

Witness Intimidation and Forfeiture By Wrongdoing

Presenter: Matthew Dix

Outline

- **ACKNOWLEDGEMENTS**
- **Witness Intimidation**
- **Sixth Amendment**
- **Forfeiture By Wrongdoing**

Rock Stars - David C. Brown



- Chief Deputy Hennepin County Attorney (Minneapolis)
- Prosecutor for over 25 years and has served in the Adult Prosecution Division, Drug Team, Child Protection Division, and Appeals Section
- Extensive teaching on evidence and trial skills for the NDAA and Minnesota County Attorneys Association
- Honors graduate of University of Minnesota Law School

Rock Stars - Tracy Prior



- Chief of Family Protection Division, San Diego County
- Prosecutor for 20 years
- Taught at the state and national levels and has presented to international audiences
- Teaches to prosecutors, medical professionals, law enforcement, treatment providers and victim advocates
- Adjunct professor at Palomar and Miramar Junior Colleges

Rock Stars

- J.R. Ujifusa (DDA Multnomah County)
- Wendy Patrick (DDA San Diego County)
- Jacqie Spradling (Chief DDA Topeka, Kansas)
- Mark Wynn (Trained thousands of police and prosecutors)
- DDA Kristina Marie Korobov
- Clay Biddle (DDA San Diego County)
- Julie Lynn (DDA San Diego County)
- Scott Pirrello (DDA San Diego County)
- Carlos Campbell (DDA San Diego County)
- Jessica Lees (DDA San Diego County)
- Shawn Tafreshi (DDA San Diego County)

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U.S. Constitution: **Sixth Amendment**

Sixth Amendment

- **“In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him...”**
- **Witness Doesn't Show Up = NOT GUILTY**
- **Witness Refuses to Testify = NOT GUILTY**
- **Example: Stolen Cell Phone**

Ferris Bueller: Limits

DDA Lees Case

- Defendant history of violence and threat girlfriend
 - 2000: Slaps in face, pushes to ground, says “Bitch I’m going to fucking kill you.”
 - 2006: Defendant broke Victim’s arm, but she goes to hospital and lies: says she just slipped and fell.
 - 2006: During argument, Victim mentions calling police. Defendant says “Shut the fuck up, If the police come, I’m going to jail for murder.”

DDA Lees Case

- Current Case : Pre- Arrest Facts
 - Victim and Defendant broke up
 - Victim living with her mother
 - Defendant breaks into mother's house
 - Victim threatens to call police
 - Defendant throws on bed, gets on top, punches all over body
 - Victim yells to call police
 - Defendant says he's gonna kill her if the police show up
 - Victim runs away
 - Defendant "You stupid bitch, I'll kill you when I get you."
 - Victim's mother witnesses entire thing
 - Victim calls police and wants Defendant arrested

DDA Lees Case

- Post Arrest
 - Defendant Calls Victim from Jail: Weeks before Trial
 - After call,
 - Victim or Mother refuse to testify at Trial
- Call (0:50)
- Threats
 - I'm looking at 16 mother fucking years, I'll kill you bitch
 - I'm gonna murder you and your momma if I gotta go do these years
 - Don't get your ass on the stand, nor your mamma
- DOES THIS CHANGE YOUR MIND?



Difficult Witnesses

Why Witnesses Are Difficult

- Fear of Retaliation = Witness Intimidation
 - Physical/ Mental
 - Directly by Defendant - Past and Present
 - Indirectly by Others- Friends, Family
- Shame/Embarrassment
- Cultural issues
- Love (Defendant says “I’m sorry”)
- Kids
- Dependence on Money (ability to make and access)

Types of Difficult Witnesses

- Reluctant Witness
- Recanting Witness
- Minimizing Witness
- Forgetful Witness
- Lying Witness
- Hostile Witness

Witness Intimidation

Forms of Witness Intimidation

- Explicit Intimidation:
 - Explicit act, threat, gesture, etc.
 - Aimed at coercing one not to testify, or testify in a certain way.
- Implicit Intimidation
 - Social norms passed through community
 - “Snitches are Bitches”
 - Stems from an atmosphere
 - pressuring persons not to testify
 - vengeance toward those who testify or cooperate with authorities.

