

THE FILSON CLUB HISTORY QUARTERLY

Vol. 11

LOUISVILLE, KENTUCKY, JULY, 1937

No. 3

JAMES SPEED, THE ATTORNEY-GENERAL, 1864-1866

BY HELEN L. SPRINGER
New Albany and Sullivan, Indiana

An address before The Filson Club, April 5, 1937.

[Editor's Note: Miss Springer's address is based on a part of her thesis, *The Political Career of James Speed*, which she submitted to the Department of History, University of Chicago, as a candidate for the degree of Master of Arts. The part here used consists of about twenty-two pages of her entire dissertation, a manuscript of 170 pages. Among other divisions of her subject are Speed the Emancipationist, Speed the Unionist, and Speed the Radical Republican in the Reconstruction Period.]

"Slavery is the curse of the State; I would willingly adopt any feasible plan to be rid of it," wrote James Speed, of Louisville, in his diary, April 10, 1844.¹ Thus he sounded the keynote of his political career. This attitude on slavery put Mr. Speed in President Lincoln's good graces. When Edward Bates resigned the Attorney-Generalship, the Cabinet post was proffered Speed on December 2, 1864.² He entered upon his duties December 5, 1864. James Speed was not Lincoln's first choice for this position. Joseph Holt declined the appointment; it is alleged that James Guthrie did also.³ Furthermore it is an accepted fact in Louisville that Lincoln had wished Joshua F. Speed, brother of James, to accept a Cabinet post from the very beginning of his presidential career. There is little doubt Joshua Speed told the President that he felt his brother better fitted for the office than he. Henry Watterson analyzed Joshua Speed's attitude toward his elder brother thus:

... Joshua Fry Speed's undervaluation of his intellectual gifts, as Lincoln well knew amounted to an obsession. He was a

¹James Speed, *James Speed, A Personality*, by James Speed, His Grandson (Louisville, John P. Morton & Co., 1914) page 17.

²Robert Brent Mosher, *Executive Register of the United States, 1789-1908* (Washington, Government Printing Office, 1905), page 166.

³Joshua Fry Speed, nephew of James and Joshua Speed made this statement in an interview with the author February 8, 1936.

very able man. But he lived in the ideal he had made of James Speed, who had prepared himself for the law and an ambitious career, whilst he had gone, very successfully, be it known, into trade.⁴

At any rate, it was James Speed who entered the Cabinet and not his brother, Joshua. James G. Blaine felt James Speed was chosen:

. . . . for reasons which were partly personal, partly public. He was a Kentuckian and a Clay Whig, two points in his favor. But more than all, he was the brother of Joshua Speed, with whom in young manhood, if not indeed in boyhood, Mr. Lincoln had been closely associated in Illinois. . . . Those who knew him well cannot fail to remember the kindling eye, the warmth of expression, the depth of personal interest and attachment with which he always spoke of "Josh Speed." . . .⁵

George D. Prentice, editor of the *Louisville Journal*, heartily commended Speed's appointment as did Speed's old friend, Colonel A. G. Hodges, editor of the *Frankfort Commonwealth*. He emphasized Speed's indifference to public acclaim. Lincoln called Speed "An honest man and a gentleman, and one of those well-poised men, not too common here, who are not spoiled by a big office."⁶

Indeed, Mr. Speed's political career previous to his acceptance of the Cabinet post was in line with Lincoln's political opinions.⁷ In consistence with the traditional attitude of the Speed family, he condemned the institution of slavery in Kentucky. As a member of the House of Representatives in his State, he contended, in the session of 1847-1848, that the Non-Importation Law of 1833 should be preserved intact on the statute books. When the Legislature amended this law in favor of the slavery interests, he bent his efforts toward embodying a gradual emancipation clause in the Constitution of 1849. Contrary to his hopes, the Constitution of 1849 made emancipation even more difficult. Thus the worthy but unpopular cause for which James Speed had fought for three years was overwhelmed in defeat. As his cause went into eclipse, so did his political career. Ten years were to pass before Speed again crossed swords with his pro-slavery adversaries. His opportunity to strike a telling

⁴*Louisville Courier-Journal*, April 12, 1915.

⁵James G. Blaine, *Twenty Years of Congress* (Norwich, Connecticut, Henry Bill Publishing Co., 1886), Vol. 2, page 62.

⁶Lord Godfrey R. B. Charnwood, *Abraham Lincoln* (New York, H. Holt Co., 1917), page 404.

⁷For this note, see page 171.

blow for his cause grew out of the events of the decade 1850 to 1860. The events of these years caused a mighty wave of anti-slavery sentiment to sweep the country, and James Speed rode to power on its crest. Although a man without a party when the Whigs dissolved in the Kansas-Nebraska controversy, he cast his lot with the Radical Republican party in the early sixties. In return for his strenuous efforts in the anti-slavery cause and his devotion to the Republican party, James Speed was rewarded with the office of Attorney-General.

