

## SCHLEY DID NOT EXERT EVERY EFFORT TO DESTROY THE CRUISER COLON, DECLARES HIGGINSON, WHO COMMANDED THE BATTLESHIP MASSACHUSETTS

### SENSATION FOLLOWS A QUESTION

Inquiry Court Withdraws  
It After the Reply  
Is Given.

Testimony Contradicts Chief of  
the Flying Squadron Con-  
cerning Coaling.

WASHINGTON, Sept. 20.—The Schley court of inquiry reconvened to-day and before it adjourned examined four witnesses. The most important incident of the day was the decision of the court withdrawing a question put by the court itself asking a witness to give his opinion concerning a point under controversy. The witness was Rear Admiral Higginson, who participated in the Santiago campaign as captain of the battleship Massachusetts. This vessel at one time was a part of the flying squadron commanded by Commodore Schley, and the court asked him to state whether all possible measures were taken to capture or destroy the Spanish vessel Cristobal Colon as it lay in Santiago harbor from May 27 to June 1, 1898. Counsel for Admiral Schley objected to the question on the ground that a reply would involve an opinion and not a statement of facts.

#### Will Shorten Inquiry.

Judge Advocate Lemly admitted that the precedents were against questions of this character, and the court withdrew this interrogatory. It is generally admitted that this decision will have the effect of materially shortening the term of the court, as will also the court's intention to cut out irrelevant questions and all hearsay testimony. In several cases the witnesses were admonished to relate only events coming within their own observation. Admiral Dewey showed himself a prompt and methodical presiding officer. He called the court to order exactly at the designated hour and adjourned it just as promptly at 4 o'clock.

The witnesses to-day were Rear Admiral Higginson, who commanded the battleship Massachusetts during the Spanish war; Captain C. M. Chester, who commanded the cruiser Cincinnati; Major Thomas N. Wood of the marine corps, who commanded the marines on the Massachusetts; and Commander G. B. Harber, who was executive officer of the Texas, the latter being on the stand when the court adjourned. The attendance of the public was small.

#### Admiral Ramsay Accepted.

Rear Admiral Ramsay occupied the seat which on the first day of the session was filled by Rear Admiral Howison. All three members of the court were in service uniform, and the morning air was cold enough to make their closely buttoned coats appear comfortable. Mrs. Dewey accompanied her husband and remained a short time.