Studies on Witness Intimidation

- Most prevalent these types of crimes
 - Gang Crimes
 - Domestic Violence crimes
 - DV crimes are “notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial.” *Washington v. Davis*, 547 U.S. 813, 834 (2006). the
- Personal connection to Defendant are at greatest risk
 - E.g., family, crime associate, romantic, physical proximity (neighborhood) as the offender.
- Children and females greater risk than males

Types WI: Verbal Threat

- Direct threats
 - “If you come to court, I will kill you.”
 - “No Body, No Crime”.
 - “Let’s keep this our secret, and I won’t hurt your cat”
 - “There’s no protective order that can tell me what to do!”
- Implied threats:
 - “I’m like a ticking time bomb here in jail, getting madder and madder in here.”
- Methods: Notes, letters, text, phone calls, in person

Types WI : Non-Verbal Threat

- Loiter outside places victim is known to be (park car)
- Damage witnesses' house or property
- Making hand signs (gun, fist, slicing throat)
- The look
- Showing tattoo (32s)
- Taking off jewelry, shirt
- “Code words” or mouthing words

WI: Real Examples

DDA Pirrello Case

- Pre-Arrest Facts

- Next door neighbor heard Defendant beating Victim.
- Neighbor heard Victim crying out “call the police!”
- Defendant told Victim “if you get me locked up, I’m going to kill you.”
- Neighbor called the police
- When Defendant realized police were at front door, Defendant told victim that if he went to jail, that he would get a gun and shoot her.
- Defendant said that he “would put a bullet in her ass.”
- While talking to police, Victim was crying and upset. Victim said she truly was afraid of defendant carrying out his threats because she had seen him with guns

DDA Pirrello Case

- After Arrest
 - Victim became totally uncooperative
 - Victim left San Diego
 - Victim hiding in a different county to avoid service
 - DDA's office could not locate her
 - Defendant's Readiness Conference = 20th of the month
 - Defendant's Trial = 30th of the month in San Diego
- Jail Call between Victim and Defendant (2:17-5:45)



DDA Pirrello Case (2:30- 5:45)

- Jail Call on November 21, 2010
- “Be careful on the 20th and the 30th of the month”
- “I’m not going to get released if they bust your ass”
- “If you get caught, they will have you come to court AGAINST ME”
- “They want you in court. YOU GOT TO HIDE, HOMEY”
- “Don’t fuck up!” “Stay your ass out the way!”
- “The whole case about you.” “If you not there, I’m cool. If they bust your ass, I’m fucked.”
- “Get out the way and... get the fuck back to Anaheim”
- “Don’t think you could lie to me. I know everybody, and they will tell me what’s going on.”

DDA Campbell Case

- Pre-Arrest Facts

- Defendant and Victim are dating
- They got into an argument
- Victim tried to run outside
- Defendant dragged her back inside apartment
- Neighbor witnessed Victim being dragged inside and called 911
- When inside, Defendant strangled and beat Victim
- Police arrived: saw victim laying in pool of blood

DDA Campbell Case

- Pre-Arrest Facts (continued)
 - Victim told police that her friend “Gina” caused the injuries
 - On way to hospital, Victim broke down into tears and said “I can’t do this anymore and lie for him, I just can’t, it was my boyfriend, Ryan Chilcote who did this to me.”
 - Victim told police that she was very scared that Defendant would kill her someday..... and that’s why she always lies for him...because he has told her numerous times that if he goes to jail he will kill her.

Example: DDA Campbell

- Post-Arrest Events (3 months after arrest, month before trial)
 - September 9: Victim and Defendant begin to communicate via text
 - September 15: Victim filed “No-Prosecution Request”
 - Victim stated that Defendant did not abuse her.
 - Victim stated, “I know things will change this time. I love him.”
 - November 15: Facebook Video Post

DDA Campbell Case

Cassandra S [Redacted]

↓ Add Friend Message ...

Timeline About Photos Friends More ▾

DO YOU KNOW CASSANDRA?

To see what she shares with friends, send her a friend request. [Add Friend](#)

ABOUT

Went to chool

Lives in

PHOTOS

FRIENDS 15

William Flood Mike Cornstock Stephanie Sue Henniksen

Derek Cameron Magdi Kanaan Sean Bruner

Brandon

Cassandra Sc uploaded a new video. November 15 at 7:39pm · 🌐

01:32

Share

Anton Villa likes this.

