

A man was charged with the sale of narcotics. The federal prosecutor arranged with the man's wife for her to testify against her husband in exchange for leniency in her case. At trial, the prosecution calls the wife, who had been granted immunity from prosecution, to testify, among other things, that she saw her husband sell an ounce of heroin.

Which of the following statements is most clearly correct in federal courts?

- A. The wife can be called as a witness but cannot testify, over her husband's objection, that she saw him sell heroin.
- B. The wife can be required to be a witness and to testify that she saw her husband sell heroin.
- C. The wife can refuse to be a witness against her husband.
- D. The wife cannot be called as a witness over her husband's objection.

## Explanation:

### Spousal privileges

	Purpose	Privilege holder	Duration
<b>Spousal-immunity</b>	Shields witness-spouse from testifying against spouse in criminal case about matters that occurred before or during marriage	Witness-spouse	Only during active marriage
<b>Marital-communications</b>	Protects against disclosure of confidential spousal communications made during marriage in criminal & civil cases	Both spouses	Continues after divorce

Two common law privileges apply to **spousal testimony** in federal courts:

**Marital-communications** privilege – protects confidential communications between spouses during the marriage from disclosure in a civil or criminal case, even after the marriage has ended

**Spousal-immunity** (ie, spousal-testimonial) privilege – protects persons in an active marriage from **testifying against** their **spouse** in a **criminal case** about any matters that occurred before or during the marriage

Both spouses hold the marital-communications privilege, so one spouse can prevent the other from testifying to a confidential marital communication. But since the **witness-spouse** is the sole holder of the spousal-immunity privilege, the witness-spouse can choose whether to testify—even over the defendant-spouse's objection (**Choice D**). Therefore, the correct statement is that the wife can refuse to be a witness against her husband in this criminal case (**Choices A & B**).

### Educational objective:

The marital-communications privilege protects confidential communications during the marriage from disclosure in a civil or criminal case. In contrast, the spousal-immunity privilege protects persons from being required to testify against their spouse in a criminal case about events that occurred before or during the marriage.

### References

Fed. R. Evid. 501 (privileges).

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