

VOL.

Before Thayer, J.

COMMONWEALTH

v.

SACCO and VANZETTI.

INDEX Court House, Boston, Feb. 18, 1924.

	Direct	Cross	Re-Direct	Re-Cross
In re. examination by Capt. Van Amburgh of barrel of Sacco pistol.				

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COMMONWEALTH OF MASSACHUSETTS.

Norfolk, ss.

Superior Court,
Criminal Session.

Thayer, J.

COMMONWEALTH

v.

SACCO and VANZETTI.

Lobby of Court House, Boston, Mass.,
Feb. 18, 1924.

Capt. VAN AMBURGH. If your Honor please, I would like to handle the plug gauge, which is the one I submitted, No. 3045.

The COURT. Here you are, Captain (handing plug gauge to Capt. Van Amburgh).

Capt. VAN AMBURGH. May I have,-- Mr. Hamilton, have you a scale, Mr. Hamilton? I just want an ordinary scale. I did not bring an ordinary scale with me, just an ordinary machinist's scale. I want to get a closer approximation of the gauge at the entrance of the barrel, after which I will be all finished.

Mr. HAMILTON. There is a Starrat, the one I used down at Dedham (handing gauge to Capt. Van Amburgh.)

The COURT. Before you do that, I have to put these things all away.

Capt. VAN AMBURGH. I will be finished in two or three minutes or five minute with the one point I wish to look up. Is there any desire on the part of your Honor to see me do the gauging?

The COURT. What say?

Capt. VAN AMBURGH. Is there any desire on the part of your Honor to see me do the gauging?

The COURT. Yes. Then that is why I want to go to lunch.

Capt. Van AMBURGH. Well, here goes. That is my gauging at the muzzle.

Mr. HAMILTON. Let me see how far you pushed that in when you take it out.

Capt. VAN AMBURGH. It will do no harm to make a pencil line on there, just to get rough measurements. For instance, calling it tenths of an inch we will satisfy everyone, two tenths, three tenths. The pencil isn't sharp enough.

The COURT. That is better.

Capt. VAN AMBURGH. There, the line that I am making is a 32nd of an inch on the outside, so subtracting a 32nd of an inch, well, now that is a free gauging. That is, there is no crowding to that point. See, it is -- there is a half inch. What is this graduation?

Mr. HAMILTON. One-hundredths on one side and fiftieths on the other, on the other is one-hundredths. You are using fiftieths. The other side is one-hundredths.

Capt. VAN AMBURGH. I prefer to use one-hundredths. Four tenths of an inch.

Mr. WILLIAMS. That is, Captain, you inserted that plug gauge four tenths of an inch into the muzzle of the barrel which you are now examining?

Capt. VAN AMBURGH. The plug gauge entered freely, with a gauge feel four tenths of an inch. To assist in visualizing that, five tenths of an inch is half of an inch. We know what half an inch is, so four tenths of ---

(Mr. Hamilton makes examination under glass.)

The COURT. You can take it, Mr. Hamilton, if you want to.

Mr. HAMILTON. I want to make a record of what I saw.

Mr. VAN AMBURGH. Inserting the muzzle of the same plug gauge in the breech end of the barrel there is complete freedom, indicating that the bore diameter at that end is larger possibly than at the muzzle end.

Mr. WILLIAMS. Your first insertion was at the muzzle end?

Capt. VAN AMBURGH. The first insertion was from the muzzle end.

The COURT. Would you rather go ahead now or go to lunch?

Capt. Van AMBURGH. I am prepared to make a statement, but I have my mind made up and all. I am ready for a decision, and I can give it after lunch as well as now. Probably I could dictate it a little better.

The COURT. It is five minutes past now.

Capt. VAN AMBURGH. If the Court should prefer, I would just as soon stay. I have my mind all made up. I have my decision ready to go.

Mr. WILLIAMS. If the Judge will put that barrel and that plug gauge back in their proper receptacles.

Mr. HAMILTON. Before you dismount that, I want to examine it.

The COURT. Which one is this (indicating)?

Capt. VAN AMBURGH. That is the barrel I have been examining, the only one, the barrel in question.

The COURT. Now, come here, gentlemen. That one there belongs in it here, doesn't it? You look at it and tell me if I have got them right.

Mr. HAMILTON. It is the one that is in there. It isn't the one that belongs with that.

The COURT. No, no.

Mr. HAMILTON. That is one that is in there.

The COURT. That is the way the pistol came to me.

