COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20554

TO THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE:

I have the honor of submitting herewith our Committee's final draft of a proposed amendment of Rule 51.

This proposed amendment is the product of two years of study in which the Committee has had the benefit of the views of many judges, lawyers, and citizens, both by letter and at public hearings in Washington, D.C. and San Francisco, in response to a wide distribution of earlier drafts for criticism and comment.

The Committee proposes to revise Rule 51 to permit the court to instruct a jury either before or after argument by counsel, or both. Instruction before argument is the practice of some states and is favored by some courts as a means of providing a better framework for the arguments of counsel. The Committee believes that this amendment, if adopted, will serve to improve the administration of justice in our federal courts.

The Committee also recommends adoption of the gender-neutralizing amendments to the Civil Rules. These amendments have been reviewed to assure that no change in the meaning of the Civil Rules will result. Their purpose is merely to alter the style of the Rules to eliminate any implication that judges or lawyers are, or should be, male.

Respectfully submitted,

Frank M. Johnson, Jr.
Chairman, Civil Rules Committee

Rule 51. Instructions to Jury: Objection

1   At the close of the evidence or at such earlier time during

2   the trial as the court reasonably directs, any party may file written

3   requests that the court instruct the jury on the law as set forth in

4   the requests. The court shall inform counsel of its proposed action

5   upon the requests prior to their arguments to the jury~. but the

6   court shall instruct the jury after the arguments are completed. The

7   court, at its election, may instruct the jury before or after

8   argument, or both. No party may assign as error the giving or the

9   failure to give an instruction unless he objects thereto that party

10   objects thereto before the jury retires to consider its verdict,

11   stating distinctly the matter objected to which he objects and the

12   grounds of his the objections. Opportunity shall be given to make

13   the objection out of the hearing of the jury.

COMMITTEE NOTE

Although Rule 51 in its present form specifies that the court shall instruct the jury only after the arguments of the parties are completed, in some districts (typically those in states where the practice is otherwise) it is common for the parties to stipulate to instruction before the arguments. The purpose of the amendment is to give the court discretion

---

*New matter is underscored; matter to be omitted is lined through.

to instruct the jury either before or after argument. Thus, the rule as revised will permit resort to the long-standing federal practice or to an alternative procedure, which has been praised because it gives counsel the opportunity to explain the instructions, argue their application to the facts and thereby give the jury the maximum assistance in determining the issues and arriving at a good verdict on the law and the evidence. As an ancillary benefit, this approach aids counsel by supplying a natural outline so that arguments may be directed to the essential fact issues which the jury must decide. See generally Raymond, Merits and Demerits of the Missouri System of Instructing Juries, 5 St. Louis U. L. J. 317 (1959). Moreover, if the court instructs before an argument, counsel then know the precise words the court has chosen and need not speculate as to the words the court will later use in its instructions. Finally, by instructing ahead of argument the court has the attention of the jurors when they are fresh and can give their full attention to the court's instructions. It is more difficult to hold the attention of jurors after lengthy arguments.