jury may not be discharged until it has completed its sentencing duties. The court may still set another time for the defendant to make or renew the motion, if it does so within the 7-day period.

COMMITTEE NOTES ON RULES—2005 AMENDMENT

Rule 29(c) has been amended to remove the requirement that the court must act within seven days after a guilty verdict or after the court discharges the jury, if it sets another time for filing a motion for a judgment of acquittal. This amendment parallels similar changes to Rules 33 and 34. Further, a conforming amendment has been made to Rule 45(b)(2).

Currently, Rule 29(c) requires the defendant to move for a judgment of acquittal within seven days of the guilty verdict, or after the court discharges the jury, whichever occurs later, or some other time set by the court in an order issued within that same seven-day period. Similar provisions exist in Rules 33 and 34. Courts have held that the seven-day rule is jurisdictional. Thus, if a defendant files a request for an extension of time to file a motion for a judgment of acquittal within the seven-day period, the court must rule on that motion or request within the same seven-day period. If for some reason the court does not rule on the request within the seven days, it loses jurisdiction to act on the underlying substantive motion. *See, e.g., United States v. Smith*, 331 U.S. 469, 473–474 (1947) (rejecting argument that trial court had power to grant new trial on its own motion after expiration of time in Rule 33); *United States v. Marquez*, 291 F.3d 23, 27–28 (D.C. Cir. 2002) (citing language of Rule 33, and holding that ''district court forfeited the power to act when it failed to . . . fix a new time for filing a motion for a new trial within seven days of the verdict'').

Assuming that the current rule was intended to promote finality, there is nothing to prevent the court from granting a significant extension of time, so long as it does so within the seven-day period. Thus, the Committee believed that the rule should be amended to be consistent with all of the other timing requirements in the rules, which do not force the court to act on a motion to extend the time for filing within a particular period of time or lose jurisdiction to do so.

Accordingly, the amendment deletes the language regarding the court's acting within seven days to set the time for filing. Read in conjunction with the conforming amendment to Rule 45(b), the defendant is still required to file a timely motion for a judgment of acquittal under Rule 29 within the seven-day period specified. The defendant may, under Rule 45, seek an extension of time to file the underlying motion as long as the defendant does so within the seven-day period. But the court itself is not required to act on that motion within any particular time. Further, under Rule 45(b)(1)(B), if for some reason the defendant fails to file the underlying motion within the specified time, the court may nonetheless consider that untimely motion if the court determines that the failure to file it on time was the result of excusable neglect.

Changes Made After Publication and Comment. The Committee made no substantive changes to Rule 29 following publication.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

Former Rules 29, 33, and 34 adopted 7-day periods for their respective motions. This period has been expanded to 14 days. Experience has proved that in many cases it is not possible to prepare a satisfactory motion in 7 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. This led to frequent requests for continuances, and the filing of bare bones motions that required later supplementation. The 14-day period—including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a)—sets a more realistic time for the filing of these motions.

AMENDMENT BY PUBLIC LAW

1986—Subd. (d). Pub. L. 99–646 added subd. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–646, §54(b), Nov. 10, 1986, 100 Stat. 3607, provided that: ''The amendments made by this section [amending this rule] shall take effect 30 days after the date of the enactment of this Act [Nov. 10, 1986].''

Rule 29.1. Closing Argument

Closing arguments proceed in the following order:

(a) the government argues;

(b) the defense argues; and

(c) the government rebuts.

(Added Apr. 22, 1974, eff. Dec. 1, 1975; amended Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1974

This rule is designed to control the order of closing argument. It reflects the Advisory Committee's view that it is desirable to have a uniform federal practice. The rule is drafted in the view that fair and effective administration of justice is best served if the defendant knows the arguments actually made by the prosecution in behalf of conviction before the defendant is faced with the decision whether to reply and what to reply.

NOTES OF COMMITTEE ON THE JUDICIARY, HOUSE REPORT NO. 94–247; 1975 AMENDMENT

A. Amendments Proposed by the Supreme Court, Rule 29.1 is a new rule that was added to regulate closing arguments. It prescribes that the government shall make its closing argument and then the defendant shall make his. After the defendant has argued, the government is entitled to reply in rebuttal.

B. Committee Action. The Committee endorses and adopts this proposed rule in its entirety. The Committee believes that as the Advisory Committee Note has stated, fair and effective administration of justice is best served if the defendant knows the arguments actually made by the prosecution in behalf of conviction before the defendant is faced with the decision whether to reply and what to reply. Rule 29.1 does not specifically address itself to what happens if the prosecution waives its initial closing argument. The Committee is of the view that the prosecutor, when he waives his initial closing argument, also waives his rebuttal. [See the remarks of Senior United States Circuit Judge J. Edward Lumbard in Hearings II, at 207.]