Mr. HAMILTON. Yes, sir. For the time being that is where it belongs.

The COURT. All right, sir.

Mr. HAMILTON. Before you dismount that, I want to take ---

Capt. VAN AMBURGH. I will leave it there for lunch, Mr. Hamilton. I won't disturb it or touch it any moment from this time on.

The COURT. But the reason, Mr. Williams, why I do it now is because I have to pack these things all away.

Mr. HAMILTON. I can do what I want while you are packing. As soon as you are ready to go I will go out of the way.

The COURT. Where is the paper? Did they come in a paper?

Mr. WILLIAMS. Yes.

Mr. HAMILTON. It is right in the paper basket.

The COURT. Somebody threw it down in here. Did you ring?

Mr. WILLIAMS. I did, sir.

The COURT. (To the messenger.) James, I got a job here for you (handing package to the messenger.)

The MESSENGER. In the safe down there?

The COURT. Yes, right in the safe. That I will mark "Judge

Thayer" on the outside.

The MESSENGER. All right, sir.

The COURT. Now, I want you to see I got these other things. Well, you can see, here are these parts. Those are all the parts there are, 2, 4, 5.

Capt. VAN AMBURGH. I am not familiar with that layout. Those are the Hamilton pistols, so-called.

The COURT. No, well, I have something here.

Mr. MOORE. Here is a wrapper.

The COURT. No, I am not going to give them the benefit of that wrapper. I have something here, James.

Capt. VAN AMRUGH. There is a little wire clip that may be part of the equipment of your binding.

The COURT. What did I do with that thing? Here it is right in front of me looking at me. I will take care of these. I will put these under my lock and safe. Those (indicating) are to go in the safe.

(Noon recess.)

AFTERNOON SESSION.

The COURT. Now, you may continue with your experiment.

Capt. VAN AMBURGH. There is one thing I did not do. It occurs to me now it would be well to take it up. That is to examine Mr. Hamilton's taper plug gauge.

The COURT. That is it, hand it to him, Mr. Hamilton, please.

(Mr. Hamilton hands gauge to Capt. Van Amburgh.)

Mr. WILLIAMS. Do you want the barrel, Captain, at the same time?

Capt. VAN AMBURGH. I would like the barrel a little later, yes.

The COURT. Which one, the Sacco?

Capt. Van AMBURGH. The barrel I examined, the alleged Sacco barrel, the one in the box.

The COURT. Hand that over to the Captain. That is the one you wanted, isn't it?

Capt. Van AMBURGH. Yes, that is the one I examined this morning.

The COURT. Would you like, Mr. Moore, on the record a statement that I made with reference to when Mr. Worthington brought the Sacco pistol into my room? It was then assembled, and that I went with him up to Mr. Williams' office, and Mr. Williams dis-assembled it and Mr. Worthington returned with me to the -- to my office. He returned with me to my office, where I made certain examinations with the Capt. Van Amburgh plug gauge.

Mr. MOORE. This statement at this time that your Honor has reference to is subsequent to the conclusion of the hearings on the 5th motion November 12th, subsequent to that date?

The COURT. Yes, it was a few days after Capt. Van Amburgh filed his affidavit with the plug gauge. Mr. Worthington brought in the affidavit with the gauge, and I think either he had the Sacco pistol in an envelope, but it was assembled. I did not know how to dis-assemble it, and I asked him to go with me up to Mr. Williams' office, and he went, and he was there with me while Mr. Williams dis-assembled it, and we both came back to my office. He remained there a little while.

Mr. MOORE. You were present at the time Mr. Williams dis-assembled it?

The COURT. Yes. Mr. Worthington was present, too. I am sure he will remember that. There was a certain remark made which he can't fail to recall it. I insisted on his going with me. If you want that in the record?

Mr. MOORE. How is that, your Honor?

The COURT. If you would like to have that in the record?

Mr. MOORE. I assume Mr. McKenney is taking it all.

The COURT. Let me ask you, Mr. Williams, is that as you understand it?

Mr. WILLIAMS. I remember the incident. I could not tell you when it took place.

The COURT. You remember I came up with Mr. Worthington?

Mr. WILLIAMS. I do, sir.

The COURT. And in the presence of both of us, you dis-assembled the Sacco pistol.

Mr. WILLIAMS. Yes, you apparently could not get the gun apart, and I took it apart for you at your request.

The COURT. And Mr. Worthington and I went out together.

Mr. WILLIAMS. Yes.

