, the same question at different times, questions that require internal coherence (sequence constraints), and questions that test mutual entailment (if A is true, what must also be true?).

#### Phase F — Confrontation-in-Substitute

Instead of direct cross-defendant confrontation, the tribunal can present anonymized contradiction statements (“Another witness claims...”) or attributed contradiction statements (higher fairness burden). This phase carries the highest constitutional risk and is subject to the constraints defined in Part VI, Section 14.

**Critical constraint:** Contradiction prompts must be treated as court-generated analytical conditions, not testimony offered for truth. See Section 14 (Crawford / Bruton Interface) for the governing framework.

#### Phase G — Synthesis for Factfinder

Outputs are compiled into a Consistency Record: a map of convergences and divergences, keyed to specific questions, with supporting exhibits and timestamps. If a jury trial, jurors are shown synthesized segments and exhibits in a curated order, with instructions per Part V.

## Part IV: Evidence Products

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### 8. Artifact Definitions

A DIT produces new kinds of artifacts, all subject to the admissibility rules defined in Part VI. These artifacts are classified as judicial findings of procedural fact—not substantive evidence, expert opinion, or demonstrative aids. See Section 15 for the governing admissibility framework.

#### 8.1 Consistency Matrix

A table linking each question to each defendant’s answer and identifying divergence type (conflict, omission, hedge, or shift).

#### 8.2 Drift Profile

Tracks changes over time: how an answer evolves with or without new disclosed facts.

#### 8.3 Entailment Graph

Maps logical dependencies: if a defendant asserts X, they become committed to Y and Z.

#### 8.4 Isolation Integrity Log

Proof that defendants could not coordinate during testimony.

#### 8.5 Per-Question Disclosure Log

Records what information each defendant had been told at the time of each answer. Required to make jury Instruction 5 (Information Asymmetry) enforceable. Without this log, jurors cannot evaluate whether divergences stem from informational inequality or from deception.

### 9. Worked Example

**Hypothetical:** Three defendants—A (Executive), B (Accountant), C (Operations Manager)—are alleged to have used a shell company to route illicit payments.

#### 9.1 Round 1 — Blind Group Prompt

| *Who authorized transfers from Account Z in March?*

Defendant	Answer
A	“B processed under standing authority.”
B	“C submitted payment requests.”
C	“A approved all March transfers.”

No defendant can see whether they aligned blame or converged on a shared story. The result is a three-way conflict.

#### 9.2 Consistency Matrix (Excerpt)

Question	A	B	C	Divergence
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Auth Z	B-authorized	C-submitted	A-approved	3-way conflict
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### 9.3 Round 2 — Targeted Prompt to B

| *Did A approve any March transfer in writing?*

**B responds:** “No.”

### 9.4 Round 3 — Blind Group Prompt

| *Were any March approvals verbal?*

Defendant	Answer
A	“Some verbal approvals occurred.”
B	“All approvals were written.”
C	“Approvals were usually verbal.”

### 9.5 Drift Profile (Defendant B)

Round	Claim
R1	C submitted payment requests
R2	A gave no written approvals
R3	All approvals were written

This creates internal rigidity, making later alignment harder without contradiction.

### 9.6 Entailment Graph (Defendant B)

**B asserts:** (1) All approvals were written. (2) A gave no written approvals.

**Entailment:** Any written approval must originate elsewhere. If a document later surfaces showing A signed an approval, B cannot accept the document without contradicting prior entailments.

### 9.7 Artifact Production Rules

All artifacts must be generated by court technical staff, disclosed simultaneously to both sides, and challengeable via methodological objection, statistical interpretation objection, or framing objection. See Section 15 for admissibility standards governing jury presentation.

## Part V: Model Jury Instructions

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The following instructions assume a DIT testimony phase occurred, a Consistency Matrix and Drift Profile have been admitted, and the jury is permitted to consider them only as credibility-related material.

### Instruction 1 — Nature of the Isolation Phase

During this trial, certain testimony was taken while defendants were questioned separately and were not permitted to hear one another's answers. This procedure was used to prevent witnesses or defendants from adjusting their testimony based on what others had said during the proceeding.

You must not interpret this separation as suggesting that any defendant is more or less credible, or more or less likely to be guilty, solely because this procedure was used.

