

In the course of his trial for the murders of Nicole Simpson and Ronald Goldman, O.J. Simpson invoked his right not to testify under the Fifth Amendment of the United States Constitution. At the conclusion of the closing arguments, Judge Ito, the presiding judge, following decisions of the United States Supreme Court, instructed the jurors not to hold Simpson's silence against him when deciding upon his guilt or innocence. After Simpson's acquittal in the criminal trial, the family of Ronald Goldman initiated a civil action (a suit for damages) for wrongful death against Simpson. In a civil, as opposed to a criminal, trial a defendant, who has been acquitted of a criminal charge, such as murder, cannot decline to testify. Furthermore, in civil cases even if the defendant has not already been acquitted of criminal charges, and thus may invoke his Fifth Amendment Right not to testify, the jury is allowed to hold his silence against him in reaching its verdict concerning the defendant's liability for damages. Recently Great Britain, after a heated debate, changed its laws so that juries in criminal cases may now draw an adverse inference when the defendant does not testify.

Is it unfair to allow juries to hold a criminal defendant's silence against him in a criminal trial? If so, why? If not, why not?

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