The COURT. I think you are entitled to know how that got

dis-assembled. It is only fair to you to account for that.

Mr. MOORE. Well, I assume that also that at that time neither your Honor nor Mr. Williams nor Mr. Worthington, nothing occurred at that time to in any wise challenge your attention to the ---

The COURT. Not a thing, not a thing, excepting I think I made a remark that when it came down, when I, when I put the -- I won't say as I did. I had a feeling, anyhow inside that when I put that into the ---

Mr. WILLIAMS. The plug gauge, you mean?

The COURT. Yes. Where is the blame thing now?

Mr. WILLIAMS. You have it in your right hand.

The COURT. That is the plug gauge.

Mr. WILLIAMS. What, the barrel?

Mr. HAMILTON. The Captain has it here.

The COURT. No, that one, this one.

Mr. WILLIAMS. No, no, it isn't, neither, pardon me. It is loose in 418,830.

The COURT. Then it is in.

Mr. HAMILTON. This is complete.

The COURT. I guess What's his name has got this. I did make a remark I think to myself, however.

Mr. MOORE. If your Honor please, apropos of the discussion this morning with reference to my understanding of the Commonwealth's --- I will not use the word "claim" -- but of the Commonwealth's attitude of last week. Since that time I have had Miss Small write up the statement, and I find this at the conclusion of Mr. Williams' statement to the Court at that time (reading):

"It is the contention of the government, and I am sure it is the fact, that the original Sacco barrel has

"been inadvertently, I trust and assume, put in one of those Colt pistols presented by Mr. Hamilton, and therefore, in further consideration of this case your Honor should examine and use as an exhibit this barrel which is now in one of the other pistols rather than the other barrel which your Honor has had up to the present time in the original Sacco pistol."

The COURT. It may be his contention now, I don't know, but we will know pretty soon.

Mr. MOORE. I say what I am trying to bring home is my statement this morning.

The COURT. I think that rather bears you out, Mr. Moore.

Mr. WILLIAMS. I think it did decidedly.

The COURT. I think it bears you out, and I did not recollect it as it really was. He went stronger than I supposed he did, and that may be because of a statement that was made subsequent, which I will not ask now, but I am going to ask later.

Mr. WILLIAMS. I simply say with reference to what Mr. Moore has just read that of course unless Capt. Van Amburgh should find that in his opinion this other barrel was the missing Sacco barrel I should make no such contention because I had no evidence other than my own examination of it to go by when I made the statement here.

The COURT. Are you ready to report?

Capt. Van AMBURGH. Ready to report.

(Discussion off the record.)

The COURT. It should be described as the barrel produced by Sheriff Capen taken from the Hamilton new pistol numbered -- what is the number of it?

Mr. WILLIAMS. 418,830.

The COURT. I am going to know that (taking pistol out of pistol box). 418,830.

Capt. VAN AMBURGH. I have examined the pistol number above mentioned, and make statement that it is the barrel which has been referred to as, in all proceedings heretofore, as the Sacco barrel. My reasons for this conclusion are based entirely on appearances under,-- after a visual examination by the use of hand microscopes, also a compound microscope. As one point of identification I find a discoloration near the muzzle end on the exterior surface of the barrel on that portion known technically as the "crowning."

The COURT. Can I see that?

Capt. Van AMBURGH. Do you have a microscope, sir?

The COURT. Is that one all right (indicating)?

Capt. VAN AMBURGH. Yes, that will do. It doesn't take any power to see it. It is just a general mottle. There is one streak there running in a curve. (The Court makes examination.) That is one. Now, I will call your attention to some more. There is a general discoloration around here (indicating). There is some of it right there, kind of a mottling. This discoloration was -- is --- strike that out --- is, as I recollect, clearly the result of the operation of making a cast of the bore at the time of the trial. The cast was what is known as a sulphur cast. Enough heat was applied to melt sulphur, which in turn was -- which in turn caused the barrel to rise in temperature above the normal, and the result of the action of heat, the presence of sulphur and some oil, used in the operation caused a,-- what is known as an oil blueing.

Mr. HAMILTON. Oil what?