### Instruction 2 — Purpose of Consistency Artifacts

You have been shown materials described as a Consistency Matrix and a Drift Profile. These materials summarize how individual answers given during the isolation phase aligned with, differed from, or changed in relation to other answers given by the same or other participants.

They are offered for a limited purpose. They may be considered only in evaluating the internal consistency of a witness's or defendant's statements over time.

They may not be considered as direct evidence that any event occurred, proof that a statement was true or false, or evidence of guilt by themselves.

### Instruction 3 — Consistency Is Not Proof of Truth

People may give consistent statements that are false, or inconsistent statements that are true. Memory, stress, misunderstanding, differences in perception, or differences in language can all cause statements to vary even when made honestly.

You must not assume that a consistent set of answers reflects truth, nor that an inconsistent set of answers reflects deception.

### Instruction 4 — Silence During Isolation

A defendant's decision not to answer a question, to limit an answer, or to decline participation during the isolation phase must not be considered by you in any way when determining guilt or credibility. You may not treat silence as disagreement, inconsistency, or admission.

### Instruction 5 — Information Asymmetry

Participants in the isolation phase did not receive identical information at identical times. Differences in knowledge available to each participant at the time of questioning may account for differences in their answers.

You must consider whether a participant had the same opportunity to know or recall the information being asked about before drawing any conclusions from differences in their responses.

### **Instruction 6 — Limited Use of Summary Materials**

The Consistency Matrix and Drift Profile are summaries created to assist in understanding testimony. They do not replace the testimony itself, the exhibits introduced, or your independent judgment.

If you find that the summary conflicts with your recollection of testimony or evidence, you must rely on the testimony and evidence.

### **Instruction 7 — No Burden Shift**

The use of isolation-phase questioning does not change the presumption of innocence, does not shift the burden of proof, and does not require any defendant to explain or reconcile any difference in testimony. The burden remains entirely on the prosecution to prove guilt beyond a reasonable doubt.

### **Instruction 8 — Joint Assessment Requirement**

You may consider differences or consistencies in statements only as one part of your overall evaluation of credibility. You must assess testimony, exhibits, and all admitted evidence together, and not treat any summary artifact as dispositive.

## **10. Design Constraints Derived from Instructions**

Writing jury instructions surfaced three constraints that feed back into the procedural framework:

- **Artifact Classification:** Consistency Matrix and Drift Profile must be admitted as credibility summaries, not substantive evidence. Otherwise Instruction 2 becomes incoherent.
- **Disclosure Timing Log:** Instruction 5 requires that jurors be able to know what each participant had been told at the time of answering. DIT must produce a per-question disclosure log linked to each answer.
- **Silence Encoding Rule:** Consistency Records must encode refusal or invocation separately from divergence. Non-responsive entries should be removed from the matrix entirely before jury presentation, so there is no cell to interpret at all. Otherwise Instruction 4 is violated by the artifact itself.

## Part VI: Doctrinal and Constitutional Framework

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### 11. Doctrinal Lineage: From Witness Sequestration to DIT

DIT is not introducing information control into adjudication—it is extending an already accepted control from witnesses to co-defendants where co-defendants have testimonial incentives equivalent to co-witnesses in conspiracy cases.

#### 11.1 Existing Precedents for Information Control

Practice	Status	Info Control?	Justification
Witness Sequestration	Routine	Yes	Prevent tailoring
Jury Media Instructions	Routine	Yes	Prevent contamination
Grand Jury Secrecy	Routine	Yes	Preserve independent testimony
Parallel Interrogations	Routine	Yes	Detect inconsistency
<b>DIT</b>	<b>Proposed</b>	<b>Yes</b>	<b>Prevent co-defendant adaptation</b>

#### 11.2 The Epistemic Bridge

Co-defendants in a conspiracy case function epistemically as mutually interested witnesses. If courts sequester witnesses to prevent testimony coordination, then in cases where co-defendants' defenses depend on synchronized accounts, the same anti-tailoring rationale may apply.

#### 11.3 The Limiting Principle

DIT does not claim that defendants are “just witnesses.” Rather: when defendants elect to testify regarding shared conduct, their testimony may be subject to anti-coordination safeguards analogous to witness sequestration.

This preserves the right not to testify, the right to confront evidence, and keeps DIT within testimonial-phase constraints.

