FORAKER'S ACTIONS AS PUBLIC SERVANT

Defends Them in a Speech Regarded as Opening of Presidential Campaign in Ohio.

DIFFERS WITH PRESIDENT.

But Does Not Credit Stories of His Hostility—Will Maintain His Independence—Brownsville Affair.

Canton, O., April 10.—In the presence of 1,200 people, Senator Joseph B. Foraker tonight delivered an address defending his actions as a public servant and declaring his willingness to abide by their decision in the future. The occasion was the annual banquet of the Commercial Club board of trade. Senator Foraker was on the program for an address on "Civic Pride," but his speech was largely directed to his work as senator, and is regarded as being the opening of the presidential campaign in Ohio.

THE SENATOR'S SPEECH.

Senator Foraker discussed published statements regarding the president's attitude toward the senator's speech at this time, replied to a publication mentioning him as one of an anti-Roosevelt combination, reviewed the investigation of the discharge of the negro soldiers on account of the trouble at Brownsville, Tex., reiterated his views regarding recent railroad legislation, protested against the infringement by one branch of the government on the rights of another branch, declared that the representatives of the people in Congress are accountable only to the people and are not "properly subject to any other influence," denied the right of any one except his constituents to call him to account, and sounded a note of warning against increased surveillance of business men who need "no moral regeneration."

THE "DEADLINE" REPORT.

He quoted a published report that "President Roosevelt has drawn a deadline for Senator Foraker," and that "if he attacks President Roosevelt, President Roosevelt will be heard from in no uncertain tones."

Senator Foraker said: "The wicked flee when no man pursueth. I have not forecasted the character of any speeches I am intending to make and if I had it would seem incredible to the average mind that such a story could be anything more than a mischief-making pipe dream of an over-ambitious correspondent.

"That the president of the United States should become personally engaged in a political contest to determine his successor is without precedent, unless it be the bad precedent set by Andrew Jackson as to Martin Van Buren.

"That he would enter upon such a struggle with a declaration that he is to set limitations upon the freedom of speech of those who may differ from him, that they are to disregard those limitations at their peril, is without precedent even in the case of Jackson, and is so inconsistent with the dignity of his high office and the properties always to be observed, that I feel it a duty toward the president himself to enter for him, on my own motion, a disclaimer of all responsibility for such publication.

"The time has not yet come, and nobody knows that better than the president himself, when 'deadlines' can be drawn in debate for anybody to observe; nor has the time come when any real man would respect them if they were drawn.

"So far as I am personally concerned, I shall always speak with malice toward none, according to my own convictions whenever and wherever I may have occasion to speak at all."

RICH MEN'S CONSPIRACY.

Mr. Foraker characterized as a "sort of companion piece" a published statement of the president to his friends, naming as members of the combination to "do him up" for his attitude toward Wall street, E. H. Harriman, J. B. Foraker and John D. Rockefeller.

"In view of this publication," said Mr. Foraker, "I trust that I may without impropriety say that until it was given out at Washington a few days ago I never heard tell of any combination or trust or conspiracy to oppose the president in anything; much less did I ever hear of the so-called $5,000,000 conspiracy of which we have heard so much during the last week.

"I trust I may be pardoned for going further and saying I never saw John D. Rockefeller but once in my life, and that was 20 years ago or more, while I was governor of Ohio.

"I had the pleasure of meeting him in connection with the ceremonies connected with the laying of the cornerstone of the Young Men's Christian association building at Cleveland. With that single exception, I never saw him, never spoke to him and never communicated with him in any way, directly or indirectly.

"Mr. Harriman I have seen oftener. I have seen him three times—twice at the White House; the last time as an honored guest at the wedding ceremonies of the president's daughter. On neither of these occasions did I have any conversations with him.

"The only other time I ever saw him was to meet him at a dinner party given by Senator and Mrs. Depew, where Speaker Cannon and his daughter, Senator Spooner and his wife, Senator Elkins and his wife, and many others, were present.

"Except only the brief conversation of the evening in the presence of all this company, I never communicated with him directly or indirectly on any subject whatever.

"I call attention to this with particularity so that at the outset such wild, reckless, crazy stories may be put into the class of campaign literature where they properly belong.

