ALABAMA ASSOCIATION FOR JUSTICE

JOURNAL

FIGHTING for JUSTICE

OVER 60 YEARS

Volume 34 • Number 3
Spring 2015

ALAJ ANNUAL CONVENTION
JUNE 18-20, 2015

SANDESTIN BEACH RESORT
DESTIN, FLORIDA

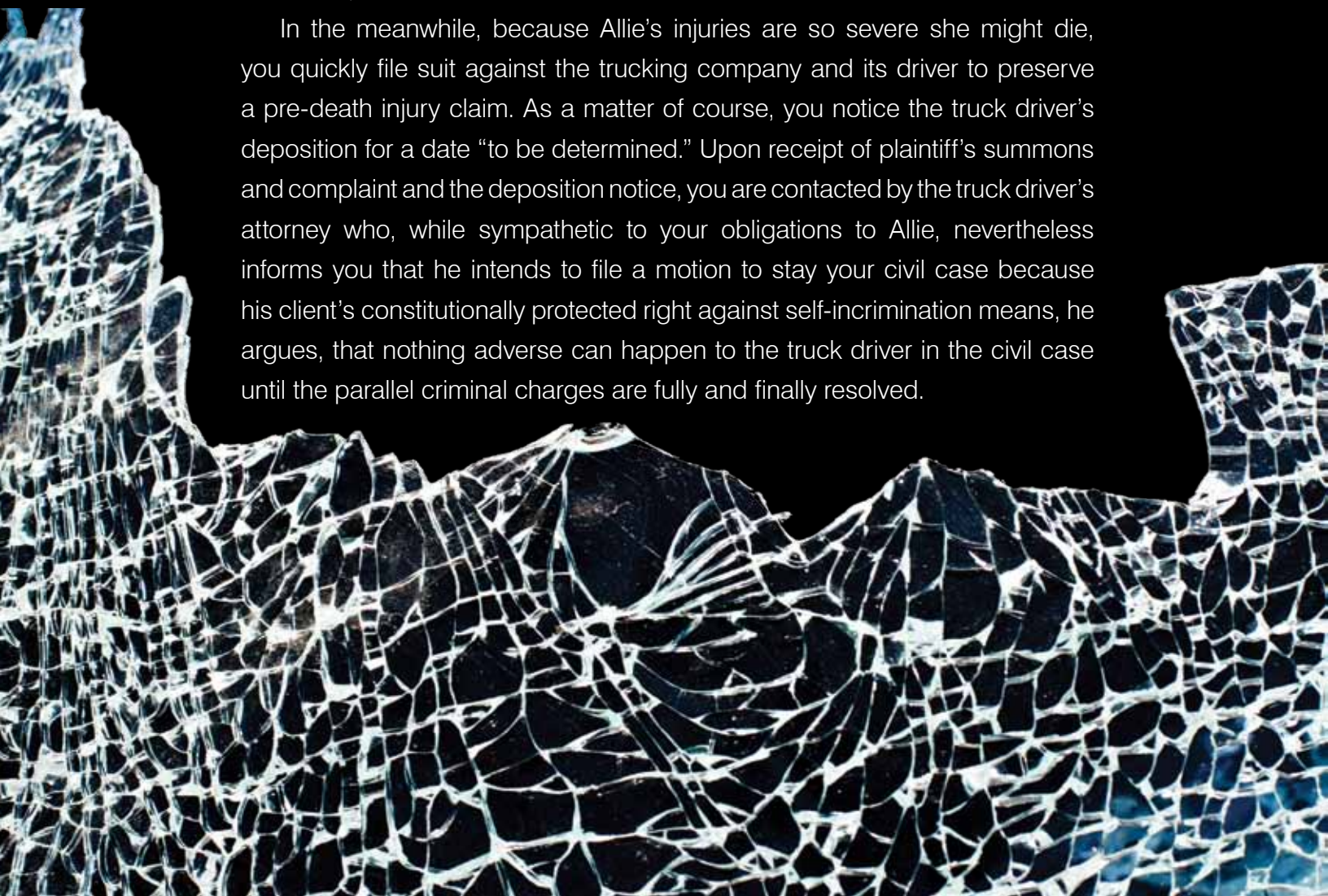
STRENGTH IN KNOWLEDGE
POWER FROM NETWORKING
UNITED FOR JUSTICE

Overcoming an Assertion of FIFTH AMENDMENT PRIVILEGE Against Self-Incrimination IN PARALLEL CIVIL PROCEEDINGS

by Gregory B. Breedlove and David G. Wirtes, Jr.