## 12. Constitutional Risk Map

Constitutional challenges to DIT will come as compound arguments, not single-clause claims. This map is organized by mode of attack, tied to the specific DIT phases where each attack bites hardest.

### 12.1 Confrontation-Based Attacks (Sixth Amendment — Crawford Line)

**Attack:** DIT permits the tribunal to introduce contradiction prompts such as “Another participant stated X.” If that statement originates from a co-defendant’s testimonial answer and is presented to test credibility, the defense will argue this is testimonial hearsay introduced without opportunity for cross-examination.

**Phase risk:** Phase F (Confrontation-in-Substitute). This is where DIT most clearly departs from baseline procedure.

**DIT defense:** Reframe contradiction prompts as procedural consistency tests, not truth assertions. They are not admitted to prove what another defendant said is true, but to test whether the current respondent’s account is stable under informational uncertainty. This requires explicit instruction that contradiction prompts are hypothetical testing devices, and a rule that prohibits later admission of the underlying statement unless confrontation rights are satisfied in open court.

### 12.2 Due Process Attacks (Fifth and Fourteenth Amendments)

**A. Structural asymmetry:** The prosecution has global observability while the defense is fragmented into isolated epistemic units. DIT gives the state informational synthesis capacity while preventing coordinated defense narrative formation.

**Safeguard:** Defense counsel must receive full disclosure logs, real-time record of all tribunal prompts, and access to consistency artifacts contemporaneously with the court. DIT cannot increase prosecution informational access beyond what discovery permits.

**B. Differential defendant asymmetry:** Defendant A receives disclosure X at time T1; Defendant B receives disclosure X at time T2; their resulting divergences become credibility evidence. This is the harder problem, because existing doctrine does not have a clean framework for evaluating fairness between defendants in a joint proceeding.

**Safeguard (Equalization Principle):** Material tribunal disclosures must be distributed to all defendants within a defined interval, or excluded from any artifact shown to the jury. This converts information asymmetry into temporally bounded sequencing. The interval chosen is a substantive choice about how much unfairness the system tolerates in exchange for truth-finding value, and must be specified per-case.

### 12.3 Right-to-Counsel Attacks (Sixth Amendment — Strickland Line)

**Attack:** Isolation prevents defense counsel from knowing what co-defendants have said, advising on narrative alignment, or adjusting strategy to emerging testimony—creating structural impairment of effective assistance.

**Safeguard (Counsel Consultation Windows):** Isolation questioning must occur in bounded cycles, with guaranteed consultation breaks during which counsel receives updated disclosure logs, current artifact states, and tribunal prompt history.

**Safeguard (Strategy-Neutrality Rule):** DIT may prevent coordination based on testimony, but may not prevent strategic defense preparation based on disclosed evidence. This preserves defense ignorance of co-testimony without defense ignorance of state case posture.

#### **12.4 Compulsory Process Attacks (Sixth Amendment — Washington v. Texas Line)**

**Attack:** DIT prevents a defendant from using co-defendant testimony in their own defense during the testimonial phase.

**Risk level:** Moderate to low. DIT does not prohibit confrontation entirely—it defers it. So long as open-court testimony, cross-examination, and rebuttal opportunity remain available at trial proper, DIT functions as a pre-adversarial credibility screen rather than a permanent testimonial barrier.

#### **12.5 Cross-Cutting Vulnerability: Artifact Classification**

All four attack modes converge on the same question: What is a Consistency Matrix? If it is evidence, Confrontation risk rises. If it is expert opinion, Daubert risk arises. If it is a demonstrative aid, prejudice risk rises.

**DIT's classification:** Judicial findings of procedural fact. See Section 15.

## 13. Information Control Rules

### 13.1 Information Disclosure Classes

- **Class 0:** General legal instructions, rights advisements.
- **Class 1:** Neutral prompts (no evidence hints).
- **Class 2:** Standardized exhibits already in discovery.
- **Class 3:** Tribunal-injected facts (newly introduced, highly sensitive).
- **Class 4:** Contradiction statements derived from other testimony.

A DIT must specify which classes can be used in which phase, what approvals are needed (judge alone vs. judge plus special master), and whether contradiction statements must be attributed.