"But these stories are but samples of many others, all of which, taken together, seem to have for their object the dissemination of the idea that I am at war with the policies of President Roosevelt.

PRESIDENT A TIRELESS WORKER.

"No man ever occupied the White House who has been identified with so many legislative measures as President Roosevelt. He is a tireless worker. He is constantly doing, or causing to be done, something of great importance. This is true, not only as to domestic, but also as to foreign affairs. He has been president since September, 1901, almost six years.

"During all that time I have supported all measures that have come before the senate of the United States for consideration with which he was in any way identified, except only three.

"I differed from his as to joint statehood for New Mexico and Arizona, insisting that they should not be forced into the Union as one state, unless a majority of the citizens of each territory might so vote. The proposition I favored was adopted by Congress and the people of the territories voted against joint statehood. That was a proposition about which men might well differ. There was no occasion for any bitterness of feeling in connection with its consideration; and there was none on my part, and I never heard that there was any on the part of the president.

DISAGREES WITH PRESIDENT.

"I was also unable to agree with the president as to conferring the rate-making power upon the interstate commerce commission, as provided in the Hepburn law, passed at the first session of the Fifty-ninth Congress. I was not opposed to that proposition, however, because I did not want governmental control and supervision of railroads engaged in interstate commerce, for I was among the first to advocate such a measure, but because I thought the Hepburn law in that particular was both unconstitutional and unnecessary and that it was a long and serious step in the wrong direction as a matter of public policy.

"I did not believe either that if Congress had the power to make rates, it had the right to delegate that power to any administrative body. Whether I was right in entertaining this opinion will be determined when the supreme court of the United States passes on the question, as sooner or later it must."

Mr. Foraker said all the prosecutions against the railroads, the sugar and beef trusts and the Standard Oil company and other corporations have been brought under the Elkins law, and the government secured convictions speedily in all cases except where its own testimony failed, but that no suit of the kind has been brought under the Hepburn law.

BROWNSVILLE AFFAIR.

"Another session of Congress has just closed," he continued. "There were numerous measures pending and acted upon with which the president was prominently identified. So far as I can recall I supported everyone of them. There was one matter, however, about which I have taken a different view from him. I refer to the discharge, without honor, of the members of companies B, C and D of the Twenty-fifth infantry, on account of the shooting affray at Brownsville, Tex. This was an incident, not a policy. But it was an incident of such character that I felt it my duty as a representative of the people of Ohio to do with respect to it what I have done.

"It was charged—and the president was made to believe—that certain men of the Twenty-fifth infantry had made a murderous midnight assault upon the sleeping men, women and children of Brownsville; that they had 'shot up' the town as the expression goes, and that they had killed one man, and wounded another, and put in jeopardy the lives of many. He believed that this was done by a few, but that others of the battalion knew and refused to disclose the identity of the men who did it.

"As a result he ordered that the whole battalion should be dismissed without honor, the innocent and the guilty alike; the guilty because they were guilty, the innocent because they could not be distinguished from the guilty.

INJUSTICE TO OLD SOLDIERS.

"Among these men were old soldiers who had seen many years of service. Their services had been honest, faithful, gallant and distinguished. One of them had served continuously for 26 years. In 15 months he could have retired on a pension for life. His service had been rendered not only on the frontier of this country, but in Cuba and in the Philippines. It had covered both war and peace. In all the long period not one single black mark had been registered against him. He never had been court-martialed; he had never been punished. He had never been even reprimanded. On every one of his numerous discharges it was recorded that his character was excellent, and that his services had been efficient.

"His case is but an illustration, in a little stronger degree, of many others. A number had served more than 20 years; many of them almost 20 years; all had acquired distinct and valuable rights, and all these rights were swept away from them in an instant by an executive order, which put them all alike in common disgrace, and sent them adrift with their countrymen, whom they had done so much to defend, branded as criminals who had either participated in the shooting or who had become accessories after the fact, by protecting criminals who had.

MEN GIVEN NO SHOW.

"These men had been given no opportunity to be heard. It seemed to me that no man in this country was so humble that he should not be given a day in court somewhere, or some time or some place, to make his defense, confront his accusers, and refute their testimony against him; and especially should soldiers have the benefit of such a hearing.