At the time Speed became a member of Lincoln's official family discord had already appeared. Lincoln had adopted his policy of lenient reconstruction in his Amnesty Proclamation of December 8, 1863. This had not met with the approval of some of the Cabinet members, especially Stanton. What attitude might the administration expect James Speed to adopt? James G. Blaine wrote:

As a southern man, he was expected to favor a lenient policy towards his offending brethren, and was supposed to look coldly upon much that was implied in the President's declarations. Of the six cabinet members . . . it will be seen that three—Mr. McCulloch, Mr. Welles, and Mr. Speed—might be regarded as

James Speed served as representative in the Kentucky State legislature in 1847-48. He was Emancipation candidate against James Guthrie, Pro-Slavery candidate, for office of delegate to the State Convention, called to frame a new constitution, but was defeated. From 1856 to 1858, and again from 1873 to 1879, he was professor of law at the University of Louisville. Speed worked with his brother, Joshua F., in May and June, 1861, to place arms in the hands of Union sympathizers. In July, 1861, he became commander of the Louisville Home Guards in which capacity he acted to prevent an outbreak of rebellion in Louisville, July 21, 1861, the evening of the day on which the Battle of Bull Run was fought. He was elected to the State Senate in 1861, where he served until 1863. In 1864 Speed became a member of the Executive Committee of the Republican party in Kentucky and was chosen delegate to the Baltimore Convention.

He held the Cabinet post of Attorney-General from December, 1864, to July, 1866. In September, 1866, he presided over the Convention of Southern Unionists who were opposed to the policy of President Johnson. The Radical members of the Kentucky Senate rewarded Speed's untiring efforts in behalf of the Republican party by placing his name in nomination for United States Senator in 1867. He was defeated. Speed received the vote of Kentucky in the National Republican Convention of 1868 for Vice-President. Speed was defeated in a campaign for election to the National House of Representatives in 1870. He was a delegate to the National Republican Conventions of 1872 and 1876, where he served on the Committee on Resolutions.

James Speed was born March 11, 1812, near Louisville, where he died June 25, 1887. In 1840 he married Jane Cochran, daughter of John Cochran of Louisville. They were the parents of seven children: John Speed who married Aurora Combe; Henry Pirtle Speed who married Mrs. Lizzie Goldbach; Charles Speed who married Eliza Homire; Breckinridge Speed who married Lizzie McGoodwin; James Speed, Jr., who married Hattie Morton; Joshua F. Speed who married Anna Granger, and Edward Shippen Speed who died in 1862, aged six years—*Records and Memorials of The Speed Family*, by Thomas Speed (a grandson of James Speed) (Louisville, Courier-Journal Job Printing Co., 206 pages, 1892). See also *James Speed, A Personality*, by James Speed, cited in foot note No. 1.

favoring a conservative plan of reconstruction, and three—Mr. Stanton, Mr. Harlan, and Mr. Dennison—a radical plan.⁹

Southern though he was, those south of the Mason-Dixon line who had derived consolation from that fact were doomed to disappointment. As the weeks rolled by, as the Anaconda that was Grant's Army squeezed the Confederates out of Richmond, James Speed began to lean toward the radical group in the Cabinet.

The first tangible evidence of Speed's Radical inclinations appeared on April 11th, when Lincoln revealed to the Cabinet that he had given the Virginia Legislature a permit to vote to restore Virginia to the Union. This meant he would recognize the existing State Government of Virginia as *de facto* until Congress could provide another. Secretaries Stanton, Speed and Dennison attacked the plan so strongly that Lincoln confessed to Welles that they were "annoying him greatly." On the day of Lincoln's death, Speed, in a conversation with Chief-Justice Chase, spoke of Lincoln's views expressed in the Cabinet meeting the day before. He said:

..... "He had never seemed so near our views," He said he thought he had made a mistake at Richmond in sanctioning the assembling of the Virginia Legislature; and had perhaps been too fast in his desire for early reconstruction.¹⁰

When Speed spoke of "our views" he referred to Sumner, Stanton, Dennison, Chase and other leading Radicals. This statement shows that Speed had already begun to think of Reconstruction from a Radical point of view. The upshot of this radical opposition was Lincoln's order to cancel the permit he had extended to Virginia.

Although Speed was finding fault with Lincoln's lenient reconstruction policy on the eve of the assassination, he felt keenly the loss of the nation in his death. He eulogized Lincoln in a letter to his mother:

The best and greatest man I ever knew, and one holding just now the highest and most responsible position on earth, has been taken from us, but do not be downcast and hopeless. This great Government was not bound up in the life of any one man.¹¹

It was James Speed's responsibility, as legal authority for the Cabinet, to examine the precedents and the Constitution pre-

⁹Blaine, *op. cit.*, Vol. 2, page 62.

¹¹J. W. Schuckers, *The Life and Public Services of Salmon Portland Chase* (New York, D. Appleton Co., 1874), page 519.