Capt. VAN AMBURGH. Oil blueing to come on the surface. In

further explanation I will say that such blueing is a deposit commonly referred to as oxide. The discoloration referred to is quite generally distributed around the muzzle portion where the sulphur flowed, and is particularly noticed, or, change that to "noticeable" -- is particularly noticeable near the -- on the top surface, particularly noticeable on the top surface in the form of a sharp line. The top surface alluded to is intended to mean the top of the barrel as found in the firing position. Another point of identification is the fit of a plug gauge .3045 diameter into the muzzle and breech ends of the barrel. The close fit of this gauge is exactly as I found it on my previous examinations. The said gauge was inserted into the muzzle end of the barrel a distance of approximately four tenths of an inch. This I consider is a reasonable depth of insertion for a barrel such as the one under examination on account of the very dirty, rusted and general bad condition found on its bore and groove surfaces. I think I will change that, too, because here I am only considering bore surface. I will leave out groove --- as found on its bore surface. Insertion in the breech end was accomplished with great freedom, in fact, the gauge actually falls into the bore. The easy insertion in the breech end -- the easier insertion in the breech end is attributed to the better condition with reference to fouling and general condition of the bore surface. Another point of identification is the appearance of the -- of that portion of the muzzle surface known as the crowning. The term "crowning" is the general rounding of the very extreme end of the muzzle of the barrel sweeping from the terminus of the rifling around onto the exterior diameter of

the barrel proper. On the crowning are noticeable certain small indentations, all of which were there in previous examinations. The foregoing statements constitute a description or picture of the Sacco barrel which have been impressed on my mind from the result of many examinations and which I believe are distinctive and constitute identification.

The COURT. Now, do you want to answer that statement, Mr. Hamilton?

Mr. MOORE. If your Honor please, may I ---

Capt. VAN AMBURGH. May I interrupt for a moment?

The COURT. Sure.

Capt. VAN AMBURGH. I examined -- I think it might be well to take this. I examined Mr. Hamilton's gauge, and if proper I would like permission to make a statement in reference to its dimensions.

The COURT. Go ahead.

Capt. VAN AMBURGH. That last paragraph which I gave was intended as my closing, and I might ---

Mr. WILLIAMS. Never mind, you are just telling the court.

Mr. MOORE. No reason why everything should not go into the record, as I see.

The COURT. Go ahead.

Mr. MOORE. Certainly.

Capt. VAN AMBURGH. I had opportunity to examine a taper plug gauge, the property of Mr. Hamilton. It was measured very carefully by me, and the following dimensions recorded: Diameter at the small end, .2834 of an inch. First graduation, .2894 of an inch; second graduation .2946 of an inch; third graduation, .2996 of an inch; fourth graduation, .3043 of an inch; fifth graduation, .3091 of an inch; sixth graduation,

.3131 of an inch; seventh and last graduation, .3192 of an inch.

The COURT. In comparison with Mr. Hamilton's measurements, are yours larger or smaller?

Capt. VAN AMBURGH. On this particular gauge?

The COURT. Yes.

Capt. VAN AMBURGH. I don't recall. I made no record of his measurements.

The COURT. These simply represent your measurements?

Capt. VAN AMBURGH. Just my measurements, yes.

The COURT. Yes, irrespective of his measurements?

Capt. VAN AMBURGH. Irrespective. May I continue with this gauge?

The COURT. I thought you were through.

Capt. VAN AMBURGH. Without knowing the origin of this gauge, I will say that it is not a good piece of gauge work. There are aberrations on its surface which prevents me from classifying it as a true taper.

The COURT. Will you please show me what you mean by those aberrations (looking at gauge)?

Capt. VAN AMBURGH. I first show you visually, and then measure it for demonstration purposes. The light playing on here shows a light streak there. The streak referred to runs around the diameter -- runs around the circumference.

The COURT. Can that be felt with the fingers?

Capt. VAN AMBURGH. I will point it out. In fact, I will call your attention, -- you can hold -- one, two, half way.

The COURT. Can you feel it with the fingers?

Capt. VAN AMBURGH. You can feel it with the micrometer.

The COURT. Now, put it on on what you mean, that streak.

Capt. VAN AMBURGH. That light streak running around the circumference. Such gauge should be used only for rough checking. Where fine work is in question, a gauge should be very carefully lapped to remove all equalities -- all inequalities.

Mr. WILLIAMS. If your Honor please, will you ---

The COURT. I want to ask a few questions.

Mr. WILLIAMS. I was just going to propose one in your examination to ask. Will you ask the Captain at sometime, at some stage of your examination how the plug gauge which he submitted was made?

The COURT. I ask you that question, Captain.

Mr. WILLIAMS. I think you can sit down, Captain.

Capt. VAN AMBURGH. Oh, yes.

Mr. WILLIAMS. It is an informal hearing, if his Honor will permit.

