

**305 FALSUS IN UNO**

[USE OF THIS INSTRUCTION IS NOT FAVORED.]

If you become satisfied from the evidence that any witness has willfully testified falsely as to any material fact, you may disregard all the testimony of the witness which is not supported by other credible evidence in the case.

**COMMENT**

Wis JI-Criminal 305 was originally published in 1962 and revised in 1979. It was republished without change in Release No. 28C12/91 and the comment was updated in 1994 and 1995. This revision involved nonsubstantive editorial changes and was approved by the Committee in April 2000.

In Ollman v. Health Care Liability Ins., 178 Wis.2d 648, 658-59, 505 N.W.2d 399 (Ct. App. 1993), the court made the following observations about the **falsus in uno** instruction:

Wisconsin's **falsus in uno** instruction is a derivative of the old maxim, **falsus in uno, falsus in omnibus**, or translated, "false as to one thing, false as to all things." . . . In general, the falsus in uno instruction has fallen into disfavor among the courts of this country. The now prevailing attitude . . . is one of tolerance and sufferance. The instructions labor under faint praise, and are generally regarded as of little assistance to juries. [Citations omitted.]

In State v. Lagar, 190 Wis.2d 424, 434, 526 N.W.2d 836 (Ct. App. 1994), the court flatly stated that "[t]he **falsus in uno** instruction is not favored." The court also emphasized that the decision to give the instruction is within the wide discretion of the trial court: "The impeachment of a witness with prior statements does not necessarily mean that a **falsus in uno** instruction is appropriate. The testimony must be shown to be willful and intentional. The trial court was in the best position to make this call." Id. at 435.

The Committee recommends that the instruction not be routinely given.

In State v. Williamson, 84 Wis.2d 370, 267 N.W.2d 337 (1978), the refusal to give the falsus in uno instruction was upheld where the witness maintained that her prior testimony was inconsistent because she was confused. The court noted that "[t]he falsus in uno instruction is not favored in the law," citing: Annot. 4 A.L.R.2d 1077 (1949), and emphasized the evidentiary basis required for giving the instruction:

In order for the falsus in uno instruction to be appropriate, the false testimony must be on a material point and must be willful and intentional. Mere discrepancies in the testimony that are most likely attributed to defects of memory or mistake are no basis for rejecting a witness's testimony entirely. 84 Wis.2d 370, 394.

Williamson was cited with approval in State v. Robinson, 145 Wis.2d 273, 281, 426 N.W.2d 606 (Ct. App. 1988). See also State v. Lombardi, 8 Wis.2d 421, 99 N.W.2d 829 (1959).

The text of the instruction is supported by the older criminal cases dealing with this issue. See Spick v. State, 140 Wis. 104, 121 N.W. 664 (1909). In Miller v. State, 139 Wis. 57, 119 N.W. 850 (1909), the court approved the following language:

If a witness testifies wilfully falsely as to any material matter in the trial of a case, the jury may, if they see fit, but are not bound to, reject all of such witness's evidence not corroborated by some other credible evidence. (pp. 82-83)

This instruction ought to be given only where the judge has some reason to believe a witness has testified falsely. In Pumorlo v. City of Merrill, 125 Wis. 102, 110, 103 N.W. 464 (1905), the supreme court referred to the falsus in uno instruction and said:

To warrant the giving of such an instruction there must be a sufficient basis in the evidentiary facts and circumstances adduced as tends to show that there was wilfully false swearing. Whether such a rule applies to the consideration of the evidence of a case is primarily a question for the trial court and not for the jury.