¹⁰James Speed, *A Personality*, page 60.

paratory to administering the oath of office to Andrew Johnson. Speed composed a letter to Vice-President Johnson and was delegated with McCulloch to carry it to Kirkwood House. After the oath was administered, Speed and McCulloch carried to the other members of the Cabinet President Johnson's request "that the present Cabinet stand by him in his difficult and responsible position." What was the feeling of the Cabinet members toward Johnson? Speed must have had misgivings. Welles had written in his diary March 4, 1865, the day Johnson was inaugurated as vice-president, that:

The Vice-President elect made a rambling and strange harangue. My impressions were that he was under influence of drink, yet I know not that he drinks. Speed who sat at my left, whispered to me that "all this is in wretched bad taste"; and very soon he said, "The man is certainly deranged."¹¹

A man of such serious mien as Speed must have felt apprehensive that a man who could be as unstable as this on occasion was acceding to the chief executive position in the nation. However doubtful he may have been of Johnson's ability at the time he became President, by September he was commending him in a letter to his mother:

The man or men that can make this country peaceful, happy and prosperous . . . must forget themselves. In this the President is a remarkable man. I have seen him intimately since he went into his great office, and can say with confidence that he is a patriot and as unselfish as Mr. Lincoln was. Mr. Lincoln made mistakes, but he was honest and the country and the world forgave him. Mr. Johnson may make mistakes, but if he does they will be unselfish and he will be honest.¹²

The most publicized incident of Speed's service under Johnson was the trial of the Lincoln assassins. Should the assassins be tried in the civil courts or by a military tribunal? Speed declared for trial by a military court, an opinion criticized by three leading Republican papers in New York: the *Post*, the *Tribune* and the *Times*, also by his predecessor, Edward Bates, who, conning his newspapers with keen interest out in St. Louis, remarked in his diary: "I do not doubt that that unwise determination was the work of Mr. Stanton."¹³ The Military Commission made its

¹¹*Diary of Gideon Welles* (Boston, Houghton Mifflin Co., 1911), Vol. 2, pages 480-481.

¹²*James Speed, A Personality*, pages 68, 69.

¹³Howard K. Beale (Editor), *The Diary of Edward Bates, 1859-1866*, Vol. 4 of the *Annual Report of the American Historical Association for the Year 1930* (Washington, United States Government Printing Office, 1933), page 483.

decision, and accordingly Andrew Johnson gave the order for the execution of a woman. This acerbity of the masses was to cause Attorney-General Speed many harrowing moments just before the execution and, indeed, a few weeks before his death, years later, he was still trying to justify his part in the proceedings. Widespread public disapproval of the execution of Mrs. Surratt led Speed to prepare an elaborate opinion in July, 1865, explaining why he had held that the assassins be tried by a military court.¹⁴ Edward Bates read this opinion and wrote a blistering denunciation in his diary:

. . . . This is the most extraordinary document I ever read, under the name of a law opinion. . . . This opinion is addressed to the President and dated July, 1865. After the sentence, and in fact, after the execution of the accused, who were condemned to death! And thus, it is apparent that the opinion was gotten up (a mere fetch of the War office) to bolster up a jurisdiction, after the fact, so generally denounced by lawyers and by the respectable Press all over the country.¹⁵

Facts which came to light years after Mrs. Surratt suffered the extreme penalty reveal that a Writ of Habeas Corpus was not the only effort made to save her life. Five members of the Military Commission signed a petition, recommending a commutation of her death sentence to imprisonment for life. President Johnson claimed not to have received this petition with the record of the trial. Judge Advocate-General Joseph Holt was accused of negligence. When Judge Holt asked James Speed to bear witness that Johnson did receive the petition, Speed admitted, in 1873, that he had seen the petition attached to the record of the trial in the President's office but he refused to relate Cabinet discussion concerning the petition.¹⁶ Intermittently for ten years Judge Holt did his best to induce Mr. Speed to vindicate him of undeserved accusations. Mr. Speed held out the information steadfastly. Henry Watterson, writing of James Speed in 1915, stated: "The gentlest of men in his nature, his mind was uncompromising in its dealing with issues and ideas."

This controversy with Judge Holt reveals the most unyielding side of James Speed's nature. In an address (his last public address) before the Society of the Loyal Legion, at Cincinnati,

¹⁴J. Hubley Ashton (editor), *Official Opinions of the Attorney-Generals of the United States* (Washington, W. H. and O. H. Morrison, 1869), Vol. 11, pages 297-317.

¹⁵*Diary of Edward Bates, op. cit.*, pages 498-499.

¹⁶Joseph Holt, *Vindication of Hon. Joseph Holt* (Washington, Chronicle Publishing Co., 1873), page 13.

May 4, 1887, in response to the toast, "Abraham Lincoln," James Speed was still trying to vindicate Judge Holt without giving away Cabinet secrets. This was about two months before his death on June 25, 1887, at the age of seventy-five. He said:

. . . . A maudlin sentiment has sought to cast blame on the officials who dealt out justice to the assassins of Lincoln. One in particular is my distinguished friend, the then Judge-Advocate General of the army. Judge Holt performed his duty kindly and considerately. In every particular he was just and fair. This I know. But Judge Holt needs no vindication from me or any one else. I only speak because I know reflections have been made, and because I know the perfect purity and uprightness of his conduct. . . .¹⁷

This would seem to prove conclusively that Speed could have cleared Judge Holt of the accusation if he had but spoken. An examination of the facts of this controversy leads to the conclusion that Andrew Johnson did not wish to accept censure for failure to give consideration to the petition from the five members of the Military Commission. Whether or not Speed was justified in cleaving to the rule of secrecy regarding Cabinet proceedings is a matter of personal opinion. Probity deserves approbation, but if it fastens a badge of infamy on an innocent man its expediency becomes questionable.

