4.03. Completing and Explaining Writing, Recording, Conversation or Transaction [1]

When part of a writing, conversation, recorded statement or testimony, or evidence of part of a transaction is admitted, any other part of that writing, conversation, recorded statement or testimony, or evidence of any other part of the transaction, may be admitted when necessary to complete, explain, or clarify the previously admitted part. The timing of the admission of such additional parts is subject to the court's discretion.

Note

This rule is derived from long-standing Court of Appeals precedent which recognizes that when evidence has been admitted, an adverse party may offer evidence necessary to complete, explain, or clarify the evidence that has been introduced. (*See e.g. Rouse v Whited*, 25 NY 170, 174-175 [1862] [" 'Where a statement, forming part of a conversation, is given in evidence, whatever was said by the same person in the same conversation, that would in any way qualify or explain that statement, is also admissible' " (citing *Prince v Samo*, 7 Adol & Ellis 627 [1838]; 1 Phillips' Evidence 416 [4th Am ed, from 10th Eng ed])]; *Grattan v Metropolitan Life Ins. Co.*, 92 NY 274, 284 [1883] ["The rule appears to be firmly settled, both as to a conversation or writing, that the introduction of a part renders admissible so much of the remainder as tends to explain or qualify what has been received and that is to be deemed a qualification which rebuts and destroys the inference to be derived from or the use to be made of the portion put in evidence"]; *Nay v Curley*, 113 NY 575, 578-579 [1889] ["where a party calls a witness and examines him as to a particular part of a communication or transaction, the other party may call out the whole of the communication or transaction bearing upon or tending to explain or qualify the particular part to which the examination of the other party was directed"].) The rule is founded upon "the plainest principles of equity." (*Rouse*, 25 NY at 177 ["All statements made in a conversation, in relation to the same subject or matter, are to be supposed to have been intended to explain or qualify each other, and therefore the plainest principles of equity require, that if one of the statements is to be used against the party, all the other statements tending to explain it or to qualify this use, should be shown and considered in connection with it"].)

The rule as stated reflects the limits on "completeness" imposed by the Court of Appeals, namely, "(*a*) No utterance irrelevant to the issue is receivable; (*b*) no more of the remainder of the utterance than concerns the same subject and is explanatory of the first part is receivable; (*c*) the remainder thus received merely

aids in the construction of the utterance as a whole, and is not in itself testimony." (*People v Schlessel*, 196 NY 476, 481 [1909].)

Under the rule, when part of a party's own statement is admitted against that party as an admission against the party's interest, the party may offer into evidence any part of the statement which is exculpatory. (*See e.g. People v Dlugash*, 41 NY2d 725, 736 [1977]; *People v Gallo*, 12 NY2d 12, 15-16 [1962]; *Grattan*, 92 NY at 284-286].) Similarly, when a witness has been impeached by a statement the witness previously made, other parts of the statement may be admitted to clarify or explain the statement. (*See e.g. People v Ochoa*, 14 NY3d 180, 187 [2010]; *Feblot v New York Times Co.*, 32 NY2d 486, 496-498 [1973]; *see also People v Ramos*, 70 NY2d 639, 640-641 [1987] [Court emphasized that parts of the statement used for impeachment purposes that concerned unrelated matters were not admissible].) This rule of "completeness" does not in any way modify rule 8.05 (Admission by Adopted Statement) as it relates to a defendant's silence.

The rule also addresses a timing issue; that is, when the completion evidence may be admitted. The rule commits the timing determination to the discretion of the court. (*See e.g. People v Torre*, 42 NY2d 1036, 1037 [1977] [where part is admitted during cross-examination, other parts may be admitted on re-direct]; *Gallo*, 12 NY2d at 15-16 [where part of a written statement was read into the record on the People's rebuttal, other parts which were exculpatory may be admitted at that time].)

While other jurisdictions' codification of the completeness rule permits the use of other writings or recordings for explanatory and clarification purposes of the admitted writing or recording (*see e.g.* Fed Rules Evid rule 106), the Court of Appeals has not addressed the use of other writings or recordings.

New York has expressly incorporated the rule of completeness in CPLR 3117 (b) ("If only part of a deposition is read at the trial by a party, any other party may read any other part of the deposition which ought in fairness to be considered in connection with the part read"), and in CPLR 4517 (b) ("If only part of the prior trial testimony of a witness is read at the trial by a party, any other party may read any other part of the prior testimony of that witness that ought in fairness to be considered in connection with the part read").

In *Hemphill v New York* (595 US —, —, — S Ct —, —, 2022 WL 174223, *8 [2022]), the Court barred the introduction in evidence of "unconfronted testimonial hearsay" under the "opening the door to evidence" principle (*see* Guide to NY Evid rule 4.08). In doing so, the Court opined that "the Court does not decide today the validity of the common-law rule of completeness as applied to testimonial hearsay. Under that rule, a party against whom a part of an utterance has been put in, may in his turn complement it by putting in the remainder. The parties agree that the rule of completeness does not apply to the facts of this case, as Morris' plea allocution was not part of any statement that Hemphill

introduced. Whether and under what circumstances that rule might allow the admission of testimonial hearsay against a criminal defendant presents different issues that are not before this Court" (595 US —, —, — S Ct —, —, 2022 WL 174223, *9 [internal quotation marks and citations omitted]).

[1] In January 2022, the Note was amended to include the last paragraph's discussion of *Hemphill.*