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 29.1 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

EFFECTIVE DATE

This rule effective Dec. 1, 1975, see section 2 of Pub. L. 94–64, set out as a note under rule 4 of these rules.

Rule 30. Jury Instructions

(a) IN GENERAL. Any party may request in writing that the court instruct the jury on the law as specified in the request. The request must be made at the close of the evidence or at any earlier time that the court reasonably sets. When the request is made, the requesting party must furnish a copy to every other party.

(b) RULING ON A REQUEST. The court must inform the parties before closing arguments how it intends to rule on the requested instructions.

(c) TIME FOR GIVING INSTRUCTIONS. The court may instruct the jury before or after the arguments are completed, or at both times.

(d) OBJECTIONS TO INSTRUCTIONS. A party who objects to any portion of the instructions or to

a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b).

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

This rule corresponds to Rule 51 of the Federal Rules of Civil Procedure [28 U.S.C., Appendix], the second sentence alone being new. It seemed appropriate that on a point such as instructions to juries there should be no difference in procedure between civil and criminal cases.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

The amendment requires the court, on request of any party, to require the jury to withdraw in order to permit full argument of objections to instructions.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

In its current form, Rule 30 requires that the court instruct the jury after the arguments of counsel. In some districts, usually where the state practice is otherwise, the parties prefer to stipulate to instruction before closing arguments. The purpose of the amendment is to give the court discretion to instruct the jury before or after closing arguments, or at both times. The amendment will permit courts to continue instructing the jury after arguments as Rule 30 had previously required. It will also permit courts to instruct before arguments in order to give the parties an opportunity to argue to the jury in light of the exact language used by the court. See generally Raymond, *Merits and Demerits of the Missouri System in Instructing Juries*, 5 St. Louis U.L.J. 317 (1959). Finally, the amendment plainly indicates that the court may instruct both before and after arguments, which assures that the court retains power to remedy omissions in pre-argument instructions or to add instructions necessitated by the arguments.

NOTES OF ADVISORY COMMITTEE ON RULES—1988 AMENDMENT

The amendment is technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 30 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

Rule 30(a) reflects a change in the timing of requests for instructions. As currently written, the trial court may not direct the parties to file such requests before trial without violating Rules 30 and 57. While the amendment falls short of requiring all requests to be made before trial in all cases, the amendment permits a court to do so in a particular case or as a matter of local practice under local rules promulgated under Rule 57. The rule does not preclude the practice of permitting the parties to supplement their requested instructions during the trial.

Rule 30(d) clarifies what, if anything, counsel must do to preserve a claim of error regarding an instruction or failure to instruct. The rule retains the requirement of a contemporaneous and specific objection (before the jury retires to deliberate). As the Supreme Court recognized in *Jones v. United States*, 527 U.S. 373 (1999), read literally, current Rule 30 could be construed to bar any appellate review absent a timely objection when in fact a court may conduct a limited review under a plain error standard. The amendment does not address the issue of whether objections to the instructions must be renewed after the instructions are given, in order to preserve a claim of error. No change in practice is intended by the amendment.

Rule 31. Jury Verdict

(a) RETURN. The jury must return its verdict to a judge in open court. The verdict must be unanimous.

(b) PARTIAL VERDICTS, MISTRIAL, AND RETRIAL.

(1) *Multiple Defendants*. If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.

(2) *Multiple Counts*. If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.

(3) *Mistrial and Retrial*. If the jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts. The government may retry any defendant on any count on which the jury could not agree.

(c) LESSER OFFENSE OR ATTEMPT. A defendant may be found guilty of any of the following:

(1) an offense necessarily included in the offense charged;

(2) an attempt to commit the offense charged; or

(3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

(d) JURY POLL. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). This rule is a restatement of existing law and practice. It does not embody any regulation of sealed verdicts, it being contemplated that this matter would be governed by local practice in the various district courts. The rule does not affect the existing statutes relating to qualified verdicts in cases in which capital punishment may be imposed, 18 U.S.C. 408a [now 1201] (Kidnapped persons); sec. 412a [now 1992] (Wrecking trains); sec. 567 [now 1111] (Verdicts; qualified verdicts).

Note to Subdivision (b). This rule is a restatement of existing law, 18 U.S.C. [former] 566 (Verdicts; several joint defendants).

Note to Subdivision (c). This rule is a restatement of existing law, 18 U.S.C. [former] 565 (Verdicts; less offense than charged).

Note to Subdivision (d). This rule is a restatement of existing law and practice, *Mackett v. United States*, 90 F.2d 462, 465 (C.C.A. 7th); *Bruce v. Chestnut Farms Chevy Chase Dairy*, 126 F.2d 224, App.D.C.

NOTES OF ADVISORY COMMITTEE ON RULES—1972 AMENDMENT

Subdivision (e) is new. It is intended to provide procedural implementation of the recently enacted criminal