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 forfeiture provision of the Organized Crime Control Act of 1970, Title IX, §1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, §408(a)(2).

The assumption of the draft is that the amount of the interest or property subject to criminal forfeiture is an element of the offense to be alleged and proved. See Advisory Committee Note to rule 7(c)(2).

Although special verdict provisions are rare in criminal cases, they are not unknown. See *United States v. Spock*, 416 F. 2d 165 (1st Cir. 1969), especially footnote 41 where authorities are listed.

COMMITTEE NOTES ON RULES—1998 AMENDMENT

The right of a party to have the jury polled is an ''undoubted right.'' *Humphries v. District of Columbia*, 174 U.S. 190, 194 (1899). Its purpose is to determine with certainty that ''each of the jurors approves of the verdict as returned; that no one has been coerced or induced to sign a verdict to which he does not fully assent.'' *Id.*

Currently, Rule 31(d) is silent on the precise method of polling the jury. Thus, a court in its discretion may conduct the poll collectively or individually. As one court has noted, although the prevailing view is that the method used is a matter within the discretion of the trial court, *United States v. Miller*, 59 F.3d 417, 420 (3d Cir. 1995) (citing cases), the preference, nonetheless of the appellate and trial courts, seems to favor individual polling. *Id.* (citing cases). That is the position taken in the American Bar Association Standards for Criminal Justice §15–4.5. Those sources favoring individual polling observe that conducting a poll of the jurors collectively saves little time and does not always adequately insure that an individual juror who has been forced to join the majority during deliberations will voice dissent from a collective response. On the other hand, an advantage to individual polling is the ''likelihood that it will discourage post-trial efforts to challenge the verdict on allegations of coercion on the part of some of the jurors.'' *Miller*, *Id.* at 420 (citing *Audette v. Isaksen Fishing Corp.*, 789 F.2d 956, 961, n. 6 (1st Cir. 1986)).

The Committee is persuaded by the authorities and practice that there are advantages of conducting an individual poll of the jurors. Thus, the rule requires that the jurors be polled individually when a polling is requested, or when polling is directed sua sponte by the court. The amendment, however, leaves to the court the discretion as to whether to conduct a separate poll for each defendant, each count of the indictment or complaint, or on other issues.

Changes Made to Rule 31 After Publication (''GAP Report''). The Committee changed the rule to require that any polling of the jury must be done before the jury is discharged and it incorporated suggested style changes submitted by the Style Subcommittee.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

The rule is amended to reflect the creation of new Rule 32.2, which now governs criminal forfeiture procedures.

GAP Report—Rule 31. The Committee made no changes to the published draft amendment to Rule 31.