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EDITORIAL

WILL MR. JUSTICE BISCHOFF, JR., EXPLAIN?

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In the course of the proceedings, instituted by the Tammany Volkszeitung Corporation to punish members of the National Executive Committee of the Socialist Labor Party for alleged “contempt of court,” Mr. Justice BISCHOFF, JR., rendered against the members of the N.E.C. a decision in which this passage occurs:

From the affidavits and from the copy of the constitution of the political party, which has been referred to by the defendants as limiting their control of the paper, it appears that they had power to obey the injunction by exercising the necessary authority, and by remaining passive, they permitted the acts which they had been ordered to prevent.

It appears from this passage, as well as from the whole tenor of the decision, that Mr. Justice BISCHOFF, JR., does not deny the veracity of any of the affidavits presented on behalf of the N.E.C.: on the contrary, he proceeds from the principle that they are true, and, considering them true, he decides against the N.E.C., on what express ground? On the ground that the N.E.C. remained “passive.” It is upon this particular ground that an explanation from Mr. Justice BISCHOFF, JR., is urgent.

The antithesis of “passive” is “active.” If the N.E.C. is to blame for having remained “passive,” it must follow that the N.E.C. was expected to become “active.” Now, here is the rub. The word “active” is a vague word. It has many degrees; so many that “passivity” runs by easy stages into “activity,” and *vice versa*. The activity, exercised by the N.E.C. in obedience to the injunction order, Mr. Justice BISCHOFF, JR., considers to be passivity. The question of interest to the community that arises at this juncture is this: How far does the court interpret the law to order an enjoined citizen to go in such a case? Will the individual or collective shaking of the fist by the N.E.C. under the nose of the Editor whom the Party appointed, and

who is in no way a party to the case, be activity enough? Or would the fist, individual or collective, of the enjoined first have to come into actual-active contact with the nose aforesaid? Or would a shillelagh besides have to be brandished? Or would no activity be construed until pistols, sabres (dynamite, perchance?) be used? In short, seeing that the “activity” sworn to, in affidavits accepted as true by Mr. Justice BISCHOFF, JR., himself, is construed by him as “passivity,” or not sufficient “activity,” what degree of a breach of the peace does the law demand of enjoined members of a community in order to escape incurring “Contempt of Court?”

The law, whether statutory or otherwise, is not presumed to be oracular, so as to serve rather as a snare than a guide. Will not Mr. Justice BISCHOFF, JR., kindly step before the footlights and be more explicit?

**Transcribed and edited by Robert Bills for the official Web site of the Socialist Labor Party of America.
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