Cassandra Sc changed her profile picture. October 29 at 5:18pm · 🌐

Video

*Note Her Eyes

DDA Tafreshi Case

- Pre-Arrest
 - Defendant is Diablos gang member
 - Defendant/crew go to rival gang territory (Westside)
 - Defendant fires shots
 - 911 Called
 - Cops arrest them
- Post-Arrest
 - Curbstone Lineup for witnesses on scene
 - BWC 30s – 2:30, 5:00 – 6:45
 - Defendant yells
 - DIABLOS GANG BITCHES
 - Defendant makes “D” sign for Diablos
 - Tells Cop to pull up shirt, so witnesses can see Diablos Tattoo

DDA Biddle Case

- Facts

- Defendant is a gangster who shot at Victim
- Defendant is arrested
- Various witnesses come forward at prelim and testify against him
 - Victim = Bertin/Sparrow (little birdie)
 - Witnesses = Females referred to as “bitches”
- Defendant calls homeys from jail 12:10
 - Puts the word out that the witnesses are snitching.
- Result at Trial
 - V and witnesses and said very little other than, "I don't remember."



Forfeiture By Wrongdoing

Sixth Amendment

- Sixth Amendment: “In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him...”
- Witness Doesn't Show Up = NOT GUILTY.. Unless
- Witness Refuses to Testify = NOT GUILTY... Unless

Forfeiture By Wrongdoing

- In 1879, the U.S. Supreme Court recognized FBW as an exception to the Sixth Amendment Right to Confront: *Reynolds v. United States*.
 - **Holding**: “The Constitution gives the accused the right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by [Defendant’s] own wrongful procurement, [Defendant] cannot complain if competent evidence is admitted to supply the place of that which [he] has kept away.” *Id.*
 - “when absent by [his own] procurement...[Defendant] is in no condition to assert that his constitutional rights have been violated.” *Id.*

FBW: Elements

FBW: Elements

- Elements of FBW
 - Witness qualifies as “Unavailable”
 - Defendant committed or acquiesced in wrongful acts
 - Defendant intended to make witness unavailable
 - Wrongful act actually caused the unavailability
- State must prove.
- *See Giles v. California*, 554 U.S. 353 (2008); (*FRE* 804(b)(6))

Witness “Unavailable” (See FRE 804(a))

- Witness invokes a valid privilege
- Witness refuses to testify about the subject matter despite court order.
 - Witness must refuse to testify, not simply say they are afraid to testify. *State v. Cox*, 779 N.W. 2d 844 (Minn. 2010)
- Witness testifies to not remembering subject matter
 - “[I]t is not a lack of memory of having made the out-of-court statements that is pertinent... but rather lack of memory of the ‘subject matter’ of the out-of-court statements.” *State v. Fair*, 156 Idaho 431, 327 P.3d 989, 993 (Ct. App. 2014), review denied (July 7, 2014)(citations omitted)”
 - “The fact that the witness does not remember making the statements themselves is irrelevant.” *Lamonica v. Safe Hurr. Shutters*, 711 F.3d 1299, 1317 (11th Cir.2013)

Witness “Unavailable” (See FRE 804(a))

Witness cannot be present or testify because of death ... then-existing infirmity, physical illness, or mental illness;

- Before child victim is considered “unavailable” by reason of emotional distress, State must present evidence child could not testify in some other way, such as by closed-circuit TV. *State v. Smith*, 59 P.3d 74 (Wash. 2002)

Witness is absent...prosecution has not been able to procure the declarant’s attendance, using reasonable means

- Mere Absence does not mean “unavailable.” State must show efforts to produce witness were both reasonable and made in good faith. *Barber v. Page*, 390 U.S. 719 (1968)
- Extensive efforts to locate witness may be insufficient if not commenced until eve of trial. *U.S. v. Tirado-Tirado*, 563 F.3d 117 (5th Cir. 2009)
- Reasonable efforts: Subpoena, writ, interstate witness, offer of travel/lodging expenses. See *U.S. v. Yida*, 498 F.3d 945, 960 (9th Cir. 2008);³⁷

FBW: Elements

- Elements of FBW
 - Witness qualifies as “Unavailable”
 - Defendant committed or acquiesced in wrongful acts

Wrongful Acts: Two Ways to Commit

Defendant personally commitsOR

Acquiesced to wrongful acts committed by another

- **Holding**: FBW when Defendant “participated directly in planning or procuring the declarant's unavailability through wrongdoing . . . [but also when] the wrongful procurement was in furtherance, within the scope, and reasonably foreseeable as a necessary or natural consequence of an ongoing conspiracy.” *United States v. Cherry*, 217 F.3d 811, 816, 820 (10th Cir. 2000)
- **Holding**: FBW applies when Defendant “tacitly assents to wrongdoing; active participation or personal commission of the crime is not required” *United States v. Rivera*, 412 F.3d 562, 567 (4th Cir. 2005)