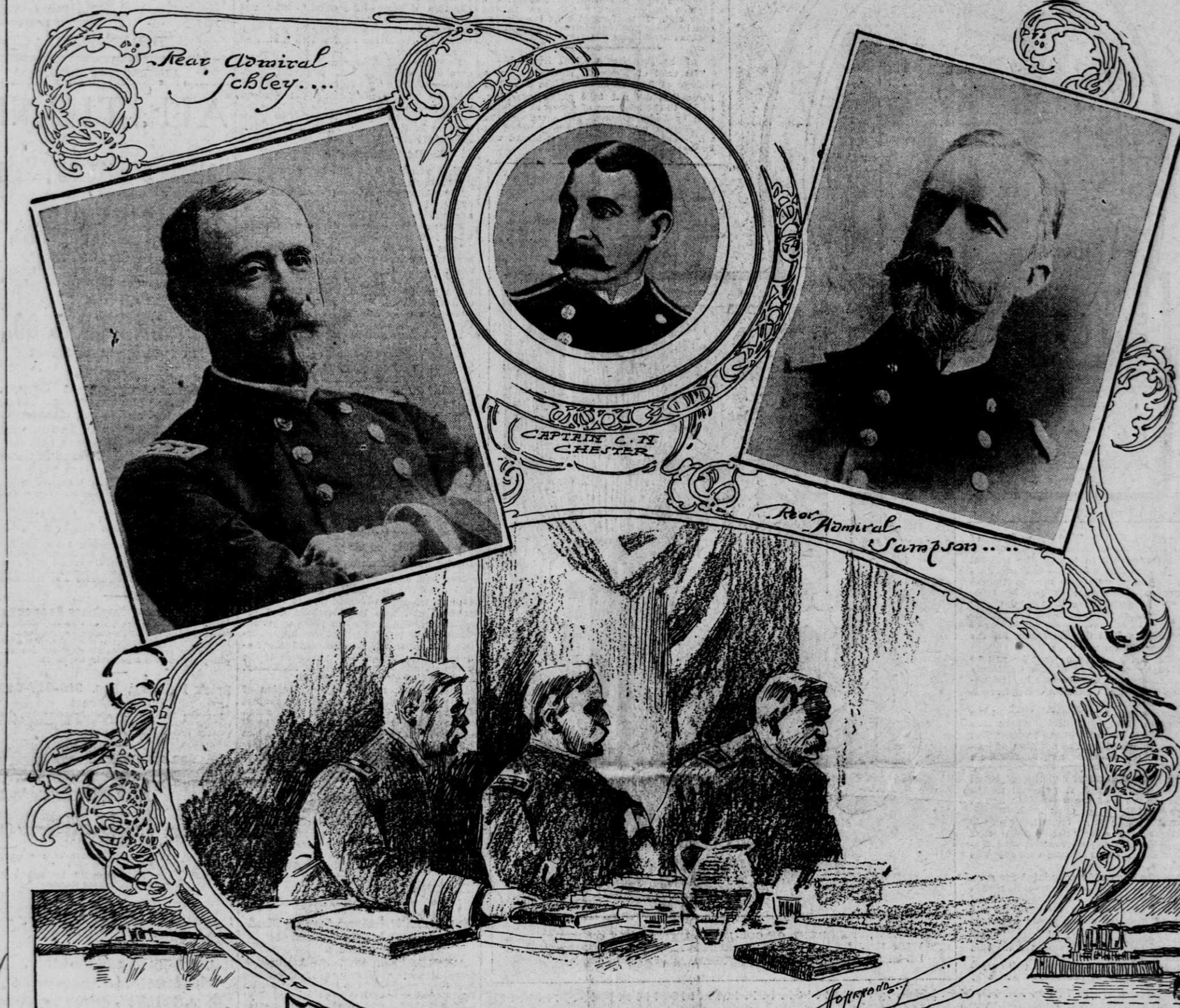
The court was called to order by a simple word from Admiral Dewey. The first order of business was the reading by Judge Advocate Lemly of the order of the Navy Department appointing Rear Admiral Ramsay to a place on the court in place of Rear Admiral Howison, and when this was accomplished Captain Lemly turned to Rear Admiral Schley and asked him, as he did when Admiral Howison was challenged, whether he had objection to urge against any member of the court. The admiral arose as this question was asked and replied, "I have not."

#### Methods of Procedure.

The court then retired for the purpose of discussing the methods of procedure. Before the withdrawal a letter from Admiral Schley to the Navy Department, requesting to be supplied with all papers bearing upon the case, and the department's reply granting the request was read.

At 11:25 the court returned from its consultation. Judge Advocate Lemly, addressing Admiral Schley as the "applicant," asked if he had any suggestions to make as to the method of proceeding, whether he had something to offer or desired that he (Lemly) proceed. The admiral responded with a nod of the head and a move of the hand, "Go ahead."

Lemly then presented the report of the Bureau of Navigation for 1898, a hydrographic chart of the West Indies and adjacent seas and other charts. He stated



explicitly that they were introduced not as testimony but as books of reference. "Will they preclude the introduction of original documents?" Attorney Wilson asked.

"Not at all," was the reply. "On the contrary, we shall desire to introduce the original document when opportunity offers."

Captain Parker made objection to the hydrographic chart when it was presented.

"It is grossly incorrect," he said. "As a matter of fact, the coast line of Cuba is six miles farther south and four miles farther west than it should be."

He withdrew his objection when assured that the chart was not to be used as evidence.

