

EXCITED UTTERANCE AND PRESENT SENSE IMPRESSION

EXCEPTIONS TO THE BAR TO HEARSAY

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1. **FEDERAL COURT** ~ Governed by RULE 803
2. **NEW YORK STATE**

Excited Utterance (Spontaneous Declaration):

“An excited utterance has been defined as a spontaneous statement, made contemporaneously or immediately after a startling event, which asserts the observations of that event by the declarant. The admissibility of any excited utterance is entrusted in the first instance to the trial court. . . The deciding factor is whether the surrounding circumstances reasonably justify the conclusion that the remarks were not made under the impetus of studied reflection.” Statements that are not the “product of studied reflection” owing to stress or the influence of excitement from an external event may be admitted under this exception.

Present Sense Impression

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition as it was unfolding, or immediately thereafter is admissible, irrespective of whether the declarant is available to testify, provided that there is evidence, independent of the statement, that supports: (A) the accuracy of the contents of the statement and (b) that the statement was made contemporaneously with the event or immediately thereafter.

3. **New York Cases of Note:**

People v. Brown, 80 NY2d 729 (1993)

People v. Cantave, 21 NY3d 374 (2013)

People v. Buie, 86 NY2d 501 (1995)

People v. Johnson, 1 NY3d 302 (2003)

People v. Vasquez, 88 NY2d 561 (1996)

People v. Melendez, 296 AD2d 424, *Lv. Denied* 98 NY2d 770 (2002)