

EDITORIAL

THE BURNS DISCHARGE

By DANIEL DE LEON

WHEN detective W.J. Burns was indicted in Indianapolis on the charge of kidnapping John J. McNamara, few people believed he would find the cobwebs of the law too strong to break through. When McNamara “confessed,” no one doubted Burns would be let out “triumphantly.” What, however, was not quite so clear to any one, from the time of his indictment down to the decision of the Judge discharging him, was that Burns would go thundering down the galleries of history the incarnation of three distinct breaches of the law—one committed by himself, a second committed by the Judge to vindicate the first offence, and a third committed also by the judge in order to vindicate the illegal vindication.

No one in his senses supposes that, if McNamara, instead of being a poor workman, had been a Standard Oil magnate dynamiter of a competitor, he would have been denied counsel, and, without a hearing, spirited away to some other State. If not the statute, custom, which has the power of law, provides council to the most obvious criminal. Burns acted in a manner that kidnappers and burglars proceed. His method of conveying McNamara to Los Angeles was a breach of Law,—the first of the series.

Being indicted for the offence, Burns was then discharged by Judge A.B. Anderson upon the reasoning that “according to the Indiana statute,” McNamara might have arranged, in Los Angeles, for an explosion, but returning to and arriving in Indiana before the explosion was consummated, he then would be immune from extradition to California, and also immune from prosecution at the Indiana bar. That neither the Indiana nor any other State’s statute bears out so baroque an interpretation every jurist knows. But assuming that the Indiana statute could be construed no otherwise, then the decision of Judge Anderson, upon the grounds that he took, amounted to a repeal of a statute in force, and the enactment of another, a brazen

violation of Law—the second of the series, which surely would not have been indulged in to suit the case of a capitalist offender.

Having gone so far, and realizing the shakiness of the leg upon which he planted his decision, Judge Anderson hastened to brace up that leg with an “ipse dixit” a legal enunciation of his own, to wit, “Burns is a man who has done signal service to his country”; in other words, the statute is not law, but the law is a personal opinion. A novel theory—the third one of the series in violation of law.

It matters not how guilty a man may be, civilization prescribes certain formalities of legal procedure; they are checks on personal whim, for the protection of the innocent. If a man can be extradited before he has a hearing, why could he not be sentenced before he is tried, and what is there to prevent his hanging before he is sentenced? What innocent citizen would be safe? The difference between an orderly community and an anarchic aggregation of men is that, whereas the latter is under personal rule, the former is ruled by law.

Burns did his share; the Governor of Indiana, who allowed the kidnapping, did his share; and now Judge Anderson has done his double share towards plunging this country into the chaos of anarchy.

Transcribed and edited by Robert Bills for the official website of the Socialist Labor Party of America.
Uploaded December 2012

slpns@slp.org