"I believed that this was their right under the Constitution. I did not believe that even the president, as commander-in-chief of the army, had power to deprive them of this right.

"But without regard to that question I felt that they should have this opportunity. I secured it for them. It was a long, hard contest in the senate which resulted in the adoption of a resolution ordering an investigation. I spoke repeatedly in favor of the proposition, but the record will be searched in vain to find one word of disrespect toward anybody from the president down to the humblest man figuring in any way in connection with the matter.

"It was with me simply a great, broad question of constitutional power on the one hand and constitutional right on the other. It has been said that it was an effort to secure the negro vote. It tries the patience to answer such charges—but that claim might be disposed of, one would think, by the simple statement that for more than 30 years I have been honored with that vote almost to a man, and simply because, as on this case, I have always upheld their rights under the Constitution and the laws.

"The investigation has been in progress; it has not yet been completed. I would prefer not to speak of the results until they have been fully determined; but challenged as I am I do not hesitate to say that the testimony so far taken justifies the investigation. I cannot here and now analyze the testimony, but it is enough to say that the evidence already taken warrants the belief that not a man in that battalion fired a gun. I do not believe any testimony can be secured that will refute anything that has been established.

NOT ALONE IN HIS BELIEF.

"I am not alone in this belief. All the officers of that command, who, at the beginning were by circumstantial evidences made to believe some of their men were participators in the shooting, are now of the opinion—and have testified—that all are innocent.

"But, however all may be, these men have had a hearing. They have been permitted to state their defense; and whether the defense prevails or not, it has been demonstrated that this is a government of law, a government where the rights of citizens, no matter how humble they may be, shall be protected by the law, and under the law, and not a government under which, by autocratic and arbitrary orders and decrees, men may be dishonored and stripped of the most valuable rights. If there be any place in the United States where these sentiments should be endorsed more heartily than another, it is here, in Ohio; in the state that gave to the nation's galaxy of great men such defenders and advocates of human rights as Joshua R. Giddings, Benjamin F. Wade, Salmon P. Chase, John Sherman and William McKinley.

OFFICE OF A SENATOR.

"But running through all this contention there is found another broad and important question. What is the office of a senator? Is he a mere agent to register the will of somebody else, or is he supposed to have opinions of his own with liberty to stand for them in debate and when he votes?

"If he is a mere agent, why have we always tried to select for this great office men of ability and high character? Anybody could follow somebody else. And why, if a senator have no liberty of action, should he be held accountable for the record he makes; and, if there is to be no difference of opinion, why have any discussion, or, in fact, why have any senate or house?

"I have always understood and thought that representatives of the people are only accountable to the people; that they are not properly subject to any other influence, and for that reason I stand ever ready to render to my constituents an account of my stewardship. It is their right to have it—it is my duty to give it, and if they are dissatisfied they have a remedy for that dissatisfaction in their own hands. They can select another.

ACCOUNTABLE TO HIS CONSTITUENTS.

"But, while conceding the right of everybody else to differ from me, I deny the right of anybody except my constituents to call me to account. I never have held any office except by election. I always have been proud of the confidence in me so frequently manifested by the intelligent people of this great commonwealth. I always am ready to abide by their judgment. I would not avoid or evade it if I could. Therefore it is that I propose to carry my cause directly to them whenever issues may arise in which I am interested. If they agree with me I shall be rejoiced; if not, I shall be satisfied. But while I will thus submit my cause to the people and abide by their judgment, I will not submit to the dictation or threats or menaces of any kind of boss, big or little, inside or outside the state. Never will I acquiesce without protest in what I do not approve, no matter by whom it may be proposed.

BELIEVES IN OUR GOVERNMENT.

"I believe in our public system of government, one state and the other national; one to deal with local affairs, the other with those that are national and international. I believe that as the business of the government and the duties of the government multiply it will become more and more strikingly manifest that our fathers were wise in providing such a system, and that, instead of talking about the obliteration of state lines, we should now more than ever be careful to preserve to the states their proper rights and functions, just as we always have been zealous to protect the federal government in the exercise of all the powers delegated to it, either expressly or by implication.