Wrongful Act: Not Necessarily Criminal Act

Includes “...the use of coercion, undue influence, or pressure to silence testimony and impede the truth-finding function of trials.” *U.S. v. Scott*, 284 F3d 758 (7th Cir. 2002)

Includes “any significant interference” including “influence and control.” *Steele v. Taylor*, 684 F.2d 1193 (6th Cir. 1982).

Includes “knowledge, complicity, planning or in any other way.” *People v. Pappalardo*, 152 Misc 2d 364 (N.Y. 1991)

Types Wrongful Acts: Murder

United States v. Dhinsa, 243 F.3d 635, 650–651 (2d Cir.), cert. denied, 534 U.S. 897 (2001)

United States v. White, 116 F.3d 903, 911 (D.C.Cir.), cert. denied, 522 U.S. 960 (1997)

United States v. Mastrangelo, 693 F.2d 269, 271 (2d Cir.1982)

Devonshire v. United States, 691 A.2d 165, 166 (D.C.1997).

Types Wrongful Acts: Financial Threat

- “I will lose my job if you testify.”
- “If I’m on parole, I can’t make money for family.”
- “I’ll get deported and then how will you live?”
- Threats to
 - Cut off utilities
 - Fail to make mortgage payments
 - Drain bank account, etc.

Types Wrongful Acts: Coercion

- Financial promises
 - Bribes
 - Will pay child support
 - Will buy victim car / items of value
- Emotional promises
 - To marry
 - Stop drinking
 - Get counseling

Wrongful Act: Collusion with Witness

- FBW may include a defendant's collusion with a witness to ensure that the witness will not be heard at trial. Commonwealth v. Szerlong, 457 Mass 858, 859-871, 993 N.E. 2d 633 (Mass 2010))
- Plans for testimony
 - Exercise the 5th Amendment/marital privilege/ Recantation
- Legal Advice:
 - Say you started it
 - Tell prosecutor you don't remember anything
 - It's not perjury since you weren't under oath
- Plans Not To Testify
 - If you don't get subpoenaed, you don't have to come to court
 - Be gone on the day of trial so they can't find you

Wrongful Act: Marriage

- FBW proper when Defendant “intended, by marrying the Victim, to enable her to exercise her spousal privilege and thereby making her unavailable to testify at trial.”
- Commonwealth V. Szerlong, 457 Mass 858, 859-871, 993 N.E.2d 633 (Mass 20110).

FBW: Elements

- Elements of FBW
 - Witness qualifies as “Unavailable”
 - Defendant committed or acquiesced in wrongful acts
 - Defendant intended to make witness unavailable

Intent to Prevent Testimony

- Proven by circumstantial evidence
- Preventing testimony need not be sole motivation.
 - *United States v. Jackson*, 706 F.3d at 267; See also *State v. Supanchick*, 354 Or. 737, 747-48, 323 P.3d 231, 238 (2014).
- Prior violence and threats “highly relevant” when proving Defendant’s present intent....even if such evidence alone is not sufficient to proof of his present intent. *State v. Baldwin*, 2010 WI App 162, (Wis Ct. App. 2010)

Intent to Prevent Testimony

- Domestic Violence unique:
 - **Holding**: “[a]cts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions.” Giles, 554 U.S. at 377.
 - “Earlier abuse, or threats of abuse, intended to dissuade the victim from resorting to outside help would be highly relevant to this inquiry, as would evidence of ongoing criminal proceedings at which the victim would have been expected to testify.” Id.

FBW: Elements

- Elements of FBW
 - Witness qualifies as “Unavailable”
 - Defendant committed or acquiesced in wrongful acts
 - Defendant intended to make witness unavailable
 - Wrongful act actually caused the unavailability

Acts Caused Unavailability

- Though provable largely by evidence of the other three elements.... it is important that the Court find that the defendant's wrongful acts are what brought about the witness' unavailability.
 - “A court does not need to rule out all possibilities for a witness's absence; it needs only to find that it is highly probable that the defendant intentionally caused it.” *State v. Dobbs*, 180 Wash. 2d 1, 16, 320 P.3d 705, 712 (2014).
- Example when this element not satisfied:
 - Defendant verbally threatens to kill witness and intends to make unavailable....but then witness accidentally [randomly] gets in a car accident and dies prior to trial.