### 13.2 Prohibited Uses

DIT must not be used to deny discovery, trick defendants with fabricated evidence, launder interrogation tactics around counsel rights, or create “procedural exhaustion” through endless loops.

### 13.3 Disclosure Weaponization Constraint

No Class 3 disclosure may introduce facts not otherwise admissible, summarize co-defendant testimony before admissibility ruling, or functionally substitute for cross-examination. If a prompt would be inadmissible as impeachment, hearsay, or character evidence, it cannot enter via DIT.

### 13.4 Equalization Reporting

The equalization interval—how long the court may maintain differential disclosure between defendants—must be reported as part of the admissibility determination. This interval represents a deliberate tradeoff between diagnostic value and procedural fairness. The court must justify the chosen interval on the record.

## 14. Crawford / Bruton Interface

This section defines DIT's relationship to the two most significant confrontation-related precedents.

### 14.1 The Bruton Inversion

**In a standard joint trial:** A co-defendant's confession may be heard by jurors and attributed implicitly across defendants (Bruton risk). Limiting instructions have been found insufficient to cure this prejudice.

**In a DIT:** Contradiction prompts are stripped of declarant identity (when anonymized), cannot be admitted for truth, and are not shown to the jury as statements. The jury sees only the procedural output of an isolation test administered under court supervision.

**Argument:** DIT does not introduce testimonial hearsay—it replaces unsupervised testimonial spillover with procedurally bounded credibility assessment. DIT solves the Bruton problem rather than creating a new confrontation problem.

### 14.2 Crawford Compliance

Contradiction prompts used during isolation testing must be treated as court-generated analytical conditions, not testimony in disguised form. DIT may test against testimonial material but may not introduce testimonial material for its truth value during isolation.

## 15. Admissibility Framework for DIT Artifacts

This framework governs three questions in sequence: whether DIT artifacts are admissible at all, what form they take when admitted, and what limiting instructions are mandatory.

### 15.1 Classification: Judicial Findings of Procedural Fact

DIT artifacts are classified as the output of a court-administered procedural mechanism designed to assess testimonial independence. They do not summarize or assert the truth of any underlying statement.

The analogy is to existing judicial findings that a lineup was non-suggestive, a confession was voluntary, or voir dire responses justified juror removal. These findings are based on process, not introduced for truth, and reviewed under abuse-of-discretion standards.

DIT artifacts enter trial the same way: not as proof of facts in dispute, but as the court's determination of how testimony behaved under a neutralized coordination environment.

### 15.2 Governing Standard for Admission

DIT artifacts are admissible only if the court finds that the artifact reflects the output of a court-administered procedural mechanism designed to assess testimonial independence, and does not summarize or assert the truth of any underlying statement.

### 15.3 Rule 403 Balancing

Because the diagnostic value of DIT depends on temporary informational inequality, Rule 403 analysis must explicitly weigh diagnostic value against procedural cost.

**Diagnostic value factors:** Did isolation plausibly reduce testimonial adaptation? Were equalization intervals within specified bounds? Was silence removed or neutralized in presentation?

**Procedural cost factors:** Duration of differential disclosure window. Degree of informational divergence during questioning. Counsel consultation access during cycles.

The court must determine whether the probative value of observing testimonial stability under isolation outweighs the risk that the isolation itself introduced unfair testimonial disadvantage.

### 15.4 Form of Admission

DIT artifacts may be admitted only in one of three formats, with a presumption in favor of judicial narrative summary. The matrix may be made available on defense request.

**Format A — Redacted Matrix:** Silence entries removed entirely. Disclosure-state annotations included per question. No color or symbol encoding implying evaluative weight. Highest transparency, highest risk of juror overinterpretation.

**Format B — Judicial Narrative Summary (Presumptive Default):** Delivered by the court as: “During isolation-phase questioning, the court observed that...” Mirrors voluntariness findings, juror impartiality findings, and competency rulings. Safest constitutionally, but concentrates interpretive authority in the judge.

**Format C — Expert-Mediated Explanation (Optional):** Only to explain what isolation testing measures, not what any answer means. Experts may describe procedural logic but not credibility conclusions. Opens Daubert door; use only when the other formats are insufficient.

The choice between formats should be guided by case-specific factors: complexity of the conspiracy, number of defendants, and volume of isolation-phase testimony.