Bud and Allie are returning home from a social engagement when their passenger car is struck broadside by a speeding 18-wheeler. Bud is killed. Allie is injured. Law enforcement conducts a field sobriety test on the truck driver, charges him with DUI, and obtains a blood sample. Upon learning the truck driver also had traces of methamphetamines in his blood at the time of the wreck, the truck driver is indicted for murder.

In the meanwhile, because Allie's injuries are so severe she might die, you quickly file suit against the trucking company and its driver to preserve a pre-death injury claim. As a matter of course, you notice the truck driver's deposition for a date "to be determined." Upon receipt of plaintiff's summons and complaint and the deposition notice, you are contacted by the truck driver's attorney who, while sympathetic to your obligations to Allie, nevertheless informs you that he intends to file a motion to stay your civil case because his client's constitutionally protected right against self-incrimination means, he argues, that nothing adverse can happen to the truck driver in the civil case until the parallel criminal charges are fully and finally resolved.



Who's right? Do Allie's constitutionally guaranteed rights to an adequate remedy and of access to courts get trumped by the truck driver's constitutionally guaranteed privilege against self-incrimination?

The Constitutionally Guaranteed Privilege Against Self-Incrimination

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself,* nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Emphasis added). The privilege against self-incrimination contained in the Fifth Amendment to the Federal Constitution is extended, by virtue of the Due Process Clause of the Fourteenth Amendment, to action by the states. *Jardner v. Broderick*, 392 U.S. 273 (1968).

The Alabama Constitution of 1901 likewise provides a guarantee against self-incrimination. Article I, § 6, of our Constitution provides "[t]hat in all criminal prosecutions, the accused ... shall not be compelled to give evidence against himself." Notably, "[d]espite the difference in language, the Alabama privilege against self-incrimination offers the same guarantee as that contained in the Federal Constitution." *Hubbard v. State*, 283 Ala. 183, 194, 215 So.2d 261 (1968); *Hill v. State*, 366 So.2d 318, 322 (Ala. 1979).

The Reach and Scope of the Privilege

Clearly, the Fifth Amendment and Art. I, § 6, privileges against self-incrimination apply in criminal proceedings, but what about parallel civil proceedings, as when a wrongful death or personal injury lawsuit is filed against an intoxicated/impaired driver and his employer? Can the driver refuse to appear at a duly-noticed deposition? Refuse to be sworn as a witness? Refuse to answer questions about the wreck?

The privilege can be asserted in virtually any legal proceeding, criminal, civil, or administrative, so long as the party or witness has a reasonable belief his sworn testimony could be used against him in a pending, future, or anticipated criminal proceeding:

> The privilege can be claimed in any proceeding, be it criminal or civil, formal or informal, administrative or judicial, investigatory or adjudicatory, in which the witness reasonably believes that the information sought, or discoverable as a result of his or her testimony, could be used in a subsequent state or federal criminal proceeding.

21A Am. Jur. 2d Criminal Law § 1037 (Supp. Feb. 2015); *Accord, United States v. Balsys*, 524 U.S. 666 (1998); *Kastigar v. United States*, 406 U.S. 441 (1971); *Malloy v. Hogan*, 378 U.S. 1 (1964); *Harrison v. Wile*, 132 F.3d 679, 682 (11th Cir. 1998) ("It is well established that the privilege against self-incrimination protects an individual not only from 'being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'").

Under federal law, "[a] court must stay a civil proceeding pending resolution of a related criminal prosecution only when 'special circumstances' so require in the 'interest of justice.'" *United States v. Lot 5 Fox Grove, Alachua County, Fla.*, 23 F.3d 359, 364 (11th Cir. 1994) (quoting *United States v. Kordel*, 397 U.S. 1, 90 S.Ct. 763, 769-70, (1970)). "[T]he Fifth Amendment is violated when a person ... who is a defendant in both a civil and a criminal case, is forced to choose between waiving his privilege against self-incrimination or losing the civil case in [summary proceedings]." *Shell Oil Co. v. Altina Associates, Inc.*, 866 F.Supp. 536, 540 (M.D. Fla. 1994) (citing *Pervis v. State Farm Fire & Casualty Co.*, 901 F.2d 944 (11th Cir.), cert. denied, 498 U.S. 899 (1990). "To trigger this exception, the invocation of the privilege must result in automatic summary judgment...[or]; must result in an adverse judgment, not merely the loss of '[the defendant's] most effective defense.'" *Shell Oil Co. v. Altina Associates, Inc.*, 866 F.Supp. at 540-41 (quoting *Pervis*, 901 F.2d at 946-47).