FBW: The Hearing

The Hearing

- Most State Forfeiture Hearings Governed by FRE 104.
 - “The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.”
- Hearsay is admissible
 - Example- Detective testifies that “Victim said Defendant threatened to kill her if she testified.”
 - Davis, 547 U.S. at 833, quoting Edwards, 830 N.E.2d at 174; See People v. Stechly, 225 Ill. 2d 246, 278, 870 N.E.2d 333, 353 (2007).
- Timing of FBW hearing
 - Immediately before trial=OK
 - Five months before trial = Not OK State v. Poole, 232 P.3d 519 (Utah 2010).

The Hearing

- Notice.
 - Not required by FRE 104,
 - But “best practice” to give formal notice to the defense of the State’s intention to introduce statements under FBW.
See *State v. Henry*, 2012 Ohio 5552 (slip opinion) appeal not allowed, 2013 Ohio 1123, 134 Ohio St. 3d 1508, 984 N.E.2d 1102
- Standard of Proof at FBW hearing
 - Preponderance of Evidence: Most States and Feds
 - Clear and Convincing: Maryland, New York, and Washington. *State v. Dobbs*, 320 P.3d 705 (Wash. 2014)
- Good Example when FBW proven:
 - Holding: call from defendant to witness that he should not testify coupled with stares from defendant’s family in court prompting witness to refuse to testify was sufficient.
 - *Fields v. Fabian*, 2008 WL 2788057 (D. Minn. 2008)

The Hearing

- Good Example when FBW proven:

- **Holding**: State established defendant's pattern of abuse and intimidation towards victim and shown it was highly probable that these violent threats—which defendant explicitly and directly connected to victim's decisions to call the police and press charges—were the cause of her absence at trial, and thus, substantial evidence supported trial judge's finding that there was clear, cogent, and convincing evidence that defendant was the cause of victim's absence, such that he forfeited his right to confront victim; defendant had been stalking and threatening victim, with violence, including threats to shoot her, victim was terrified that defendant was going to kill her, and once victim reported defendant to the police, defendant began harassing her about that decision and warned her that she was going to “get it.”)
- State v. Dobbs, 180 Wash. 2d 1, 16, 320 P.3d 705, 712 (2014).

Preparing for FBW Hearing

Preparing for FBW Hearing

- Establish unavailability
 - What reason under FRE 804(a) makes witness Unavailable?
- Establish wrongful acts
 - How can conduct of others be attributed to defendant?
 - Jail calls / Jail Mail, Letters, Social Media, Cell Phones
- Establishing intent to make witness unavailable.
 - Evidence is largely circumstantial from nature of threats and intent to make witness unavailable
 - Still needs to be argued and court should make factual finding
 - History of relationship: Past, Present, and Future
 - Abuse, threats, prior dropped charges.
 - Look at Defendant rap sheet to see if there are past cases “dismissed” because witness did not show up or recanted or didn’t want to prosecute

Preparing for FBW Hearing

- Identify hearsay statements that you want to admit
 - **Make sure statements are truly testimonial!!**
 - **If they are non-testimonial, then Crawford doesn't apply**
 - **Think about excited utterance or medical treatment**
 - **How can prosecution show reliability of statements?**
- Find supportive case law
 - **Search for cases using *Giles* as precedent**
- File motion to Admit Evidence
 - **Brief paragraph explaining concept**
 - **Evidence of conduct in question**
 - **What is wrongdoing**
 - **Who engaged in it (defendant or at his behest)**
 - **Intent behind conduct**

Preparing for FBW Hearing

- Conduct hearing
 - Likely need to call witnesses
 - Judge may allow proffer BUT you probably want these witnesses under oath before trial.
 - Be prepared to argue your motion in court
- Other Things to Consider
 - Seek to admit evidence of FBW in your case-in-chief
 - Consider the filing of additional charges against Defendant in this case
 - Witness Intimidation, Bribery, Violation of Court Order
- Experts explain witness behaviors
 - May need to be put into full context of abusive relationship
 - Jury may still have problems understanding witness's absence
 - “If it really happened, she would be here to testify!”

Does FBW Extinguish Hearsay?

Does FBW Extinguish Hearsay Object?

