

# Fed. R. Crim. P. 52

## Section 52 - Harmless and Plain Error

**(a) HARMLESS ERROR.** Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

**(b) PLAIN ERROR.** A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

*18 APPENDIX U.S.C. § 52*

*As amended 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, 28 U.S.C. [former] 391 (second sentence): "On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties"; 18 U.S.C. [former] 556; "No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, \* \* \*." A similar provision is found in Rule 61 of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. Note to Subdivision (b). This rule is a restatement of existing law, *Wiborg v. United States*, 163 U.S. 632, 658; *Hemphill v. United States*, 112 F.2d 505 (C.C.A. 9th), reversed 312 U.S. 657. Rule 27 of the Rules of the Supreme Court provides that errors not specified will be disregarded, "save as the court, at its option, may notice a plain error not assigned or specified." Similar provisions are found in the rules of several circuit courts of appeals.*

**COMMITTEE NOTES ON RULES-2002 AMENDMENT** *The language of Rule 52 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. Rule 52(b) has been amended by deleting the words "or defect" after the words "plain error". The change is intended to remove any ambiguity in the rule. As noted by the Supreme Court, the language "plain error or defect" was misleading to the extent that it might be read in the disjunctive. See *United States v. Olano*, 507 U.S. 725, 732 (1993) (incorrect to read Rule 52(b) in the disjunctive); *United States v. Young*, 470 U.S. 1, 15 n. 12 (1985) (use of disjunctive in Rule 52(b) is misleading).*