

and decisive ruling, upon the objection of the defendant, and in allowing the Solicitor General to proceed with said claim that Frank had the key in his pocket, as a deduction, the same being totally unwarranted; and for said illegal and erroneous actions and failure to act, by the Court, and for said illegal and improper argument, a new trial should be granted.

101. Movant says that a new trial should be granted, because of the following:

The Solicitor General, in his concluding argument, in referring to the testimony of the physicians introduced by the defendant, spoke as follows:

" It wouldn't surprise me if these able, astute gentlemen, vigilant as they have shown themselves to be, didn't go out and get some doctors who have been the family physicians and who are well known to some of the members of this jury, for the effect it might have upon you".

Whereupon the following colloquy occurred.

" Mr. Arnold, There's not a word of evidence as to that, that's a grossly improper argument, and I move that that be withdrawn from the jury".

"Mr. Dorsey: I don't state it as a fact, but I am suggesting it."

"Mr. Arnold, He has got no right to deduct it or suggest it, I just want Your Honor to reprove it, --reprimand him and withdraw it from the jury, I just make the motion, and Your Honor can do as you please".

Mr. Dorsey ( resuming); "I am going to show that there must have been something besides the training of these men, and I'm going to contrast them with our doctors."

" Mr. Arnold: I move to exclude that as grossly improper. He says he's arguing that some physician was brought here because he was the physician of some member of the jury, it's grossly unfair and it's grossly improper and insulting even, to the jury".

Mr. Dorsey: I say it's eminently proper and absolutely a legitimate argument".

"Mr. Arnold: I just record my objection, and if your honor let's it stay in, you can do it."

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" Mr. Dorsey: Yes sir: That wouldn't scare me, Your Honor."