

Sounds of Silence

BY M. KELLY TILLERY

In the last quarter century, the Philadelphia Bar Association Board of Governors has passed about 500 resolutions, some of which concern issues beyond our profession. One of the most recent, supporting action on climate change, is a good example. Others concern such issues as land mines (against), diversity (for), marriage equality (for), bullying (against), religious freedom (for) and discrimination against women (against).

Some view resolutions as worthless pontification that only placate liberal consciences. Lincoln hesitated to issue an Emancipation Proclamation until he could give it effect, telling a group of ministers on Sept. 8, 1862, "I do not want to issue a document that the world will see must necessarily be inoperative, like the Pope's Bull against the comet." In 1456, Pope Calixtus III supposedly had issued a Papal Bull ordering Halley's Comet not to appear in the sky. Lincoln issued his Preliminary Proclamation two weeks later. Covering 3 million slaves, the final Proclamation of Jan. 1, 1863, had actually freed more than 1.3 million by late 1864. And the 13th Amendment, ending slavery, was born of two crusading women, Elizabeth Cady Stanton and Susan B. Anthony, who began a petition drive, just 2 ½ years before it was adopted 150 years ago, this Dec. 6.

It occurred to me that because our Association had existed for 63 years during which slavery was legal, including in Pennsylvania until 1848, perhaps it had spoken on this seminal national scourge. Unfortunately, neither our nor any other bar group ever said anything about slavery. Or about the 13th Amendment. Nor did any speak out on any other major social or political issue of the day.

To be fair, antebellum bar associations were more like exclusive social or library clubs and protective professional guilds, not having the wider mission such as that of ours today, "to serve the profession and the public by promoting justice, professional excellence and respect for the rule of law and ... strive to foster understanding of, involvement in and access to the justice system."

Trained lawyers did not arrive here until after the English "Glorious Revolution" of 1688. Parliament's Bill of Rights (1689) inspired some English lawyers to spread the good

word of "rights" to the colonies, though not to those then here enslaved.

Ours is the oldest continuous bar association in the U.S. (1802). Detroit, Cincinnati and New Orleans had bar associations, as did six slave states. Similarly, not one seems to have spoken on slavery, at least not against it.

There is, however, ample evidence of individual members of this bar who bravely spoke out and litigated cases that helped erode and bring about the eventual demise of the slave power.

Philadelphians William Rawle (1759-1836) and David Paul Brown (1795-1872) were two of the earliest and bravest lawyer-abolitionists who spoke out vociferously and often against slavery, despite the unpopularity of the cause and substantial risk to their own safety and livelihood.

Philadelphia jurist John Meredith Read's (1797-1874) public stance against slavery expansion cost him a seat on the Supreme Court when President Tyler withdrew his nomination in 1845 due to Southern opposition.

In 1851 Philadelphia lawyers Read, Brown, Theodore Cuyler, Joseph J. Lewis and W. Arthur Jackson secured acquittal of a white miller in the celebrated treason trial arising out of the Christiana Riot in which a large group of blacks and whites prevented the U.S. Marshal from capturing a fugitive slave.

Other Philadelphia lawyers such as Horace Binney (1780-1875), Jared Reed Ingersoll (1749-1822), John Sergeant (1779-1852), Evan Lewis (1782-1834), George H. Earle Sr. (1823-1907) and William Morris

Meredith (1799-1873) were publicly active in opposition to slavery.

And at least five of our first six Chancellors, acting as individuals, strongly and publicly opposed slavery. The second, Peter S. DuPonceau, (1760-1844) spoke out, but against abolitionism, not slavery.

The silence of some such as Chief Justice Benjamin Chew (1722-1810), John Dickinson (1732-1808) and even the first "Philadelphia Lawyer," Andrew Hamilton (1676-1741), may be, in part, because they each owned slaves for a time.

In 1860, there were 33,193 lawyers in the U.S. (no women, only four black), 2,414 of whom in Pennsylvania. Only a



handful spoke out. And an even smaller number took action.

There is no record of any lawyer among the 2,000 settlers of Jamestown, Virginia on Aug. 20, 1619 when “20 and Odd Negroes,” slaves from Angola, first arrived on a Dutch ship. And there is no record of anyone objecting on that day or any day for a long while thereafter.

This, the first time slavery was brought to mainland America, was the crucial opportunity for someone to speak out and say, “No!” What a different world we might live in if just one person, particularly one political, business, religious or legal leader, had had the guts to say, “No. Not here!”

There also arose no hue and cry from any Philadelphians, lawyers or not, in 1684 when the British ship *Isabella* offloaded the first 150 African slaves on our Delaware River docks. Most were purchased by Quakers at auction at the London Coffee House at the southeast corner of Front and High (now Market) Streets, a frequent gathering place for members of the bar.

Ninety years later, Thomas Paine (not a lawyer), who for a time lived across the street, was one of the first to speak out in his first essay, “African Slavery in America” (March 8, 1775).

Great public apologies began in 1077 when Henry IV apologized to Pope Gregory VII for political conflicts with the church, but there has been an explosion in the last 25 years. The U.S. has apologized for internment of innocent Japanese Americans in World War II and doing ghastly experiments on African-Americans at Tuskegee Institute, but it has never apologized for slavery.

The Senate (2009) and House (2008) passed different apology resolutions but, unsurprisingly, could never agree on common language. President Clinton expressed regret for the slave trade (1998), but there has never been a formal government apology.

Some say apologies are as useless as resolutions. But perhaps it is time for

the nation to do so. And, perhaps for our Association as well, for not standing up and saying, “NO!” as its first act, in 1802.

Of course, no officer or member of ours or any association pre-1865 lives today. But that is likewise true of officers, directors, employees, stockholders and leaders and citizens of entities which have apologized for involvement in and shared responsibility for slavery.

In the last decade, numerous disparate entities have apologized, including the City of London, Ghana, Benin, Wachovia, J.P. Morgan, Aetna and Lehman Brothers.

In 2005, Philadelphia enacted a law requiring those doing business with the city to research and disclose any historical ties to slavery, though not mere silence in the face of it. Lest you think these corporate mea culpas were a result of the soul-searching of repentant executives, know that most were a result of a similar 2003 Chicago ordinance.

But this is not about slavery. Or apologies. It is about silence. In the face of injustice.

John Stuart Mill’s “marketplace of ideas” cannot produce truth, wisdom and effective solutions unless and until we actually come to market and ascend the soapbox.

Whether we heed Eldridge Cleaver, “If you’re not part of the solution, you’re part of the problem;” Albert Einstein, “If I were to remain silent, I’d be guilty of complicity;” Dr. Martin Luther King Jr., “In the end we will not remember the words of our enemies, but the silence of our friends;” or Paul Simon, the sounds of silence speak volumes.

As members of the bar, we are privileged to have special powers that come with heavy responsibility, not only to our clients, but also to our community, nation and planet. If we remain silent, we fail. ■

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