

DYING DECLARATION ¹

As you are aware, there was testimony that the deceased, (*specify name*), made a statement when he/she was under a sense of impending death, with no hope of recovery.

While the law permits that testimony, experience shows that such testimony is not always true and that dying persons have made self-serving declarations, such as false accusations in order to destroy their enemies, and false excuses in order to save their friends.

Thus, our law instructs that such testimony, as with all testimony, be carefully evaluated, and further that such testimony not be accorded the same value and weight as the testimony of a witness, given under oath, in open court, and subject to cross-examination.

¹ *People v Mleczko*, 298 NY 153, 161, 81 NE2d 65, 68–69 [1948] (“Made without the test of cross-examination, ‘with no fear of prosecution for perjury’ and with only the uncertain promptings of ‘fear of punishment after death’ to assure truthfulness, and at a time ‘when the body is in pain, the mind agitated, and the memory shaken by the certainty of impending death,’ dying declarations have been characterized as ‘dangerous.’ As this court has observed, ‘Experience shows that dying declarations are not always true’ and that ‘dying persons have made self-serving declarations, such as false accusations, in order to destroy their enemies, and false excuses, in order to save their friends.’”)