General Robert E. Lee escaped indictment for his part in the Civil War; President Jefferson Davis was not so fortunate. There was a difference of opinion in the Cabinet as to the method of trial. Harlan and Seward contended Davis should be tried by a military court, but supported Speed in his insistence on a civil trial. Two months earlier, Speed had insisted on the trial of Lincoln's assassins by a military tribunal. No doubt the widespread criticism he suffered because of this opinion influenced him to insist on civil trial for Davis. Also, the United States Circuit Court disagreed about this same time as to whether Milligan of Indiana, who had been sentenced to hang by a military commission, should be granted the Writ of Habeas Corpus. Perhaps Speed realized public opinion had turned against trials by military commissions.

After due deliberation, Attorney-General Speed and the associate counsel decided that the trial must be held in Virginia in the district in which Davis lived while he was engaged in

¹⁷James Speed, *Address of the Hon. James Speed before the Society of the Loyal Legion* (Louisville, John P. Morton & Co., 1888), page 7.

directing the rebellion against the government. This was contrary to the theory of "constructive presence" held by some men. These men felt that the trial might be held in any district in a Northern state where the Confederates had invaded, on the theory that Davis was "constructively present" even though he was not there in person. This decision raised the question whether or not a jury could be procured in Virginia or any Confederate state which would find Davis guilty. Speed at first thought it particularly fortunate that the trial would take place in the Circuit Court where Chief Justice Chase presided. He felt fairly certain that Chase would sympathize with the government, but Chase who had political aspirations had no desire to become implicated in a controversy so filled with political dynamite. Chase refused to hold court until peace should be declared. The Cabinet took the Davis case under consideration in July, 1865. After Chase's refusal to preside, nothing further was done until the spring of 1866.

In the meantime, Attorney-General Speed was not permitted to forget Jefferson Davis languishing in prison at Fortress Monroe where he endured acute physical suffering. Letters written by Davis and those addressed to him were sent constantly to his desk. The Radicals, ever desirous of rendering Johnson unpopular since he stood in the way of a punitive reconstruction policy, tried to make political capital against him out of the Davis case. The Senate and the House both passed resolutions asking "for what charges and what reasons Jefferson Davis was still held in confinement and why he had not been put upon his trial." The House resolutions called for the publication of the papers relative to the Davis case. January 31, 1866, Speed advised against the publication of the papers relative to Davis saying:

Their publication might wrong the government, or accused, or both. Whilst I see that much wrong may flow from the publication, I cannot see that any good would come from it. In my opinion, then public and private justice alike demand that they should not be made public.¹¹

Although the President issued a partial peace proclamation in April, 1866, still Chief Justice Chase refused to preside over the Circuit Court in which Davis was to be brought to trial. Speed's inherent love of justice asserted itself. He wrote the President

¹¹*Executive Documents*, Vol. 7, 39th Congress, 1 Session, No. 46.

suggesting that Jefferson Davis's counsel be allowed private interviews with him and that Davis be permitted the freedom of the grounds of the fortress. Speed also accompanied Davis's counsel to see the Chief Justice to ascertain whether he would entertain any application to release Mr. Davis on bail. Chase refused; also the district Judge refused the counsel's petition, and Davis remained in prison. At this juncture James Speed's connection with the Davis case ceased when he resigned his office in July.

All the problems considered by the Cabinet—surrender, parole, amnesty, the trial of the Lincoln assassins, the Davis trial—were like great crashing chords which sounded loudly for an instant above the overtone that beat steadily in the ears and brains of the President and the secretaries. How could the governments of the Seceded States be reconstructed? What was to be done to restore the Rebel States to their former status in the Union? When Congress met in 1865, Johnson had solved the problem; he had carried out self-reconstruction. The relations between the Negroes and the Whites he would leave to the states, hoping to keep the question out of politics. He was opposed to Negro Suffrage; he advocated deportation instead. The admission of the senators and representatives of the Reconstructed States rested with Congress, he said. All had not been smooth sailing in Cabinet circles while Johnsonian reconstruction was being affected. The reconstruction of North Carolina came under discussion on May 9, 1865. Stanton, Dennison, and Speed desired to reconstruct this state on condition that Negro Suffrage be accepted. Charles Sumner, who had had the Negro Suffrage question very much at heart, was disappointed. He wrote Speed, who sympathized with him on this point, inclosing a letter from the abolitionist, Wendell Phillips, in which it was proposed that the Federal Government set up governments in the Southern States. In his reply Attorney-General Speed set forth his opinions on reconstruction.

