



**Evidence R 801(d)**  
**Peter Lushing** to: Rules\_Support

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To the Committee:

I write to propose an amendment to Fed. R.Evid. 801(d), statements that are not hearsay. I suggest subdivision be reworded to be an exception to the hearsay rule.

I taught Evidence for over 35 years and this rule caused the one moment of dread I experienced each semester. First of all, no judge would ever care whether there is no hearsay bar to evidence either because, (1) it is not hearsay, or (2) because it is an exception to the hearsay rule. But given that, why bother students with the distinction between "not-hearsay" and "exception to hearsay"? Outside of the bar examination, I doubt whether anybody cares about this useless distinction. I once research it and could find nothing in support, but only criticism. And if it is strictly history-based, I say "who cares?".

The rule should be ported over to the exceptions, noting of course the preconditions as well as the substantive provisions. This will serve students, bar exam test-takers, and I suspect more than a few Evidence professors.

Thank you for your consideration. I wish I had written this 35 years ago.

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