- FBW = Exception to Sixth Amendment
- Question: Once you've proven FBW, can defense counsel still object to the statements on hearsay grounds...and force you to prove statement is either
 - Not Hearsay
 - Hearsay with Exception
- In criminal trials, hearsay statements must be admissible pursuant to both
 - Rules of Evidences and
 - Sixth Amendment right to confront a witness.

Declarant Testifying and Subject to Cross?

No

Both Hearsay and Offered for the Truth?

Yes

Statement Testimonial?

Yes

Declarant qualifies as "unavailable?"

Yes

Prior Opportunity to Cross Examine?

No

Forfeiture by wrongdoing?

Yes

No Violation of Sixth Amend

No

Violation of Sixth Amend

Statement admissible unless barred by hearsay or relevance

↑

FBW Extinguish Hearsay at Trial?

- Most Courts: FBW kills all hearsay objections
 - See, e.g., *Giles*, 554 U.S. at 365; *United States v. Mastrangelo*, 693 F.2d 269, 272 (2d Cir.1982); *Commonwealth v. Edwards*, 830 N.E.2d at 170; *State v. Hallum*, 606 N.W.2d 351, 356 (Iowa 2000).
- Some Courts: Even if prove FBW, must also prove statement admissible per hearsay rules of evidence
 - See, e.g., *People v. Giles*, 40 Cal.4th 833, 55 Cal.Rptr.3d 133, 152 P.3d 433, 446–47 (2007) (“[E]ven if it is established that a defendant has forfeited his or her right of confrontation, the contested evidence is still governed by the rules of evidence....”); *Vasquez v. People*, 173 P.3d 1099, 1106 (Colo. 2007) (*State v. Fields*, 679 N.W.2d 341, 345–47 (Minn.2004)

Avoid FBW By

- Securing Witness Cooperation
 - Build trusting relationships with victims as early as possible.
 - Explain power and control and cycle of Violence
 - Do what is in your power to make witness safe
 - Take control, but don't be Defendant!
 - Assess witness safety
 - Educate Victim
 - Talk about the importance of an oath and how the justice system relies on that.
 - Talk about what to save, who to call, etc.

Avoid FBW By

- Use Court Process to our advantage
 - Obtain no-contact order
 - Obtain high bail or bond
 - Issue new charges against Defendant
 - Enforce Speedy Trial Rights and move quickly
- Protect Witness At Hearings
 - Have someone on “the look-out” for intimidation during hearings (and in hallway)
 - Walk victims in-and-out of the courthouse
 - Ensure no cell phone or pictures (social media can spread wildfire)
 - Motion to exclude spectators at hearing, but be careful...
 - See Waller v. Georgia, 467 U.S. 39 (1984); Presley v. Georgia, 130 S.Ct. 721 (2010).

Witness Intimidation and Forfeiture by Wrongdoing

Presenter: Matthew Dix

If Time

Privileges

- Adverse Testimonial Privilege
 - The witness-spouse had the choice of whether or not to testify.
- Confidential Communications Privilege
 - The confidential communications privilege protects communications between validly married spouses made in confidence. (United States v. Lofton (7th Cir. 192) 957 U.S. 476.)
 - Exceptions
 - Crimes Committed Together: The marital privilege does not protect communications between spouses about committing crimes. (See e.g. United States v. Mendoza (5th Cir. 1978) 574 F.2d 1373.)
 - Crimes Against Family Members: Testimony related to criminal acts against other family members are not protected by the marital privilege. (See e.g. United States v. White (9th Cir. 1992) 974 F.2d 1135, 1138.)

Privileges

- Physician-Patient Privilege
 - There exists no physician-patient testimonial privilege under federal law. (In re Grand Jury Proceedings (Roe) (9th Cir. 1986) 801 F.2d 1164, 801 F.2d 1164.)
- Psychotherapist-Patient Privilege
- Clergy-Penitent Privilege
- Parent-Child Privilege
 - Cases Not Recognizing a Parent-Child Privilege: In United States v. Dunford (4th Cir. 1998) 148 F.3d 385; In re Grand Jury (3d Cir. 1997) 103 F.3d 1140, In the Matter of a Grand Jury Subpoena (2000) 430 Mass. 590.
 - Cases Recognizing a Parent-Child Privilege: In In re Agosto (D.Nev. 1983) 553 F.Supp. 1298; In re Grand Jury, (3d Cir. 1997) 103 F.3d 1140, 1146;