

4.03 Completing and Explaining Writing, Recording, Conversation or Transaction¹

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] [“(W)here 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], citing 3 Wigmore on Evidence § 2113.)

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; *cf. People v Hubrecht*, 2 AD3d 289, 289-290 [1st Dept 2003] [Where the defendant made three statements, two of which were exculpatory and the People introduced the one statement that was inculpatory, the exculpatory statements were “not admissible under the rule of completeness because the three statements were made to different persons in different settings and could not be viewed as a single continuous narrative or process of interrogation” (citation omitted)].)

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 Guide to New York Evidence 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 redirect]; *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 —, —, 142 S Ct 681, 692 [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 at —, 142 S Ct at 693 [internal quotation marks and citations omitted]).

To date (May 2023), it does not appear that the Court of Appeals has precluded application of the completeness rule because the completed portion constituted hearsay; however, as noted above, *Schlessel* specified that one of the limitations on the completeness rule is that the completed portion is introduced as an aid in the construction of the utterance, “and is not in itself testimony.” (*Schlessel*, 196 NY at 481.) In *Thrower v Smith* (62 AD2d 907, 912 [2d Dept 1978], *affd* 46 NY2d 835 [1978]), the Appellate Division noted that a “whole statement” in a document had to be admitted “in order to allow the party to explain the admission [in the portion introduced] by its context”; and in that situation, it was “not admissible for the truth of its contents.” Statements admitted “for purposes other than establishing the truth of the matter asserted” do not constitute testimonial evidence (*Crawford v Washington*, 541 US 36, 59 n 9 [2004] [last sentence]; *People v Garcia*, 25 NY3d 77, 86 [2015]; *People v Reynoso*, 2 NY3d 820, 821 [2004]).

Unless barred, however, as the Advisory Committee on the Federal Rules of Evidence has explained, the completeness rule may also result in some statements being admitted for their truth:

“[If the completing statement] is admitted to provide context for the initially proffered statement . . . , the completing statement is properly admitted over a hearsay objection because it is offered for a non-hearsay purpose. An example would be a completing statement that corrects a misimpression about what a party heard before undertaking a disputed action, where the party’s state of mind is relevant. The completing statement in this example is admitted only to show what the party actually heard, regardless of the underlying truth of the completing statement. But in some cases, a completing statement places an initially proffered statement in context only if the completing statement is true. An example is the defendant in a murder case who admits that he owned the murder

weapon, but also simultaneously states that he sold it months before the murder. The statement about selling the weapon corrects a misimpression only if it is offered for its truth. In such cases, Rule 106 operates to allow the completing statement to be offered as proof of a fact” (Committee Note, Proposed Fed Rules Evid rule 106 [Oct. 19, 2022], available at https://www.uscourts.gov/sites/default/files/2022_scotus_package_0.pdf [proposed amendment would allow evidence of completeness to be admitted over a hearsay objection]).

¹ In January 2022, the Note was amended to include the paragraph describing the *Hemphill* decision, and in May 2023, further comment on the issue raised in *Hemphill* was added.