RULE 51. ARGUMENT OF COUNSEL; INSTRUCTIONS TO JURY

(a) Time for Argument. Counsel for each party shall be allowed such time for argument as the court shall order. Counsel for the moving party shall argue first. Opposing counsel shall then argue. Counsel for the moving party shall be allowed time for rebuttal. When multiple claims or multiple parties are involved in an action, the order and division of the arguments shall be subject to the direction of the court.

(b) Instructions to Jury; Objections. In an action tried to a jury, at the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(c) Summing Up and Comment by Court. In an action tried to a jury, at the close of the evidence and arguments of counsel, the court may fairly and impartially sum up the evidence, but shall not during the trial, including the charge, express an opinion upon issues of fact. Upon timely objection by an aggrieved party such an expression of opinion is sufficient cause for a new trial.

Advisory Committee's Notes
1992

Rule 51(b) is amended to provide that the court has the option of instructing the jury before or after closing argument, or both before and after. The amendment adopts a 1987 amendment of Federal Rule 51 intended to

> permit resort to the long-standing federal practice [of instructing after argument] 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 . . . . 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.

Fed. R. Civ. P. 51(b) advisory committee's note to 1987 amend.

Advisory Committee's Notes
1988

Rule 51(a) is amended at the request of the Conference of Superior Court Justices by deleting paragraph (1), which gave each party in a Superior Court civil action one hour for closing argument. The effect of the amendment is to make former paragraph (2), setting forth the District Court practice under which the court has discretion as to the time for argument, applicable in both courts. The purpose is to expedite Superior Court trials by allowing the court to curtail argument in cases where the issues are clear.

Advisory Committee's Note
February 2, 1976

Rule 51 is amended by adding a new subdivision (c) concerning summing up and comment by court. It reflects existing Maine law in forbidding the court from expressing an opinion upon issues of fact. 14 M.R.S.A. § 1105. The reason for its inclusion is to make it clear that the rule set forth in the statute is unchanged. The Federal Rule as proposed by the Supreme Court contained a provision allowing comment on the weight of the evidence in accordance with the existing federal practice. Although this rule was deleted by Congress, it seems desirable to avoid the possibility of confusion, especially on the part of new members of the Bar, by putting it in the rules. Since it is not really a rule of evidence, the Evidence Committee recommended that it be included as an amendment to the Maine Rules of Civil Procedure.

Reporter's Notes
December 1, 1959

Rule 51(a) is not covered by the Federal Rules. It is taken from Revised Rules of Court 37.

Rule 51(b) is the same as Federal Rule 51. It contains some departures from the generally prevailing practice. The court must inform counsel of its proposed action on the requests before argument, so that the argument may be geared to the court's indicated views of the law. This makes for more effective argument as well as saving counsel the embarrassment of making an argument on assumptions as to the law which the court immediately tells the jury are erroneous.

As already stated in connection with Rule 46, the magic word "exception" is not necessary to save rights as to alleged errors in the charge. It is necessary, however, to make clear one's objections and the grounds for them before the jury retires. On appeal a party cannot rely upon an error not specifically called to the trial court's attention so as to give a fair opportunity to correct it.