

HEARSAY UPDATE: PRACTICING IN A WIRELESS WORLD

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Federal Rule 801

(c) Hearsay. "Hearsay" means a statement that:

- (1)** the declarant does not make while testifying at the current trial or hearing; and
- (2)** a party offers in evidence to prove the truth of the matter asserted in the statement.

Texas Rule 801

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- (1) any matter a declarant explicitly asserts; and
- (2) any matter implied by a statement, if the probative value of the statement as offered flows from the declarant's belief about the matter.

Mosely v. State, 141 S.W.3d 816 (Tex.App.—Texarkana 2004, pet. ref'd)

“Well, I can’t watch them all the time.” → Declarant believed H sexually assaulted daughter → H sexually assaulted daughter

Federal rule: not offered for truth of matter asserted

Texas rule: offered for truth of matter asserted

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- (a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

Texas Rule 801

- (a) **Statement.** “Statement” means a person’s oral or written verbal expression, or nonverbal conduct that a person intended as a substitute for verbal expression.

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