them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

EFFECTIVE DATE OF AMENDMENT PROPOSED NOVEMBER 20, 1972

Amendment of this rule embraced by the order entered by the Supreme Court of the United States on November 20, 1972, effective on the 180th day beginning after January 2, 1975, see section 3 of Pub. L. 93–595, Jan. 2, 1975, 88 Stat. 1959, set out as a note under section 2074 of Title 28, Judiciary and Judicial Procedure.

Rule 29. Motion for a Judgment of Acquittal

(a) BEFORE SUBMISSION TO THE JURY. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) RESERVING DECISION. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) AFTER JURY VERDICT OR DISCHARGE.

(1) *Time for a Motion.* A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

(2) *Ruling on the Motion.* If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) *No Prior Motion Required.* A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

(d) CONDITIONAL RULING ON A MOTION FOR A NEW TRIAL.

(1) *Motion for a New Trial.* If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

(2) *Finality.* The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

(3) *Appeal.*

(A) *Grant of a Motion for a New Trial.* If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

(B) *Denial of a Motion for a New Trial.* If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

(As amended Feb. 28, 1966, eff. July 1, 1966; Pub. L. 99–646, §54(a), Nov. 10, 1986, 100 Stat. 3607; Apr. 29, 1994, eff. Dec. 1, 1994; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). 1. The purpose of changing the name of a motion for a directed verdict to a motion for judgment of acquittal is to make the nomenclature accord with the realities. The change of nomenclature, however, does not modify the nature of the motion or enlarge the scope of matters that may be considered.

2. The second sentence is patterned on New York Code of Criminal Procedure, sec. 410.

3. The purpose of the third sentence is to remove the doubt existing in a few jurisdictions on the question whether the defendant is deemed to have rested his case if he moves for a directed verdict at the close of the prosecution's case. The purpose of the rule is expressly to preserve the right of the defendant to offer evidence in his own behalf, if such motion is denied. This is a restatement of the prevailing practice, and is also in accord with the practice prescribed for civil cases by Rule 50(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

Note to Subdivision (b). This rule is in substance similar to Rule 50(b) of the Federal Rules of Civil Procedure, 28 U.S.C., Appendix, and permits the court to render judgment for the defendant notwithstanding a verdict of guilty. Some Federal courts have recognized and approved the use of a judgment non obstante veredicto for the defendant in a criminal case, *Ex parte United States*, 101 F.2d 870 (C.C.A. 7th), affirmed by an equally divided court, *United States v. Stone*, 308 U.S. 519. The rule sanctions this practice.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Subdivision (a).—A minor change has been made in the caption.

Subdivision (b).—The last three sentences are deleted with the matters formerly covered by them transferred to the new subdivision (c).

Subdivision (c).—The new subdivision makes several changes in the former procedure. A motion for judgment of acquittal may be made after discharge of the jury whether or not a motion was made before submission to the jury. No legitimate interest of the government is intended to be prejudiced by permitting the court to direct an acquittal on a post-verdict motion. The constitutional requirement of a jury trial in criminal cases is primarily a right accorded to the defendant. Cf. *Adams v. United States, ex rel. McCann*, 317 U.S. 269 (1942); *Singer v. United States*, 380 U.S. 24 (1965); Note, 65 Yale L.J. 1032 (1956).

The time in which the motion may be made has been changed to 7 days in accordance with the amendment to Rule 45(a) which by excluding Saturday from the days to be counted when the period of time is less than 7 days would make 7 days the normal time for a motion required to be made in 5 days. Also the court is authorized to extend the time as is provided for motions for new trial (Rule 33) and in arrest of judgment (Rule 34).

References in the original rule to the motion for a new trial as an alternate to the motion for judgment of acquittal and to the power of the court to order a new trial have been eliminated. Motions for new trial are adequately covered in Rule 33. Also the original wording is subject to the interpretation that a motion for

judgment of acquittal gives the court power to order a new trial even though the defendant does not wish a new trial and has not asked for one.

NOTES OF ADVISORY COMMITTEE ON RULES—1994 AMENDMENT

The amendment permits the reservation of a motion for a judgment of acquittal made at the close of the government's case in the the same manner as the rule now permits for motions made at the close of all of the evidence. Although the rule as written did not permit the court to reserve such motions made at the end of the government's case, trial courts on occasion have nonetheless reserved ruling. *See, e.g., United States v. Bruno*, 873 F.2d 555 (2d Cir.), *cert. denied*, 110 S.Ct. 125 (1989); *United States v. Reifsteck*, 841 F.2d 701 (6th Cir. 1988). While the amendment will not affect a large number of cases, it should remove the dilemma in those close cases in which the court would feel pressured into making an immediate, and possibly erroneous, decision or violating the rule as presently written by reserving its ruling on the motion.

The amendment also permits the trial court to balance the defendant's interest in an immediate resolution of the motion against the interest of the government in proceeding to a verdict thereby preserving its right to appeal in the event a verdict of guilty is returned but is then set aside by the granting of a judgment of acquittal. Under the double jeopardy clause the government may appeal the granting of a motion for judgment of acquittal only if there would be no necessity for another trial, i.e., only where the jury has returned a verdict of guilty. *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977). Thus, the government's right to appeal a Rule 29 motion is only preserved where the ruling is reserved until after the verdict.

In addressing the issue of preserving the government's right to appeal and at the same time recognizing double jeopardy concerns, the Supreme Court observed:

> We should point out that it is entirely possible for a trial court to reconcile the public interest in the Government's right to appeal from an erroneous conclusion of law with the defendant's interest in avoiding a second prosecution. In *United States v. Wilson*, 420 U.S. 332 (1975), the court permitted the case to go to the jury, which returned a verdict of guilty, but it subsequently dismissed the indictment for preindictment delay on the basis of evidence adduced at trial. Most recently in *United States v. Ceccolini*, 435 U.S. 268 (1978), we described similar action with approval: 'The District Court had sensibly made its finding on the factual question of guilt or innocence, and then ruled on the motion to suppress; a reversal of these rulings would require no further proceeding in the District Court, but merely a reinstatement of the finding of guilt.' Id. at 271.

United States v. Scott, 437 U.S. 82, 100 n. 13 (1978). By analogy, reserving a ruling on a motion for judgment of acquittal strikes the same balance as that reflected by the Supreme Court in *Scott*.

Reserving a ruling on a motion made at the end of the government's case does pose problems, however, where the defense decides to present evidence and run the risk that such evidence will support the government's case. To address that problem, the amendment provides that the trial court is to consider only the evidence submitted at the time of the motion in making its ruling, whenever made. And in reviewing a trial court's ruling, the appellate court would be similarly limited.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 29 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.

In Rule 29(a), the first sentence abolishing ''directed verdicts'' has been deleted because it is unnecessary. The rule continues to recognize that a judge may sua sponte enter a judgment of acquittal.

Rule 29(c)(1) addresses the issue of the timing of a motion for judgment of acquittal. The amended rule now includes language that the motion must be made within 7 days after a guilty verdict or after the judge discharges the jury, whichever occurs later. That change reflects the fact that in a capital case or in a case involving criminal forfeiture, for example, the 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