

SENATE JUDICIARY COMMITTEE

MINUTES

February 11, 1971

Chairman Monroe called the meeting to order at 9:00 A.M.

Committee members present: Chairman Monroe
 Senator Close
 Senator Dodge
 Senator Foley
 Senator Swobe
 Senator Wilson
 Senator Young

Others present: Frank Daykin

SB-12 Codifies law of evidence.

Mr. Frank Daykin summarized the Evidence Code as presented in Bulletin No. 90 prepared by Legislative Commission of the Legislative Counsel Bureau, (attachment 1).

Senator Dodge: We will be having some further discussion with Mr. Vargas regarding the dead man's rule. Could you give us the rationale of the committee on omitting the Dead Man's Rule since you cannot be here for that discussion. First, what does the dead man's statute mean.

Mr. Frank Daykin: The Dead man's statute says that if one party to a transaction is dead, the other party shall not testify with respect to it. If the adverse party to the legal action is the representative of the deceased person, then the witness shall not be allowed to testify to his transactions with the deceased unless the deceased person was represented by an agent, is living and testifies, or persons other than the party to the transaction claiming to have been present testify. So what it amounts to is the exclusion of the evidence of a living and present witness because either the other party to the transaction about which the witness is testifying, or the other party to the lawsuit, is dead. It is a survival in limited form of the old disqualification of a party from testifying in his own lawsuit at all. That rule has been wittled away until today this is the only survival of it in Nevada law. In many states, it has no survival at all. The draftsman of the federal rules refer to the law as existing in several states, and categorize to it as archaic.

The real question is this, shall you exclude the testimony absolutely so the jury never hears it, or shall you allow the jury to hear it and make their own decision whether to believe it or not. To me it seems preferable to let the testimony in and then let the jury decide whether or not they believe it, rather than make it a legislative decision before the fact that in every such case the witness will lie.

The committee expressed their thanks to Frank Daykin for his presentation and the hearing adjourned.

Respectfully submitted,



Eileen Wynkoop, Secretary

Approved: _____

BULLETIN No. 90 WAS SUBMITTED AS ATTACHMENT 1 AND CAN BE FOUND IN THE RESEARCH LIBRARY OR AT THE WEB ADDRESS BELOW

**A PROPOSED EVIDENCE CODE FOR THE STATE OF NEVADA:
LCB BULLETIN No. 90**

[HTTP://WWW.LEG.STATE.NV.US/LCB/RESEARCH/1971INTERIMREPORTS/BULLETIN090.PDF](http://www.leg.state.nv.us/lcb/research/1971interimreports/bulletin090.pdf)