. . . . He Phillips seems to think that this Government has a right to make governments for the people of the disloyal states. Now the truth is, so long as they are enemies and hostile to this Government, we have a right to control them; but when they lay down their arms and cease their hostility, in fact and in purpose, then they must make their own government; we cannot make it for them; we cannot dictate to them that they shall do

more than make a government in harmony with the general Government, and which shall be republican in form. It is a matter of no consequence whether they are Territories or whether they are States. This government does not deal with the land, but with the people. If unfriendly, we deal with them accordingly; if friendly and in harmony with us, we are bound to permit them to make their own government. . . .¹⁹

Twenty years earlier Speed had declared himself willing to adopt any feasible plan to be rid of slavery. Now in June, 1865, he had come a step further in his thinking on the Negro question; he was convinced in his own mind that the Negro must be given suffrage rights. In the letter to Sumner, he argued thus:

. . . . The people, no matter what may be their color or their class, have an interest in the Government when it is made, and in the making of it; and to me it seems that the only question is, who constitute the people? My mind is firmly made up upon that point. All efforts to make the seceded States Territories, or to dispose of them as conquered countries, or to say that, as enemies, we can proscribe conditions, and all that sort of thing, seems to me to manifest a willingness or eagerness to dodge the real question—that real question being, and simply being, Shall the black man exercise any of the functions of government?

James Speed would give the Negro the right to vote but, at first, he felt Negro Suffrage should be granted by the action of the state governments. He was to change his mind a few months later. In September, 1865, he wrote his brother, Joshua: "I think that the right to secede on the part of a state is not more absurd than for the General Government to claim to control the status of suffrage in the states."²⁰

Although Speed had been disappointed that Negro Suffrage was not forced on the Southern States in the proclamations issued by July, 1865, he acquiesced. He was to become more recalcitrant in his relations with Johnson. The two men disagreed on the power of the Provisional Governor to create courts and judgeships in Mississippi. Speed, the Radical, and Johnson, the Conservative, had come to the parting of the way. This difference of opinion came to light in August, 1865. Speed was to remain in the Cabinet almost a year longer and the tension grew more strained day by day.

The Freedman's Bureau, a relief agency for Negroes, had become a political organization subversive to Johnson's interests.

¹⁹Harvard Library, American Mss., No. 159, Vol. 73.

²⁰*James Speed, A Personality*, pages 66-67.

The officials of this government agency were also officers in the Union League clubs which were organized to educate the Negroes to vote the Republican ticket. It was through these clubs that the Negroes gained the false impression that each was to be given forty acres and a mule. The officers of the Union League clubs secured their funds from the money appropriated for the Freedman's Bureau. President Johnson was well aware that this agency was a detriment to his cause. It was fated to expire March 3, 1866, unless Congress extended its span of life and this Johnson was determined to prevent. Consequently, when Congress passed a second Freedman's Bureau bill, early in 1866, he prepared to veto it. His veto message was discussed in the Cabinet meeting of February 19th. James Speed thought this veto a mistake, as an entry in Welles' diary reveals:

. . . . Seward, McCulloch, and Dennison agreed with the President as did I, and each so expressed himself. Stanton, Harlan, and Speed, while they did not absolutely dissent, evidently regretted that the President had not signed the bill. Stanton was disappointed. Speed was disturbed. Harlan was apprehensive.²¹

Welles further observed that this veto would lead to an open rupture between the Republican members of Congress and the President. What was to be the attitude of Speed? Would he stand by the President or would he desert for the Radical camp? Why should he object to a veto of the Freedman's Bureau Bill? What strange fascination did this agency hold for him?

The Freedman's Bureau bill was but the first step in a far-reaching program inaugurated by Congress to reduce the swollen power of the Executive—a power that had been built up under the stress of war. Congress, especially the Radicals, felt Johnson had usurped authority that rightfully belonged to it. A committee was appointed to consider the matter of reconstruction—the "Committee of Thirteen," Welles dubbed it. This Committee was directed by the Radicals. It was maintained that civil government must be established by Congress, that there was a distinction between pardon and amnesty and only Congress could grant amnesty. Although prosecutions for treason were unsuccessful, Congress could punish in other ways—they could deoffice, defranchise, and force the states to repudiate their debts. The Radicals concluded, also, that the United States

²¹*Diary of Gideon Welles*, Vol. 2, pages 434-435.

owed an obligation to the Negro. Just how James Speed, a Southerner, fitted into this Radical program is an enigma. "That he should agree to all the Radicals in Congress were proposing was out of the question," stated Henry Watterson. It must have been the Radical Negro Policy that won his support. For a year he had been advocating Negro Suffrage. He was convinced that the stability of the Union for which he had fought so hard depended on the recognition of the political rights of the Negro.

Mr. Speed's interest in his own political career must have played a considerable part in convincing him that the Negro must have the right to vote. He must have realized that the Republican party on which ticket he proposed to run for office in the future would be as Billingsgate to Kentuckians. If the Negroes had the vote, his election would not be impossible. Where the Freedman's Bureau was concerned, Mr. Speed, having little confidence in Southern fidelity to the Union, must have reasoned that it would be more desirable to leave the ignorant Negroes under the tutelage of the carpetbaggers who could be trusted to steer them to the polls in the interests of the Republican party and the Union. In justice to Mr. Speed, it is reasonable to think, also, that humanitarianism prompted him to favor the maintenance of the Bureau. He well knew the helplessness of the Negroes, as did all Southerners.