In Alabama, by contrast, there is no constitutional requirement that a civil action be stayed pending the disposition of a parallel criminal proceeding. *Ex parte Ebbers*, 871 So.2d 776, 787 (Ala. 2003); *Ex parte Oliver*, 864 So.2d 1064 (Ala. 2003). Rather, trial courts are to employ a weighing and balancing analysis of the competing interests to determine an appropriate remedy:

> "To determine whether a stay or protective order should issue in such circumstances, the trial court must weigh the movant's interest in postponing the civil action against the prejudice that results to the other party because of delay."

Ex parte Dinkel, 956 So.2d 1130, 1133 (Ala. 2006), citing *Ex parte White*, 551 So.2d 923 (Ala. 1989). Accord *Ex parte Flynn*, 991 So.2d 1247, 1253 (Ala. 2008).

Upon weighing the competing factors, "[a] court has the discretion to stay civil proceedings, to postpone civil discovery, or to impose protective orders and conditions in the face of parallel criminal proceedings against one of the parties when the interests of justice seem to require." *Ex parte Ebbers*, 871 So.2d at 787-88.

Factors to Be Weighed and Considered

Factors to be weighed were originally set forth in *Ex parte Baugh*, 530 So.2d 238, 244 (Ala. 1988): (1) whether the civil and criminal proceedings are "parallel," (2) whether the defendant's Fifth

Amendment protection against self-incrimination is threatened by testifying in the civil proceeding, and (3) whether any other factors should be considered, including, (a) whether there is evidence of malicious prosecution, (b) whether the defendant has counsel for the civil deposition or trial, and (c) whether there is evidence of malicious government tactics. Additional factors were added in *Ex parte Ebbers*:

1. The interest of the plaintiff in proceeding expeditiously with the civil litigation, and the potential prejudice to the plaintiff of a delay in the progress of that litigation.
2. The private interests of the defendant and the burden that any particular aspect of the proceedings may impose upon the defendant.
3. The extent to which the defendant's Fifth Amendment rights are implicated/the extent to which the issues in the criminal case overlap those in the civil case.
4. The convenience of the court in the management of its cases and the efficient use of judicial resources.
5. The interest of persons not parties to the civil litigation.
6. The interest of the public in the pending civil and criminal litigation.
7. The status of the criminal case, including whether the party moving for the stay has been indicted.
8. The timing of the motion to stay.

Id., 871 So.2d at 789-90. "[A] trial court 'must make a highly fact-bound inquiry into the "particular circumstances and competing interest involved in the case" ' when parallel civil litigation and actual, or reasonably expected, criminal charges coexist." *Id*. at 790.

An advocate must test each of these factors. For example, are the proceedings truly "parallel" if the defendant has pled guilty, or been tried and convicted? Sentenced? As next explained, precedents abound to the effect that once a defendant is convicted (or sentenced), he no longer faces a material risk of self-incrimination. What if the defendant testifies at his sentencing hearing? Hasn't he waived his right to rely upon Fifth Amendment protections?

Working familiarity with pertinent decisions from the United States Supreme Court and the Supreme Court of Alabama provide an arsenal of weapons for challenging any claim of a privilege not to testify.

Does the Privilege Against Self-Incrimination Ever End?

Opinions from the United States Supreme Court and elsewhere recognize "[t]he ordinary rule ... that once a person is convicted of a crime, he no longer has the privilege against self-incrimination as he can no longer be incriminated by his testimony about said crime...." *Reina v. United States*, 364 U.S. 507, 513 (1960); *accord, United States v. Romero*, 249 F.2d 371 (2d Cir. 1957) (a conviction for the transactions in question deprives a witness of his right to refuse to testify concerning those transactions, and in no event can the witness refuse entirely to be sworn); *United States v. Maloney*, 262 F.2d 535 (2d Cir. 1959) (a witness loses his privilege against self-incrimination concerning the crime as to which he is being examined if he has already been convicted for it); *Wyman v. DeGregory*, 100 N.H. 163, 121 A.2d 805 (1956) (privilege against self-incrimination is non-existent if it is claimed that a time when the liability of the witness has been terminated because of a prior conviction for the offense inquired into); *June Fabrics, Inc. v. Teri Sue Fashions*, 194 Mich. 267, 81 N.Y.S.2d 877 (1948) (there is no privilege against self-incrimination when the witness has been convicted).