Capt. VAN AMBURGH. The plug gauge, .3045 inches diameter,-- the decimal given when expressed as a simple fraction would read numerator, .3045 -- changed that. The point is not there when I am expressing a simple fraction. Numerator 3045, denominator 10,000. The method employed in its manufacture -- that isn't clear. The method employed in the manufacture of the plug gauge which I submitted was to turn a piece of tool steel to a dimension about ten thousandths of an inch, about ten one-thousandths make that, so as to make it clear, about ten one-thousandths of an inch over the diameter desired when finished. The next operation is to harden and draw. This is accomplished by heating the gauge to the proper temperature, which in shop parlance is known as a "cherry red." It is then quenched in cold water -- strike out the word "cold." It is then quenched in

water. At this stage the steel is very hard and brittle. The next operation is to submit the gauge to a slow heat. This causes a relaxation removing the brittleness and bringing the metal to the desired point of hardness. This last operation is known as drawing. The next operation is to grind. Grinding is accomplished on a universal grinder, in which the grinding wheel rotates at high speed and so does the work. Grinding progresses until the diameter is reduced to a point very little above that of the finished diameter. The last operation is lapping. Lapping consists of the use of a lapping ring, a ring of steel, which is placed over and clamped lightly around the gauge, a little oil and rotten stone in the form of paste is applied, and the lapping ring is moved with the fingers from end to end of the gauge while it is rotating. The action of the rotten stone and oil is to cause the very lightest abrasion possible. Frequent checking is then resorted to, bringing the diameter down very very slowly, until the finished diameter is reached. The finished diameter is checked -- was checked (I am referring to this particular gauge) on a Pratt & Whitney gauge-testing machine, an instrument far greater in refinement than micrometers. Insert there "hand" micrometers. Gauge-testing machine is intended as a compound word. That finishes that statement, by the way.

The COURT. I want to ask you a few questions, Captain. I hand you the Hamilton new colt automatic No. 427,518; and when did you first see that?

Capt. VAN AMBURGH. Here in the court room here.

The COURT. Were you at Dedham at the time they were -- this was, this Colt automatic was produced by Mr. Hamilton?

Capt. VAN AMBURGH. I would say "no."

The COURT. And you have never even seen it until you saw it in court the other day?

Capt. VAN AMBURGH. Not until I saw it in this court here.

The COURT. Then, so far as you are concerned, you know nothing whatsoever about that or the Colt automatic, the Hamilton colt automatic No. 427,518.

Capt. VAN AMBURGH. I know nothing of it.

Mr. HAMILTON. That is the complete gun.

The COURT. That is the complete gun.

Mr. HAMILTON. Yes.

The COURT. I now hand you Mr. Hamilton's new Colt automatic No. 418,830, without the barrel. When did you first see that?

Capt. VAN AMBURGH. That I first saw some few days ago when I first entered the court room here.

The COURT. You never saw it then until you came here to Court?

Capt. VAN AMBURGH. Never until I entered this court room.

The COURT. Did you ever know that what you claimed is the Sacco barrel had ever been inserted into the Hamilton Colt automatic, into the barrel of the Hamilton Colt automatic, No. 418,830?

Capt. VAN AMBURGH. I know nothing of the insertion or entry of that barrel into that pistol.

The COURT. And the first time, you are positive the first time that you ever saw either of these two new automatics which I have before me was when you came into Court the other day, in this court the other day?

Capt. VAN AMBURGH. That is right.

The COURT. When did you first know that the barrel of the new Hamilton pistol No. 418,830, had been inserted into the -- what

do you call that?

Mr. WILLIAMS. Sacco pistol.

The COURT. Into the Sacco pistol?

Capt. VAN AMBURGH. My attention was drawn to that fact about one week ago, when I made a visit to this court room with Mr. Williams.

The COURT. And at that time, who were present?

Capt. VAN AMBURGH. Gen. Foote, Commissioner of Public Safety, and Mr. Williams and yourself. The occasion for our visit ---

The COURT. Well, I don't care about that. It may help me and it may not. Prior to the time when you saw that barrel in the Sacco gun -- when was it that you ^{last} saw the Sacco barrel prior to your seeing it here in this court room?

Capt. Van AMBURGH. At the time certain micro-photographs were taken in Bridgeport which was, from my notes, appears to be from my notes, 10-20 --- October 25, 1923.

The COURT. And you haven't seen that Colt or the Sacco barrel since that?

Capt. VAN AMBURGH. Not since that time.