### **15.5 Mandatory Limiting Instructions**

If admitted, the court must deliver the instructions specified in Part V. At minimum, the court must instruct that DIT artifacts do not prove any fact in dispute, do not establish the truth or falsity of any statement, and reflect only how statements compared under isolation.

## Part VII: Safeguards and Failure Conditions

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### 16. Due Process Safeguards

#### 16.1 Counsel Access

Minimum acceptable models, in order of preference:

1. Counsel present in-room. Best for rights protection; weakest for isolation if counsel represents multiple defendants. Shared counsel is forbidden; separate teams are required.
2. Secure counsel channel with no cross-defendant leakage.
3. Guaranteed breaks for consultation between question blocks, during which counsel receives updated disclosure logs, current artifact states, and tribunal prompt history.

#### 16.2 Record Transparency

A complete record must be created so appellate review is possible. This includes all questions, all answers, all exhibits shown to each defendant, and the exact timing and order of disclosures.

#### 16.3 Duration and Scope Limits

DIT procedure must define the maximum length of the testimony phase, maximum number of cycles of re-questioning, and limits on surprise contradictions.

### 17. Adversarial Stress Cases

#### Stress Case A — Defendant Silence

If a defendant invokes the Fifth Amendment or refuses DIT participation, DIT participation cannot be compelled beyond what ordinary testimony compulsion allows. Silent participants are marked as “non-responsive” in the consistency record, but silence may not be converted into divergence. Non-responsive entries must be removed from artifacts before jury presentation per the Silence Encoding Rule.

#### Stress Case B — Defense Refusal

If defense counsel objects to Class 3 disclosures, contradiction prompts, or differential exhibit timing, the judge must pause differential questioning and hold an on-record fairness hearing. Possible outcomes include disclosure equalized across defendants, question disallowed, phase terminated, or DIT reversion.

#### Stress Case C — Disclosure Weaponization

If prosecution attempts to introduce inadmissible facts via tribunal prompt, the constraint in Section 13.3 applies: no Class 3 disclosure may introduce facts not otherwise admissible, summarize co-defendant testimony before admissibility ruling, or functionally substitute for cross-examination.

**Stress Case D — Judicial Overreach**

If the judge differentially discloses evidence in a way that materially alters defense posture for one defendant but not others, the Equalization Principle activates: material facts disclosed to any defendant must either be disclosed to all defendants within the specified interval or excluded from the consistency record.

**Stress Case E — Strategic Gaming (Unresolved)**

A defense attorney who does not refuse DIT but games it—deliberately coaching their client to give answers calibrated to the information asymmetry itself—represents a failure mode that lives inside the rules. This is not a failure of isolation integrity but of the assumption that isolation prevents all forms of strategic adaptation. This stress case is identified but not yet resolved; it may be unanswerable, but naming it constrains the claims DIT can make about its own effectiveness.

**18. Reversion Protocol**

DIT must define when it stops being fairer than the baseline system. If equalization fails, counsel access breaks down, admissibility boundaries are breached, or isolation integrity is compromised, then:

- DIT testimony phase ends.
- Proceedings revert to standard joint trial.
- DIT artifacts generated post-breach are excluded unless independently admissible.

## Appendix: Cross-Reference Map

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The following table maps dependencies between DIT components to support review and modification.

Component	Depends On	Constrains
Phase F (Confrontation-in-Substitute)	Crawford / Bruton Interface (§14)	Admissibility Framework (§15)
Jury Instruction 5 (Info Asymmetry)	Per-Question Disclosure Log (§8.5)	Equalization Principle (§12.2, §13.4)
Jury Instruction 4 (Silence)	Silence Encoding Rule (§10)	Artifact Presentation (§15.4)
Consistency Matrix (§8.1)	Artifact Classification (§15.1)	Rule 403 Balancing (§15.3)
Equalization Principle	Due Process Analysis (§12.2)	Disclosure Classes (§13), Reversion (§18)
Reversion Protocol (§18)	All Stress Cases (§17)	Artifact Admissibility (§15)
Bruton Inversion (§14.1)	Phase F, Disclosure Classes (§13)	Confrontation Defense (§12.1)
Counsel Windows (§16.1)	Right-to-Counsel Analysis (§12.3)	Strategy-Neutrality Rule (§12.3)

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