Some courts, including the Supreme Court of Alabama, recognize that the Fifth Amendment's privilege against self-incrimination is no longer available after conviction *and sentencing* for the offense. *See*, *Mitchell v. United States,* 526 U.S. 314, 326 (1999); *United States v. Romero, supra*; and *Lockett v. State*, 218 Ala. 40, 117 So. 457 (1928) (in murder prosecution where the state introduced testimony from a witness who had already been convicted and sentenced in connection with the same crime, the Supreme Court held that one jointly indicted could be used as a witness against the other, but only when convicted, sentenced, and appropriately warned that his testimony could be used against him); *State v. Click*, 768 So.2d 417 (Ala. Crim. App. 1999), cert. denied Apr. 14, 2000, Ala. S.Ct. No. 1990709.

Indeed, principles enunciated in *State v. Click* make this conclusion plain:

> The Fifth Amendment privilege against self-incrimination protects witnesses from the danger of exposing themselves to criminal liability. The privilege applies where the risk of self-incrimination is "real and appreciable," not "remote and improbable." ... Here, Darcell's asserted risk of self-incrimination was neither "real" nor "appreciable," because at the time when he claimed the privilege, Darcell already had been convicted of the charge for which he feared prosecution.
>
> * * *
>
> The United States Supreme Court recently in *Mitchell v. United States*, 526 U.S. 314, 119 S.Ct. 1307, 143 L.Ed.2d 424 (1999), addressed whether the Fifth Amendment privilege applies to sentencing hearings. The Court held that a sentencing hearing is a crucial part of the criminal trial; thus, the defendant has the protection of the Fifth Amendment at that stage. However, the Court noted, "it is true, as a general rule, that where there can be no further incrimination, there is no basis for the assertion of the privilege. We conclude that the principle applies to cases in which the sentence has been fixed and the judgment of conviction has become final." The Court also cited with approval its earlier decision in *Reina v. United States*, 364 U.S. 507, 81 S.Ct. 260, 5 L.Ed.2d 249 (1960), in which that Court stated that there is "weighty authority" for the proposition that once a person is convicted, he no longer has a privilege against self-incrimination. 364 U.S. at 513, 81 S.Ct. 260.

Id., 768 So.2d at 420-21.

Other courts have held that *the mere pendency of an appeal from a conviction* does not entitle the witness to refuse to testify on the basis of a privilege against self-incrimination. See, *In re Bando*, 20 F.R.D. 610 (D.C. N.Y. 1957), rev'd on other grounds *United States v. Riranti*, 253 F.2d 135 (2d Cir. 1958) (mere fact that a writ of certiorari is being prepared is not sufficient reason to refuse to testify since the writ may not be granted, and, if it is, the conviction may not be overturned); *State v. Simon*, 132 W. Va. 322, 52 S.E.2d 725 (1949) (a conviction is final until reversed, therefore the Fifth Amendment privilege against self-incrimination may not be asserted as a basis to refuse to testify during the pendency of an appeal); *People v. Fine*, 173 Misc. 1010, 19 N.Y.S.2d 275 (1940) (the privilege against self-incrimination existed up until the time of a plea of guilty or a verdict of guilty, but not thereafter).

Can the Privilege Against Self-Incrimination be Waived?

> "The Fifth Amendment privilege cannot be selectively invoked, and once answers to incriminating questions have been given, the privilege is waived against questions on the same subject." 5 Wayne R. LaFavre, et al., *Criminal Procedure*, § 24.5 (2d ed. 1999); John Novak & Ronald Rotunda, *Constitutional Law*, § 7.6(a) (4th ed. 1991).

