

Boston Aug. 29 -1860

Gerrit Smith Esq.

Dear Sir,

Yours of the 24th was not recd until today.

I feel in no haste as to ~~the~~ Phelps's case, but as to the others, it seems important that we decide immediately, because, according to Mr Sedgwick's letter, some of all the cases are ~~to~~ expected to be heard in September, unless discontinued.

~~What the effect would be of proceeding against Sherman and Barlow, independently of the rest of the committee, I do not feel entirely clear. I think it would be unjust to them, and very hazardous, to say the least, for us. By the effect, I mean the effect upon any subsequent suits (if we should with[?] to bring any) against the remainder of the Committee. Whether Mr Sedgwick intends ever to sue the remainder of the committee, I do not know, I have taken it for granted that he did not. Perhaps in this I am mistaken. But even if he does, It seems very important that before we proceed further against Sherman and Barlow, we make up our minds definitely whether we will ever sue the others or not, for the results of the suits against these two, may possibly have a very unfavorable if not fatal influence upon any subsequent suits against the others.~~

In regard to the newspapers, it seems to be perfectly clear that it will be, not merely useless, but suicidal, to proceed against them, independently of the committee. If their counsel should have any ingenuity at all, they will assuredly get off with merely nominal damages. For although they are technically guilty there is really no moral guilt on their part, worth talking about. The subject was once on which the public mind was intensely excited, and thirsting for information. And when thirty one gentlemen of high standing, and abundant pecuniary responsibility, came forward with a statement under their own hands, declaring that they had investigated the matter, and had ascertained that you were connected with it, and giving it as much corroborating testimony as it could reasonably be expected they could give in such a case, nobody could reasonably expect that the newspapers would refuse to publish it - especially as their columns were no doubt open to any counter statement from you or your friends. As journalists professing to furnish their subscribers with all the important news of the day, they would have been culpable rather than praiseworthy had they refused to publish it.

Mr Sedgwick in his letter to me, lays stress upon the fact that some of the papers published the manifesto "with malice." But

what Mr Sedwick calls malice, both the law and a jury would most likely, if not undoubtedly, call an excusable, or ~~even a just indignation~~ even a justifiable and proper indignation, naturally produced by what they suppose to be the naturally aroused by their confidence in the truth of the statements made by the ~~manifesto~~ committee. The publishers as well as the rest of the community had a moral right to consider those statements true, and to express appropriate indignation. And the fact that they did express indignation, is a fact altogether in your favor - and could be most effectively used ~~as such~~ by us, in the suits ~~against the committee~~, for we could say, with truth, that the same indignation which was excited in the minds of the publishers, by the statement of the committee, was undoubtedly excited also in the minds of a large portion of the public. Here, then, we have evidence and the exponent[?] of that public indignation, which you charge was excited against you, and for which you claim damages.

It seems to me, therefore, that we really have no ground at all with the publishers, if they will but furnish us the evidence necessary to convict the committee: and that, after we shall have brought the suits against them, jointly with the committee, we ought then to go to them and say to them frankly, that we have no ground with them; that it was only from necessity that we included their names in the suits; that our only object is to reach the committee; and that if they will furnish us with the evidence necessary to convict the committee, we will consent that judgments will be rendered against the committee alone.

But if the publishers decline to render us of any assistance, I would proceed without it, confident that we should nevertheless convict the whole of them, if we can but prove that those men composed the committee.

Yours truly

L. Spooner