

425 WITNESS EXERCISING PRIVILEGE AGAINST SELF-INCRIMINATION

A witness, (name of witness), exercised the constitutional right not to answer (a question) (questions) on the ground that the answer(s) might tend to incriminate (the witness) (him) (her). You may find by this refusal to answer that the answer(s) would have been against the interest of (the witness) (him) (her).

COMMENT

This instruction was approved in 2010.

Wisconsin has long recognized that a person may invoke the Fifth Amendment privilege against self-incrimination as protection from the adverse use of such evidence in a subsequent criminal action. Grognet v. Fox Valley Trucking Serv., 45 Wis.2d 235, 239, 172 N.W.2d 812 (1969); S.C. Johnson & Son, Inc. v. Morris, 2010 WI App 6, 322 Wis.2d 766, 779 N.W.2d 19. However, in a civil case as distinguished from a criminal case, an inference of guilt or against the interest of the witness may be drawn from the witness invoking the Fifth Amendment. For comparison, see Wis JI-Criminal 317.