Ex parte Rawls, 953 So.2d 374, 387 (Ala. 2006) (See, Justice, concurring in part). To be sure, Justice See's concurring opinion in *Rawls* may not state Alabama law, but it provides a nice summary of principles found elsewhere. For example, in *Mitchell v. United States, supra*, the Supreme Court stated:

> It is well-established that a witness, in a single proceeding, may not testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about the details. *See Rogers v. United States*, 340 U.S. 367, 373, 71 S.Ct. 438, 95 L.Ed. 344 (1951). The privilege is waived for the matters to which the witness testifies, and the scope of the "waiver is determined by the scope of relevant cross-examination," *Brown v. United States*, 356 U.S. 148, 154-55, 78 S.Ct. 622, 2 L.Ed.2d 589 (1958). "The witness himself, certainly if he is a party, determines the area of disclosure and therefore of inquiry," *id*., at 155, 78 S.Ct. 622. Nice questions will arise, of course, about the extent of the initial testimony and whether the ensuing questions are comprehended within its scope, but for now it suffices to note the general rule.
>
> The justifications for the rule of waiver and the testimonial context are evident: A witness may not pick and choose what aspects of a particular subject to discuss without casting doubt on the trustworthiness of the statements and diminishing the integrity of the factual inquiry. As noted in *Rogers*, a contrary rule "would open the way to distortion of facts by permitting a witness to select any stopping place in the testimony," 340 U.S., at 371, 71 S.Ct. 438. It would, as we said in *Brown*, "make of the Fifth Amendment not only a humane safeguard against judicially coerced self-disclosure but a positive invitation to mutilate the truth a party offers to tell," 356 U.S. at 156, 78 S.Ct. 622. The illogic of allowing a witness to offer only self-selected testimony should be obvious even to the witness, so there is no unfairness in allowing cross-examination when testimony is given without invoking the privilege.

Mitchell, 526 U.S. at 321-22.

These same waiver principles are found throughout reported Alabama appellate opinions. For example, in *Cotton v. State*, 87 Ala. 103, 6 So. 372 (1889), the Court recognized that when a defendant in a criminal case elects to testify for himself as a witness, he thereby waives his constitutional right of not being compelled to give evidence against himself as to that particular crime for which he is on trial. Once he elects to testify on his own behalf, he becomes subject to cross-examination and impeachment in the same manner and to the same extent as any other witness. Having voluntarily become a witness for himself, he may be questioned and cross-examined. *Accord, Ivey v. State*, 369 So.2d 1276 (Ala. Crim. App.), writ denied 369 So.2d 1281 (Ala. 1979) (where an accused elects to testify for himself, he waives his constitutional right not to be compelled to give evidence against himself); *Willingham v. State*, 50 Ala. App. 363, 279 So.2d 534 (Ala. Crim. App.), cert. denied 291 Ala. 803, 279 So.2d 538 (1973) (a defendant who voluntarily takes the witness stand on his own behalf and testifies without asserting the privilege against self-incrimination waives his privilege as to the testimony given); *International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. Hatas*, 287 Ala. 344, 361, 252 So.2d 7, 23 (1971) (the weight of authority seems to support the broad view that a witness who discloses a fact or transaction, without invoking his privilege in self-incrimination, thereby waives that privilege with respect to details and particulars of such fact or transaction).

Indeed, the Supreme Court reasoned in *International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers* that:

> It can not be tolerated that a person testifying, after stating material facts bearing upon the case, and favorable to one party, shall, when cross-examined in reference to the same subject, decline answering by reason of his privilege not to incriminate himself....
>
> * * *
>
> To uphold [defendant's] claim to privilege in the instance hereunder consideration would

> open the way to the withholding of relevant, material facts by permitting a witness to select any stopping place in his testimony. The privilege against self-incrimination presupposes a real danger of legal detriment arising from disclosures. A witness cannot invoke the privilege where the response to a specific question would only disclose details of facts already related without protest....

Id., 287 Ala. at 362, 252 So.2d at 23.

What is the Procedure to Follow When Seeking Discovery from a Party or Witness Who Asserts His Fifth Amendment Privilege Against Self-Incrimination?

The party asserting a privilege against self-incrimination as a reason for not complying with a discovery request bears the burden of establishing the right to rely upon that privilege. *Ex parte Tucker*, 66 So.3d 750, 752 (Ala. 2011). "When the Fifth Amendment privilege is asserted, it is for the trial court, not the party asserting the privilege, to determine whether the party's apprehension of a risk of self-incrimination is reasonable and well-founded." *Ex parte Ebbers*, 871 So.2d at 787. "The Fifth Amendment privilege against self-incrimination protects witnesses from the danger of exposing themselves to criminal liability. The privilege applies where the risk of self-incrimination is 'real and appreciable,' not 'remote and improbable.'" *State v. Click,* 768 So.2d at 420, quoting *Brown v. Walker*, 161 U.S. 591, 599-600 (1896), and *Rogers v. United States*, 340 U.S. 367, 372-73 (1951).

