

146 PRECAUTIONARY STATEMENT: ANONYMOUS AND "NUMBERS" JURIES

INCLUDE THE FOLLOWING WHEN THE COURT HAS DETERMINED THAT JURORS WILL NOT BE REFERRED TO BY NAME OR THAT OTHER JUROR INFORMATION MUST BE RESTRICTED

I have decided that for the convenience of court and counsel, we will refer to jurors by numbers. This should not influence your verdict in any manner.

COMMENT

This instruction was approved by the Committee in April 2003.

Whenever a court restricts any juror information, including referring to a juror by number instead of by name, the court must make an individualized determination that the restriction of information is necessary and must take reasonable precautions to minimize any prejudicial effect to the defendant. When juror information is restricted, there is a danger that the jurors will interpret the special measures as reflecting on the defendant's guilt or character. The general instruction on the presumption of innocence is not sufficient to address this issue. Therefore, "the circuit court, at a minimum, must make a precautionary statement to the jury that the use of numbers instead names should in no way be interpreted as a reflection of the defendant's guilt or innocence. . . A precautionary statement must not mislead a jury, but must be based on factors and influences that are relevant in a particular case." State v. Tucker, 2003 WI 12, ¶23, ¶24.

While it may be necessary to tailor the precautionary statement for the facts of a particular case, the Committee offers this instruction as a general model.

In State v. Britt, 203 Wis.2d 25, 553 N.W.2d 528 (Ct. App. 1996), the trial court had ruled that the jurors' names, addresses, and places of employment could not be publicly revealed in open court or on the record; however, both parties had access to all juror information via written questionnaires. This was considered to be an "anonymous jury" and its use upheld by the court of appeals because there was a strong reason to believe that the jury needed protection and reasonable precautions were taken to minimize any prejudicial effect to the defendant.

In State v. Tucker, 2003 WI 12, ___ Wis.2d ___, 657 N.W.2d 374, the trial court used only numbers to refer to the jurors, although both parties had access to all juror information, including the jurors' names. The Wisconsin Supreme Court held that this practice, termed a "numbers jury," was subject to the same requirements as those that apply to an anonymous jury and found that the trial court erred in two respects. First, the trial court did not make an individualized determination that the jurors needed protection based on the specific circumstances of the case. Second, the trial court did not take adequate precautions to minimize any prejudicial effect.

See SM-20, Voir Dire, for further discussion of anonymous and "numbers" juries.