The Thirteenth Amendment became the law but it was soon clear that, free though he was, the Negro was not yet the equal of the White Man. When the Southern legislatures met, they refused the Negro the right of testimony in court; vagrancy laws, the so-called Black Codes, were passed by Southern legislatures. This angered the Northern Radicals. This is slavery in disguise, they said. Consequently, using the enforcement clause of the Thirteenth Amendment, as a basis, the Civil Rights Bill, giving the Negro the right to appear in court, own property, sue and be sued, was adopted by Congress in March, 1866. When Johnson read his message to the Cabinet on March 26th, returning the Civil Rights Bill with his veto, he asked the Cabinet members to express their opinions. Stanton, Dennison and Harlan thought it advisable for the President to sign the bill, Stanton making the major argument for it. Speed was absent because of illness, but the loyal members of the Cabinet knew full well how he would

have voted had he been present. Senator J. R. Doolittle, one of Johnson's most active friends in the Senate, urged Welles to intercede with the President to rid the Cabinet of his enemies. This conversation between Welles and Doolittle took place about two weeks after the Cabinet discussion of the veto of the Civil Rights Bill and shortly after the veto had been overridden. The next day President Johnson told Welles:

. . . . It was true that his Cabinet was not in all respects what he wished; but he had taken it as he found it. . . . Speed, he said, certainly added no strength to the administration, was manifestly in harmony with the Radicals, advising with and encouraging them. Delicacy should cause him feeling as he did, to retire, but he had made no advance in that direction, nor would he, probably, uninvited. . . ."

The Civil Rights Bill had become the law. Its critics claimed it unconstitutional. Very well, then, the Constitution should be amended in favor of the Civil Rights measure. Early in May, Thaddeus Stevens, the leader of the House, a gentleman with a forbidding personality and irascible temper, introduced his amendment which was to be the nucleus of the Fourteenth Amendment. The Amendment planned to bring Negro Suffrage indirectly; the number of representatives from a state should be reduced in proportion to the number of males over twenty-one who should not be allowed to vote. Although in the fall of 1865 Speed had written his brother that the power to grant Negro Suffrage was the right of the State, the Fourteenth Amendment was to receive his hearty support. After his resignation from the Cabinet, he pleaded eloquently for this amendment before the Southern Loyalist Convention in Philadelphia. By the time the state legislatures took this amendment under consideration, James Speed was back in his law office in Kentucky, keenly watching the progress of Radical Reconstruction. On November 28, 1866, he wrote Charles Sumner of his fears. He made clear his approval of the removal of Southern whites from active participation in government. He said: ". . . . Universal suffrage with universal amnesty won't do. The disqualifying clause must be retained."

In 1870, after the Fourteenth and Fifteenth Amendments had become the law, James Speed, in the letter he wrote accepting the invitation to become candidate for Representative, assured

²¹*Ibid.*, Vol. 2, pages 480-481.

²²Harvard Library, American Mss., Vol. 79, No. 62.

the Republicans of his unaltered position on Negro Suffrage. He declared:

. . . . In my estimation, the crowning glory of the Constitution of the United States is the thirteenth and fifteenth amendments, because they recognize and establish equal civil and political rights to all men. . . . History teaches that the nations of the world are governed by the bayonet or ballot. Establish unequal or unjust rights among men, to sustain that inequality and injustice, force must be resorted to either in the shape of standing armies, or of the power of the master over the slave. As between the bayonet and the ballot I do not hesitate to choose the latter.¹⁴

The rift between Johnson and the Radical members of the Cabinet, already at loggerheads over reconstruction, became more serious when the Irish Fenians chose the Critical Year of 1866 to invade Canada. The Irish in America, angered at Great Britain's determined resistance to Irish independence, struck at the British government by an invasion of Canada. Rumors of an intended invasion were abroad, but the Irish conspirators spun their plans with no hindrance from the United States government. The reason was that the Fenian question was fraught with political difficulties. The Irish were a powerful political element in our society. Stanton did not wish the Republican party to lose their support; he did wish Johnson to be defeated in the coming campaign. Here was an opportunity to turn the Irish against the President. The Cabinet took under consideration the propriety of some governmental action. Welles desired to send General Grant to the frontier; Stanton objected. Stanton desired the President to make a proclamation to put down the Fenian organizations. The upshot of the affair was that neither side moved to quell the Irish plans. On June 2, 1866, the Irish met the enemy on the Canadian side, opposite Buffalo, New York. The Queen's Own Volunteers put them to rout in short order. The Irish got safely on board a large scow attached to a tugboat, and as soon as they were towed into American waters they were compelled to surrender to the United States Steamer Michigan.

After the Fenians were taken into custody, the Administration was at a loss to know what to do with the prisoners. President Johnson felt the government had a "white elephant" on its hands. Welles thought the prisoners should be turned over to the Military, but Seward thought that could not be done since

¹⁴*Louisville Daily Commercial*, September 27, 1870.

"Stanton wanted nothing to do with them." Speed dissented to Seward's suggestion that the government "let them run away," since there would probably be extradition claims for the leaders. Seward and Speed decided that the Fenians were to be "prisoners of state." Welles' insistence on military help was overridden. On June 5th, James Speed addressed the following order to district attorneys and marshals:

By direction of the President, you are hereby instructed to cause the arrest of all prominent, leading or conspicuous persons called "Fenians" who may have probable cause to believe have been or may be guilty of violations of the neutrality laws of the United States."