#### HIGGINSON AS A WITNESS.

##### His Views on the Santiago Campaign Do Not Favor Schley.

Admiral Francis J. Higginson, commander in chief of the North Atlantic squadron, was the first witness called. He said he had as captain commanded the battleship Massachusetts during the Spanish war and that for a part of the time the Massachusetts had been a part of the "Flying Squadron," of which Admiral Schley had been in command. He told of joining the fleet at Newport News; of going to Key West, and then, on the 22d of May, of going to Cienfuegos, Cuba. Key West had been left on May 19, 1898, and Cienfuegos reached on the 22d.

"What was then done to secure communication with the Cuban forces on shore?" Lemly asked.

"Nothing to my knowledge," the witness replied. "I did not see that anything was done, but I understood that information concerning the Cubans was received through Captain McCalla."

Admiral Higginson said, in response to questions, that this was later. He also told, in reply to questions, of the presence of the collier Merrimac and of the departure from Cienfuegos and the arrival at Santiago on the evening of the 26th. In reply to questions, he said that the Massachusetts had at that time taken on about thirteen tons of coal, but that as the weather was rough this was done with difficulty.

The witness also told of the fleet leaving Santiago for Key West on the night of its arrival at the former place and how, after steaming westward for some time, the vessels, all in response to Commodore Schley's signals, returned and steamed to within two or three miles of the mouth of the harbor.

"What happened to cause the decision



Rear Admiral Higginson ... ..

PRINCIPALS IN THE FAMOUS CONTROVERSY CONCERNING THE NAVAL BATTLE OF SANTIAGO AND THE CAMPAIGN IN CUBAN WATERS PRECEDING IT, MEMBERS OF THE COURT OF INQUIRY AND THE MAN WHO COMMANDED THE BATTLESHIP TEXAS AND NOW GIVES IMPORTANT TESTIMONY.

to return to Key West?"

"I don't know."

#### Not Impossible to Coal.

"What was the condition of the weather at the time for coaling at sea?"

"It was not impossible to coal, I think."

"Did you have any conference with the commanding officer in regard to returning to Santiago after you had got on the way to Key West?"

"None; we acted under general orders. All we did was to follow the signals of the flagship—the signals of the commander in chief."

Speaking of the condition when Santiago harbor was again reached, the admiral said that he could go well into the harbor and that he saw the Spanish ship Colon lying in the outer harbor. He did not remember seeing other vessels, but the Colon was then 1000 yards beyond Morro Castle. The vessel had lain there until she was fired upon, which was done on May 31, and had then retired.

Describing this engagement Admiral Higginson said it was on the day before the arrival of reinforcements under Admiral Sampson. He said that Admiral Schley had come aboard and said that

"he wanted to go in and fire on the Colon."

#### Fired on the Colon.

"So we went in and fired on her," continued the witness. He said the shots fell short of the Colon and that the Spanish shore batteries had in turn fired at the bombardment ships.

In reply to questions as to what had been accomplished by the bombardment, the witness replied that it had served to draw the fire of the Spanish shore battery and to give an indication of what it was composed of.

"What did you think of its composition?"

"I did not think it amounted to anything."

"Where was Admiral Schley during the bombardment?"

"At one time he was with me in the conning tower, but most of the time he was on the outside of it. I was near him most of the time."

"Describe the admiral's manner in this engagement."

"I hardly know how to answer that question, except to say that his manner was that of a commander in chief."

The judge advocate then asked:

"What impression did the admiral's manner in that engagement make upon you?"

#### His Counsel Objects.

Attorney Raynor, counsel for Schley, objected to this question, and after some contention the question was withdrawn.

Judge Advocate Lemly stated before withdrawing the question that he considered the point as embraced in the precept, and said that while the task was a disagreeable one he considered it his duty to press it, and intimated that he would do so at another time.

"Why did you not go in and destroy the Colon in the engagement on May 31?" Judge Advocate Lemly asked the witness.

"Because we were not ordered to do so," replied the witness.

Later on the witness volunteered the statement: "I think the Colon could have been destroyed where she lay at anchor that day."

Admiral Higginson stated, in reply to questions from Captain Lemly, that there were no written orders, and so far as he could recall the only verbal orders were to "go in."

