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THIS CASEBOOK contains a selection of 34 U. S. Court of Appeals decisions that analyze and interpret the rule against hearsay and its exceptions. The selection of decisions spans from 2012 to the date of publication.

Generally, a statement made by a person while not testifying at the current trial, offered by that person to prove the truth of the matter asserted in his statement, is hearsay. See Fed.R.Evid. 801(a)(c). Hearsay generally is inadmissible if it does not fall within an exception provided by Rule 803 or 804. See Fed.R.Evid. 802. Rule 803 provides an exception for "[a] statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed. ..." Fed.R.Evid. 803(3) (emphasis added). *US v. Gupta*, 747 F. 3d 111 (2nd Cir. 2014)

However, the fact that a statement falls within an exception to the hearsay rule does not mean that the statement is not to be classified as hearsay; nor does it mean that the statement is automatically admissible. It means simply that the statement — assuming that the criteria specified in the exception are met — is "not excluded by the rule against hearsay," Fed.R.Evid. 803, 804(b) (emphasis added); see, e.g., *Li v. Canarozzi*, 142 F.3d 83, 88 (2d Cir.1998). "The court retains its normal discretion to exclude the evidence on other grounds such as lack of relevance, see Fed.R.Evid. 402, improper purpose, see, e.g., Fed. R.Evid. 404, or undue prejudice, see Fed. R.Evid. 403." *Li v. Canarozzi*, 142 F.3d at 88; cf. *United States v. Detrich*, 865 F.2d 17, 21 (2d Cir.1988) (for admissibility, it is not sufficient that a proffered statement is not hearsay: "To be admissible it must also be relevant."). *US v. Gupta*, *ibid*.

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