The COURT. And was that during the trial or during the preparation of the affidavits on the motions for new trial?

Capt. VAN AMBURGH. It was during the time of the preparation of affidavits for motion for new trial, as I believe, as I believe the action was a motion for a new trial.

The COURT. Do you know how that exchange was made?

Capt. VAN AMBURGH. I have no knowledge as to how the change could have been made.

The COURT. Do you make any claim, Mr. Moore, that there could have been any exchange prior to the time when Mr. Hamilton

brought the two new automatic -- Colt automatics to Court?

Mr. MOORE. I am not prepared to make any statement, your Honor, with reference to the question of claims as to when this thing arose, as to the time and place.

The COURT. Doesn't that,-- must not that necessarily follow?

Mr. MOORE. I think that probably ultimately Mr. Hamilton will be called upon to testify with reference to the condition at that time, and at that time the conclusions will be legitimately drawn from what he says, after he gives his own statement, his own testimony with reference to that issue. I do not feel that I am in position at this moment to fairly answer your Honor's question, until after Mr. Hamilton has given his own testimony.

The COURT. I won't press it. All right.

Mr. WILLIAMS. Mr. Moore, before you ask any question, may I just ask one? If your Honor please, will you ask Capt. Van Amburgh in any form of language you see fit to use, how the present interior surface of the barrel in question here compares with the appearance of the Sacco pistol barrel as he saw it last on or about October 25th?

The COURT. You may answer that.

Capt. VAN AMBURGH. The barrel, the Sacco barrel at the present time has on its bore and groove surfaces a general deposit of rust extending completely around its inner circumference and continuing through the length of the barrel from a point near the muzzle to a point approximately half an inch from the breech end. That,-- the condition of rust, as I now find it, is more extensive than when I last viewed it October 25th, and very much more than at any time prior to that date.

The COURT. That is all.

Mr. MOORE. May I say this, your Honor, that I desire to ask a few questions, but I don't by so doing want to waive the privilege or the right of Mr. Thompson at a later hour to having permission to further examine the Captain. I will explain that the situation is that Mr. Thompson is absolutely unavoidably tied up in a hearing, and it is simply impossible for him to get here.

Captain, with reference to the matter ----

The COURT. I don't assent to that proposition.

Mr. MOORE. What is that, your Honor?

The COURT. I do not assent to that proposition. You say you do not want to waive it.

Mr. MOORE. Well, then, am I to understand if I make any examination that will constitute a waiver of the right of Mr. Thompson to examine further?

The COURT. As I view this, it is a pretty narrow issue here, Mr. Moore.

Mr. MOORE. What say?

The COURT. As I view it, it is a very narrow issue.

Mr. MOORE. Well, the range of the issues ---

The COURT. It cannot be very rangy, it seems to me.

Mr. MOORE. That is true enough, but the only question I am raising is if I make any examination, does your Honor intend that by my making that examination that shall operate as a bar to prevent Mr. Thompson making further cross-examination in the event that he deems it desirable. If it does, then I am not going to make an examination.

The COURT. I don't say that he can cross-examine after four o'clock.

Mr. MOORE. He can cross-examine?

The COURT. You say that he can cross-examine.

Mr. MOORE. Let me put it this way. I do not care to make any examination at all at this time if by so doing I am going to bar him. I think that is the only ---

The COURT. I can't see any reason why -- there is no cross-examination in the sense of cross-examination.

Mr. MOORE. Well, we will call it examination. We won't call it cross-examination.

The COURT. A few questions you think are material I will let you ask. I think you are the one who should ask them. I can't hold up these hearings.

Mr. MOORE. I am in this embarrassing position, your Honor. I am perfectly willing to proceed. I have no desire to delay proceedings. On the otherhand, I am associated with counsel of broad experience, of broad training, who has assumed up to this hour the entire responsibility on the fifth motion, and while it is true that I have the general body of the case, the facts are that the entire responsibility upon this motion has fallen upon Mr. Thompson, and he has been specially employed upon it.

The COURT. Do you desire now to ask Mr. Van Amburgh any questions?

Mr. MOORE. I do, but without ----

The COURT. Then proceed.

Mr. MOORE. I want a statement from your Honor whether by so doing I am going to bar him.

The COURT. I can't help that.

Mr. MOORE. If I do, I don't desire to make an examination.

The COURT. I gave you now the privilege of asking Mr. Van Amburgh all the questions you may desire that bear directly on this, what seems to me a very narrow issue. You have had large