Judge Advocate Lemly then offered Admiral Higginson's report of the 5th of August, saying the report had been made in line of duty.

Attorney Wilson of counsel for Admiral Schley said no objection would be made, but that counsel for the applicant did not desire the unobjected acceptance of the report to operate as a precedent.

Captain Lemly announced that he had no further questions to ask of Admiral Higginson and counsel for Admiral Schley stated they had no questions to put. It was then stated by Captain Lemly that the court had some questions of its own to present.

#### Sensational Question Asked.

These were written. The first was concerning the elevation of the guns during the bombardment of Colon on May 31. The reply was that at first they were 7800 feet and latterly 3000 feet. The next question

### NAVAL MEN SHED SOME NEW LIGHT

Capt. Chester Explains  
Position of Ships  
in Loop.

Major Woods of the Marines  
Tells of Hearing Schley Say,  
"Let's Get Out of This."

was as to whether there was any place of shelter near Santiago where the flying squadron could have coaled after its arrival at Santiago.

Admiral Higginson replied that Guantanamo was only forty miles to the east.

The third question, coming as it did from the court, created something of a sensation, which was added to by the reply. The question was:

"Was every effort made by Admiral Schley to destroy or capture the Spanish steamer Colon as she lay at anchor in the harbor at Santiago between the 27th and 31st of May?"

"Object," "object," "object," came from each of Admiral Schley's counsel. Before a halt could be had the witness replied: "No, I don't think it was."

#### Causes a Controversy.

The question and reply led to a legal controversy. Wilson and Raynor both gave reasons for their objections. They contended that the question called for the opinion of the witness, whereas only facts were admissible.

Raynor asked: "May I ask the court if, according to the method of procedure here, the court has ruled that we are not at liberty to object to any question at all that may be asked?"

Admiral Dewey replied: "While this court is bound to investigate all the facts, we have the right to ask any question that will bring out the facts. One of the charges against Admiral Schley is whether or not every effort incumbent upon the commanding officer of the fleet under such circumstances was made by Commodore Schley to capture or destroy the Spanish cruiser Colon as she lay at anchor in the entrance at Santiago harbor May 27 to 31, inclusive. We have asked that question and we have his (Admiral Higginson's) opinion. This court by the precept is obliged to give an opinion upon the conclusion of the investigation. Now, in the opinion of the court, and in order to form our opinion, we wanted Admiral Higginson's opinion on that subject."

Wilson—"I understand from the precept, reading it through from end to end, to be simply this, that there shall be an investigation to get at the facts. And when you have gotten at the facts then you express your opinion; but you are not called upon, as I must respectfully submit, and are not permitted to take some one else's opinion. You have a right to get all the facts you can, and that is what we want, but otherwise you will see that you might have a great variety of opinions and all the opinions of subordinates. In other words, the precept don't call for anybody's opinion except the opinion of the honorable court."

#### Dewey Takes a Hand.

Admiral Dewey—"In the opinion of one member of the court and perhaps of the others we do not ask his opinion, but for a statement of a matter of fact. We ask, 'Was everything done?' We don't say in your opinion."

Raynor made an extended argument, quoting many legal authorities against the admissibility of the opinion of witnesses, and he was speaking when at 1 o'clock the court took a recess for an hour for luncheon.

Promptly at 2 o'clock the court was called to order by Admiral Dewey and Raynor resumed his argument in opposition to the admissibility of questions intended to call out the opinions of witnesses. He contended that if the testimony giving opinions should be admitted the inquiry would be interminable. If, for instance, opinions were to be taken as to the propriety of the loop made by the Brooklyn, practically the entire navy could be summoned, as all its members were experts and each would have his opinion. Witnesses were expected to relate facts; the court to give opinions.

Replying, Judge Advocate Lemly quoted the record in the trial of Admiral Kettel, arguing that it was entirely within the discretion of the court to decide whether the opinion of a witness who had been on the ground should be called for by the court. He thought, however, that the