"I believe also that our fathers were wise when they created three departments of government and made them separate, independent and co-ordinate, and that the rights of each should be jealously protected against infringement by either of the others.

"This provision is of such vital character and has such direct relation to the public welfare and the rights and liberties of individual citizens, that no public clamor, no alleged exigency, no party considerations, no personal advantage of any kind, can justify or excuse any man who, in the discharge of public duty, consciously disregards or violates it." Concluding, the senator said:

"We can be proud also of the honor and integrity of the business men of this country. What they most need today is not so much an increased surveillance and guardianship of law as that liberty of action and trust and confidence in protection under the law which they always have heretofore enjoyed.

BAD CORPORATIONS.

"Bad men and bad corporations and trusts there are and always have been and always will be, but also there is a law for their prevention and punishment, and with respect to all such let the law take its course. We are now enjoying the most unexampled prosperity we ever have known. That it is a sound and genuine prosperity is evidenced by the fact that the recent panics and heavy losses in stocks and securities have not caused the failure of a single banking or mercantile house in the whole country."

CUTICURA SOAP SHAMPOOS

And light dressings of Cuticura at once stop falling hair and dandruff.

HERMANN GOT GOOD BERTHS FOR HIS RELATIVES

Washington, April 10.—The principal developments in the cross-examination of Binger Hermann were his admissions that while he was commissioner of the general land office he gave positions to six of his relatives. Reference again was made to the "tip" which Mr. Hermann is alleged to have given F. P. Mays regarding the Blue Mountain forest reserve, but Mr. Hermann, while admitting that he dictated the telegram could not remember its details.

It was also brought out that Hermann had received a part of the government compensation of his brother as payment on a mortgage, and that he received some of the compensation of Cy L. Miller, a son-in-law, but declared that it was in payment for advances he had made Miller.

Mr. Hermann admitted that he wanted to become United States senator in 1905, but denied that it was his plan to have his resignation as commissioner of the land office held up until after the senatorial election.

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Removes Tan, Pimples, Freckles, Moth Patches, Rash, and Skin Diseases, and every blemish on beauty, and defies detection. It has stood the test of 57 years, and is so harmless we taste it to be sure it is properly made. Accept no counterfeit of similar name. Dr. L. A. Sayre said to a lady of the haut ton (a patient): "As you ladies will use them, I recommend Gouraud's Cream" as the least harmful of all the skin preparations." For sale by all druggists and Fancy-Goods Dealers in the United States, Canada and Europe.

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Packed in Full Measure Bottles

J. A. FOLGER & CO. San Francisco.

JEROME WAS MERCILESS TO EVELYN NESBIT THAW.

(Continued from page seven.)

against the defendant and such evidence may be presented as will offset these allegations and establish his insanity at the time of the commission of the act. The law presumes that sanity is the normal condition of man and wherein insanity is the plea, as the condition of mind of the defendant at the time of the act, that becomes the crucial question of the jury to decide.

"If there existed in the mind of the defendant an insane illusion it is not an excuse unless the illusion is of such a character that if true it would result in his injury.

"Proof of partial or incipient insanity is not sufficient as an excuse. The settled law of the state is that as long as that power to appreciate the nature and quality of the act is present, no man must commit crime if he would escape the consequences.

"If he cocks, aims and discharges a revolver, as it is alleged here, did he know when he cocked and fired the weapon that the act was wrong and that it would probably destroy a life, and did he know that the act was forbidden by law? That is the question which the law must have answered.

"Under the rule of evidence the story, claimed by the defendant's wife to have been told by her to the defendant, is admitted not as affecting the character of the deceased, but that you might consider what effect such a story would have upon the defendant's mind. In considering her story, her credibility as a witness is highly material, and everything that she has said or done must be taken into consideration. Her admissions regarding the relations existing between herself and the defendant prior and subsequent to this tragedy and prior to her marriage, or any other act should be weighed in connection with her story.

"A wide latitude was allowed on cross examination. You should give due credit to all that was developed along with other facts. The letters, the will, and the codicil before you were not admitted under any ruling as to their competency, but by consent of counsel.

