

in arguing the relative value of the expert testimony delivered by the physicians called for the State and defense, to intimate that the defense, in calling its physicians, had been influenced by the the fact that certain physicians called were the family physicians of some of the jurors. In discussing it, the solicitor said: "It would not surprise me if these able, astute gentlemen, vigilant as they have shown themselves to be, did not go out and get some doctors who have been the family physicians, who are well known to some of the members of this jury, for the effect it might have upon you; and I am going to show that there must have been something besides the training of these men, and I am going to trace them with our doctors. I can't see any other reason in God's world for getting out and getting these practitioners, who have never had any special training on stomach analysis, and who have not had any training on the analysis of tissues--like a pathologist has had, except upon that theory."

Objection was made to this argument of the Solicitor, at the time it was being made, upon the ground that there was no evidence to support any such argument; that it was illegal, prejudicial, and highly improper.

73. Because the juror A. H. Henslee was not a fair and impartial juror, but was prejudiced against the defendant when he was selected as a juror, had previously thereto formed and expressed a decided opinion as to the guilt of the defendant and, when selected as a juror, was biased against the prisoner in favor of the State. Affidavits are hereto attached and marked Exhibits A, B, C, D, E, I, BB. CC. DD. EE and J. J. KK. LL. MM. NN. which are hereby made a part of this motion for new trial. Affidavits sustaining the character of the witnesses against said Henslee are hereto attached, marked Exhibits FF, GG, HH and II

The conduct of this juror, as shown by the affidavits and other evidence, the condition, conduct, and state of mind of this juror is conclusive that the defendant did not have a fair and impartial jury trial, as provided by the laws and the constitution of this State, and a new trial should be granted. Upon failure to do so, the Court will commit error.