The phrase, "by direction of the President," is peculiarly significant. "Designedly mischievous," Welles called this order. Darkly pessimistic, he opined:

. . . . The effect will be likely to throw the Irish against the administration, or make them at all events indifferent towards it It is one of many little things which impresses me there is intended mischief toward the President. Speed acts with Seward and Stanton thoroughly, and his peculiarly worded order, if not suggested by them, is just what they wished.

The next day President Johnson issued his much-delayed proclamation in regard to the Fenians. So Stanton and Seward had their way: the President was forced to take the responsibility for calling on the military to stop the Fenian movement. Speed in his preliminary order had also placed the burden of the responsibility on the shoulders of the President.

In summary, there is definite evidence that James Speed had been working openly against Andrew Johnson's interests since February, 1866. In the spring of 1865 Speed desired Johnson to reconstruct the Southern States on the basis of Negro Suffrage. Although this was not done, he did not condemn his superior officer for he expressed admiration for him to his mother in September. In the months which elapsed, however, he fell more and more under the influence of Stanton and the Radicals, so that Sumner could say of him that he was "the best man in the Cabinet." Speed openly opposed Johnson's veto of the Freedman's Bureau Bill and the Civil Rights Bill, the former being detrimental to Johnson, since it was a political machine of the Radicals, and the latter setting aside Johnson's policy of leaving

²⁵Frank H. Severance, "The Fenian Raid of '66," in *The Book of the Museum*, Buffalo Historical Society, Vol. 25, (1921), page 277.

with the states the solution of the Negro problem. Speed's advocacy of the Fourteenth Amendment was also contrary to the interests of Johnson since it deprived the Executive of amnesty power. The Attorney-General failed to co-operate with the President in the Fenian affair also, acting in this case to shunt responsibility onto the President for a proclamation which was unpopular politically. Speed was not alone in conspiring against the President. His fellow-cabinet officers, Harlan, Dennison, and Stanton were guilty also. Seward's attitude was the subject of conjecture too. Johnson's friends came to feel it was time something was done to force the hand of the disloyal Cabinet members.

James Speed had considered resigning his Cabinet post, but decided to stay on because he felt it his duty to his country. A letter from his brother Joshua, written April 1, 1866, reveals that James Speed had discussed the possibility of resigning from the Cabinet. Joshua Speed wrote his brother as follows:

. . . . Personally it would be to your interest to return. But there are other considerations. You were appointed as a representative man of the party for freedom in the slave states. So long as you can with honor, I would advise you to remain."²⁶

James G. Blaine explained James Speed's lack of sympathy with Johnson thus:

. . . . He had been regarded as very conservative on all pending issues relating to Reconstruction, but he now saw plainly that the President was inevitably drifting, not only to extreme views on the issue presented, but to an evident alliance with the Democratic party and perhaps a return to its ranks. Against this course Mr. Speed revolted. His inheritance of Whig principles, his anti-slavery convictions, his personal associations, all forbade his following the President in his desertion of the Republican party."²⁷

Senator Doolittle and Gideon Welles, two unswerving friends of President Johnson, agreed over the breakfast table on June 15, 1866, that a stand must be taken against the Radicals. At the suggestion of the President it was decided that Senator Doolittle should draw up a call for a National Convention of true friends of the Union. This call was issued on June 25th in the name of the National Union Johnson Club. It stated that no delegate would be admitted who did not "loyally accept the National situation" and who was not attached "in true allegiance to the

²⁶James Speed, *A Personality*, page 88.

²⁷Blaine, *op. cit.*, Vol. 2, page 219.

Constitution, the Union and the Government of the United States." The instigators of this convention addressed letters of invitation to each Cabinet member. Speed was not capable of double dealing as was Stanton; he refused to give his approval to the proposed convention, thus coming out in open opposition to the President. On July 13th he wrote his brother, Joshua:

. . . . Yesterday I had a full and frank talk with the President, the result of which was that I am to resign. The interview was as kind and courteous on his side as I could ask and I do not think he got the advantage of me in that particular."¹

The next day James Speed replied to Senator Doolittle's invitation to the Convention—a letter which Horace Greeley called "a grateful recognition of that party which no considerable number of men are able to unmake by degrading themselves." Speed wrote:

. . . . I do not recognize the very respectable gentlemen who have made this call as the acknowledged organs of the great Union Party of the country The pith and marrow of the present call (National Union Convention, August 14) tend toward a Convention to form a party for sustaining, not the entire government but a department of the government; I can conceive of no sadder spectacle than that of one branch of the government of the country taking an isolated position upon questions of deep and common interest and placing itself in hostile conflict with a co-ordinate department.

The call fails to take notice of the question whether the several states shall ratify or reject the last amendment (14th) proposed to the Constitution. I cannot go into an organization that would either openly oppose that measure or that would smother it by avoiding discussion The persistent attempt to keep in Constitutional rule unequal and unfair basis of representation is perilous to future peace. I feel out of place in a party that favors a basis of representation giving advantage to a portion of the body politic"

On July 16th Speed wrote a curt letter of resignation to President Johnson. The President told Welles that "Speed thought to be very short, and he, therefore, did not reply to Speed's note resigning, but considered it a fact in conformity with the terms of the note."