"There has been no denial entered here that death resulted from pistol shot wounds inflicted by the defendant.

"The legal presumption is that the defendant was sane when he committed the act. It was not incumbent on the prosecution to introduce preliminary testimony to show that he was sane.

"The burden of proof is on the defense.

"Whoever denies sanity must prove that insanity is present. The law assumes that all men are sane as it assumes all men innocent. The burden of proving a crime is on the prosecution, but the burden of overthrowing sanity is on the person claiming it. The defendant is entitled to the benefit of the doubt in this case.

"The hypothetical questions answered by the experts assumed certain facts and the answer was only the opinion of the expert on those assumed acts. You are not obligated, nor are you permitted to accept opinions as you would facts. In considering the testimony of medical experts you are to consider their experience and knowledge, and you should consider the quality of the medical testimony and not its quantity.

"The so-called irresistible impulse has no place in the law and is not an excuse, nor is every person of a disordered mind. While the burden of proof of insanity is on the defendant, he also is entitled to every reasonable doubt on the subject. If the defendant knew the nature or the quality of his act, or knew the act was wrong, then he committed a crime. All men differ mentally and physically and this makes it impossible, as I said before, for the court to lay down a fixed rule as showing deliberation and premeditation.

"As to the distinction between reasonable doubt and a possible doubt, you were thoroughly examined when you were about to become jurors. The law does not require that the prosecution shall efface every possible doubt. It only requires that the prosecution shall go beyond a reasonable doubt. A Recorder Smithe once charged a jury, the defendant is entitled to have his guilt established by competent evidence and beyond every doubt. It need not be established beyond all doubt, for that is an impossibility. Nothing in this world is beyond all doubt. The defendant is entitled to every reasonable doubt and that is all.

"A reasonable doubt is such as might arise in the mind of an intelligent man who, if called upon to give a reason for such doubt, would not be at a loss to do so. A reasonable doubt is not an imaginary thing. It is such a doubt as arises from the evidence. It is such a doubt as a painstaking man might have after a full, fair and impartial weighing of the evidence. To all such doubts the defendant is entitled.

"If any of you have a reasonable doubt that this defendant is guilty of murder in the first degree, but have no doubt that he is guilty of murder in the second degree, you may find in the second degree. And so with manslaughter.

"You may in this case, let me say once more, find the defendant guilty of murder in the first degree, guilty of murder in the second degree, or guilty of manslaughter in the first degree.

"If you vote for acquittal on the ground of insanity, you may state that ground in your verdict.

"You must be guided, gentlemen, entirely on the evidence. Clamor, prejudice or sympathy must not prevail. You must be guided by your reason and your judgment.

"The case has been fully tried, and I have not attempted to make any epitome of the evidence. If in any allusion I have made to the facts my statement does not agree with your recollection, you should take your own recollection.

"It is the duty of each juror to consider the evidence, all the pertinent statements of counsel and the suggestions of your fellow-jurors.

"I have endeavored faithfully to guard the rights of the defendant as well as the rights of the people in the many rulings I have had to make, and I have tried with clearness and fairness to instruct you in the law.

"The facts must carefully be weighed. Remember the oaths you took 'to well and truly try' this issue. Weigh the evidence carefully, consider it and discuss it and return your verdict according to your oaths."

Justice Fitzgerald supplemented his charge by again clearly defining the legal definition of reasonable doubt and saying no man should vote for a verdict as long as a reasonable doubt existed in his mind. He did this by request of Mr. Jerome. The defense also requested a special charge on several points, but Justice Fitzgerald said that he had practically dwelt on all of them, with the exception of a few on which he declined to say anything. He granted the defense an exception to his ruling. The jury then retired, at 5:17 p. m.

Under the statutes of New York, murder in the first degree is punishable with death; murder in the second degree, by imprisonment for life; and manslaughter, in the first degree, by imprisonment not to exceed 20 years. If the verdict should be one of acquittal on the ground of insanity, the disposition of the prisoner would rest with Justice Fitzgerald. Thaw having already been declared sane by the report of a commission which Justice Fitzgerald has approved and confirmed, it would seem that the prisoner must be released.

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