Plaintiff's counsel should challenge every factor necessary to the determination of whether the risk of self-incrimination is in fact "real and appreciable" or merely "remote and improbable." As a starting point, consider presenting the trial court with evidence from documents publicly available from the Alabama Administrative Office of Courts showing that in the past six years, a defendant convicted of a felony has on average only a 3% chance of obtaining a reversal at the Alabama Court of Criminal Appeals. This evidence can go a long way toward showing that after a defendant has been convicted of the crime constituting the conduct for which he also was sued, the likelihood of obtaining a retrial (and thereby being exposed to the risk of self-incrimination at the new trial) is remote.

Assuming the defendant meets the criteria for invoking the privilege, may he refuse to appear and be sworn? No. The Fifth Amendment privileges a witness "not to answer official questions put to him." *Baxter v. Palmigiano*, 425 U.S. 308, 316 (1976). It does not protect the witness from being asked the questions in the first place, or, in a civil action, from the consequences of a refusal to answer. *Id*. 425 U.S. at 318 ("The Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them."). *See, also, Mitchell v United States*:

> This Court has recognized "the prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them," *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976).... In ordinary civil cases, the party confronted with the invocation of the privilege by the opposing side has no capacity to avoid it, say, by offering immunity from prosecution.... The rule allowing invocation of the privilege, though at the risk of suffering an adverse inference or even a default, accommodates the right not to be a witness against oneself while still permitting civil litigation to proceed.

Id., 326 U.S. at 328. Consequently, as explained in Wright, Miller, King & Marcus, 8 Fed. Prac. & Proc. § 2018,

> If a deposition is sought, the availability of the privilege is not a ground for vacating the notice of the deposition. The proper procedure for the deponent to attend the deposition, to be sworn under oath, and to answer those questions he or she can answer without running a risk of incrimination. In this way, a record can be made and the court can determine whether particular questions asked did entitle the deponent to claim the privilege.

Id. *Accord*, *Nat. Life Ins. Co. v. Hartford Acc. and Indem. Co.*, 615 F.2d 595 (3d Cir. 1980) (witness in a civil proceeding may not invoke a blanket Fifth Amendment privilege prior to the propounding of questions, but is required to appear for the taking of his deposition and to assert his privilege to specific questions); *U.S. v. Hansen*, 233 F.R.D. 665 (S.D. Cal. 2005) (defendant could not refuse to attend his deposition under a blanket of Fifth Amendment privilege. Instead, defendant could, after being sworn at the deposition, assert the privilege on a question-by-question basis, but only if he had a reasonable basis to apprehend a danger of prosecution due to answering).

May a Party Appropriately Comment Upon Another's Assertion of Privilege?

Should the party refuse to answer a question at trial, in a hearing, or during a deposition on the basis of an assertion of the privilege against self-incrimination, the opposing party may properly comment upon, and the jury may draw appropriate reasonable inferences from, the assertion of that privilege. Alabama Rules of Evidence 512A states:

> (a) Comment or inference permitted. In a civil action or proceeding, a party's claim of a privilege, whether in the present action or proceeding or upon a prior occasion, is a proper subject of comment by judge or counsel. An appropriate inference may be drawn from the claim.
>
> (b) Claim of privilege by nonparty witness. The claim of a privilege by a nonparty witness in a civil action or proceeding is governed by the same principles that are applicable to criminal cases by virtue of Rule 512.

The Advisory Committee's Note to Rule 512A expressly makes reference to an assertion of the privilege against self-incrimination:

> Section (a). Comment or inference permitted. This rule continues Alabama's historic principle that a civil party's assertion of a privilege, such as that against self-incrimination, may be commented upon by the opponent and that the trier of fact may consider the assertion of the privilege and draw from it inferences against the party asserting it. *Cokely v. Cokely*, 469 So.2d 635 (Ala.Civ.App.1985) (divorce action in which spouse asserts privilege against self-incrimination when asked questions aimed at disclosing acts of adultery). A comment on the assertion of the privilege likewise is permissible when a party in a civil action or proceeding fails to take the witness stand altogether. *Trahan v. Cook*, 288 Ala. 704, 265 So.2d 125 (1972). *See also Morris v. McClellan*, 154 Ala. 639, 45 So. 641 (1908) (containing basic rationale for allowing such a comment).
>
> The committee recognizes that a number of states have adopted rules of evidence that preclude such comment. *See, e.g.*, Ark.R.Evid. 512; Idaho R.Evid. 512; Neb. Rev. Stat. § 27-513; Vt.R.Evid. 512. At the same time, however, such comment has been held constitutional and is regularly permitted in federal courts. *See, e.g., Lefkowitz v. Cunningham*, 431 U.S. 801 (1977); *Baxter v. Palmigiano*, 425 U.S. 308 (1976). Compare Me.R.Evid. 513.
>
> If in a civil action or proceeding comment is permissible as to the assertion of the privilege against self-incrimination, a constitutionally based privilege, then it seems reasonable to allow like comment when a party in a civil proceeding asserts any other evidentiary privilege.
>
> Section (b). Claim of privilege by nonparty witness. If a nonparty witness takes the stand and asserts a privilege, then comment or inference against a party is not permitted. This appears consistent with preexisting Alabama authority. *See Breedwell v. State*, 38 Ala.App. 620, 90 So.2d 845 (1956); C. Gamble, *McElroy's Alabama Evidence* § 377.04 (4th ed. 1991).

Advisory Committee's Notes to Rule 512A.

Conclusion

The mere assertion of a constitutional privilege against self-incrimination because of a pending or potential parallel criminal proceeding does not necessarily mean the death knell for your civil personal injury or wrongful death lawsuit. Effective advocacy may result in an order requiring the defendant to appear for a deposition or hearing, to be sworn, and to answer questions under oath despite the assertion of the privilege.

Mr. Wirtes is a member of Cunningham Bounds, LLC in Mobile, Alabama. He is licensed to practice law in all state and federal courts serving Alabama and Mississippi. Mr. Wirtes is active in numerous professional organizations. He is a Sustaining Member of the American Association for Justice ("AAJ" - formerly the Association of Trial Lawyers of America) where he serves as a Member of its Amicus Curiae Committee (1999-present), and previously served as Member, Board of Governors (2002-2004); Alabama Delegate (1999-2001); and ATLA PAC Eagle. He is a Sustaining Member of the Alabama Association for Justice and has served in numerous capacities, including as Member, Executive Committee (1997-present); Board of Governors (1992-96); Co-editor, the Alabama Association for Justice Journal (1996-present); and Member, Amicus Curiae Committee (1990-present / Chairman or Co-chairman, 1995-present). Mr. Wirtes is a member of the Alabama Supreme Court's Standing Committee on the Rules of Appellate Procedure.

Mr. Breedlove has obtained numerous multi-million dollar jury verdicts and settlements for his clients over the course of his career. Mr. Breedlove's areas of practice are complex litigation, class actions, personal injury, products liability, insurance fraud, bad faith, medical negligence and admiralty and maritime law. In its national rankings of leading personal injury firms and attorneys, Benchmark Plaintiff lists Mr. Breedlove as a "Litigation Star." In both 2010 and 2015, he was selected by his peers to receive Best Lawyers® distinction of Mobile's Personal Injury Litigation – Plaintiffs "Lawyer of the Year." Mr. Breedlove is recognized in Super Lawyers, Lawdragon, Chambers USA, and Benchmark Litigation, which lists America's leading litigation firms and attorneys. Mr. Breedlove is a Fellow of the International Academy of Trial Lawyers, the American College of Trial Lawyers, and the Litigation Counsel of America. Additionally, Mr. Breedlove is certified as a Civil Trial Specialist by the National Board of Trial Advocacy. He is a member of the American Board of Trial Advocates. He is also a Fellow of the Alabama Law Foundation (limited to no more than 1% of Alabama Bar members) and a Charter Member of the Atticus Finch Society. He is also a Charter Member of the "Pioneers for Justice" of the Alabama Civil Justice Foundation, and a Charter Fellow of the American College of Board Certified Attorneys. Mr. Breedlove served as President of the Alabama Trial Lawyers Association in 1998-1999 and as President of the Alabama Civil Justice Foundation in 1998-1999. He is a member of the American Association for Justice and the Auburn University Bar Association.

Mr. Breedlove received his undergraduate from Auburn University and his law degree from Cumberland School of Law. To read more about Mr. Breedlove's practice, visit www.cunninghambounds.com.