James Speed returned to his law office in Louisville but he did not bury himself there. He devoted himself to the interests of the Republican party, nationally and in his own State. The suc-

¹*James Speed, A Personality*, page 88.

²*Ibid.*, page 96.

cess of the National Union Convention of August 14th alarmed the Radical Republicans. The outcome was that this party held a convention in Philadelphia, September 3rd to September 8th, to "bring the loyal Unionists of the South into conjunctive action with the true friends of Republican Government in the North." James Speed was elected permanent chairman of the Southern Loyalist Convention—"the same Speed who had been for fifteen months content to sit in Johnson's cabinet," wrote an admirer of Johnson. The choice of Speed as permanent chairman was a popular one, "all the delegates rising to their feet and applauding vociferously for minutes." In his address to the Convention, James Speed spoke of the Convention of presidential supporters just recently adjourned. He said:

. . . . That Convention, as I read its history, came here and simply recorded in abject submission, the commands of one man. That Convention did his commands; the loyal Congress of the United States refused to do it. Aye, and if you ever have a Congress in these United States of America, that does not resolutely and firmly refuse, as the present Congress has done to be merely a recording secretary of the tyrant of the White House, American liberty is gone forever.¹⁰

These words of Mr. Speed created a sensation, not only in the convention but throughout the country. The fact that he had been closely associated with the President "added vastly to the weight of Mr. Speed's address and gave to it an influence which he had not, perhaps, anticipated when he delivered it." Away from the cheering and hat-waving audience, Mr. Speed indulged in some calm retrospection. He regretted the attack on Johnson. He felt it necessary to write the following letter of explanation:

On reaching my home I find that the Associated Press had telegraphed me as having said "the Tyrant" of the White House. Such was not my language. I said "Tenant of the White House."

It may be needless for me to make this statement and correction as you may not have seen the report of the speech. But I feel that it is due to our relations that I should do so.

The papers of Philadelphia quoted me correctly.¹¹

He may have said "tenant," or was it just wishful thinking? History accredits him with using the less flattering term. Mr. Speed was relieved to find when he visited Washington in the summer of 1867 that President Johnson seemingly bore him no malice. He wrote his wife: ". . . Words can hardly make you understand the cordial manner of the President. . . ."

¹⁰New York *Tribune*, September 5, 1866.

¹¹Library of Congress, Andrew Johnson Mss., No. 12526, Vol. 101.

Under the guidance of James Speed's legal mind, an address and resolutions were drafted by the Convention. The address was a bitter denunciation of Andrew Johnson, reiterating the word "traitor." Much to James Speed's disappointment, the framers of the resolutions had to content themselves with asking for "impartial suffrage." The attitude of the border states made a definite demand for suffrage for the illiterate black man impossible.

Immediately on his return to his home state, James Speed set about to organize a Republican party in Kentucky—a task in which it was impossible to achieve any degree of success. "It is right hard work, but a labor of love and I am . . . hopeful," he wrote Charles Sumner. He did succeed in organizing a State Convention in February, 1867. He wrote the platform adopted by this Convention. This platform was a conciliatory document intended to appeal to Conservative Kentuckians as well as Radicals.

James Speed remained an ardent Republican, continuing to serve the party with unswerving loyalty with the exception of the campaign of 1884. This year he deserted to the camp of the "Mugwumps" and cast his vote for Grover Cleveland. His Republicanism cut short his ambition for a political career. It is true in 1879 he advised the members of the graduating class of the University of Louisville to avoid politics, but this was after he had failed several times to gain public office. His name was placed in nomination for United States Senator in 1867. He received only forty-two votes.

The Republican State Convention of 1868 nominated Grant for president and Speed for vice-president. The National Convention was indifferent to the nomination of Mr. Speed; no Republican possessed sufficient influence to swing the electoral vote of Kentucky, the hotbed of Democracy. The name of Kentucky's favorite son was withdrawn after the first ballot; he received only the twenty-two votes of his own state.

Past failure did not deter James Speed from making one more attempt to secure a national office. He accepted a call to become the candidate for State Representative in 1870. He could expect nothing but defeat, but he was eager to keep the Republican party alive in the state of Kentucky. Despite the superior qualifications of James Speed, his fellow-citizens voted for the less capable man.

James Speed, born in 1812, just as the young nation entered a war to establish its commercial independence, grew up with the country. He launched upon his political career as the nation was rounding out its continental boundaries in the imperialistic war with its neighbor to the South. When the irrepressible conflict between Sectionalism and Federalism was threatening to make a Chinese Wall of the Mason-Dixon Line James Speed strove valiantly and successfully to eradicate the barrier. His political career was shaped by two definite objectives. He helped to hold Kentucky in the Union, an important factor in the ultimate preservation of the Union. He had said, in 1844, that "Slavery is the curse of the State; I would willingly adopt any feasible plan to be rid of it." He stayed resolutely by this principle and contributed not a little to the destruction of the "peculiar institution." When the searchlight of history flashed on his career after his passing on June 25, 1887, it revealed that James Speed had sacrificed his own political ambitions to preserve the Nation.