

Who'll Try Viereck? Goldsborough Fights to Do So; Prosecutor Assails His 'Bias'

Justice Department prosecutors today will seek the aid of the U. S. Court of Appeals in staying the trial of George Sylvester Viereck, Nazi propagandist, after an angry and unsuccessful battle yesterday to remove the case from the jurisdiction of District Court Justice T. Alan Goldsborough because he allegedly "has a personal bias or prejudice against the United States Government."

The charge was made in a sworn affidavit of personal bias filed late yesterday by prosecuting Atty. William Power Maloney and his aide, Edward J. Hickey. It resulted from the Justice's assignment of the Viereck trial to begin Wednesday instead of the original date of Feb. 2.

The affidavit was presented to Justice Goldsborough personally and he rejected it, thus leaving the Government open to one of several steps.

The Justice Department attorneys indicated they would ask the Appeals Court for assignment of one of the District's 10 other judges. Failing that, they can refuse to appear Wednesday. In that event, the case might be dis-

missed and the Government would seek a new indictment against Viereck.

'JUVENILE' CONDUCT

After yesterday's legal fireworks, in which Justice Goldsborough countered by terming the Prosecuting Attorney's conduct "juvenile" and "immature," he ordered the Government to be ready to try Viereck tomorrow, threatening to "take the proper steps" if it failed to do so.

Mr. Mahoney replied that "the Government will not be ready," and said he would seek relief at the Appeals Court because Justice Goldsborough failed to relinquish the case when served with the affidavit.

He said he had been informed last week, a few minutes before the jury returned a verdict convicting George Hill of perjury, that Justice Goldsborough had sent a message to the effect "that unless Mr. Hickey and I appeared forthwith" . . . he would set the Viereck case down for trial without consulting us."

ROW ON THURSDAY

Court proceedings disclosed that the row over Viereck, free under \$7500 bond and charged with concealing his use of Congressional franks to spread Nazi propaganda in this country, came to the surface in Justice Goldsborough's chambers Thursday, following conviction of Hill, second secretary to Rep. Hamilton Fish (R., N. Y.), for telling a grand jury he did not know Viereck.

Mr. Maloney said that he went to the Justice's and told him he had "been under the impression the case already had been set for trial before Justice F. Dickinson Letts, on Feb. 2."

According to the affidavit, Justice Goldsborough said that "so far as he was concerned, the Viereck case never had been set for trial before Justice Letts and that he wanted it to begin tomorrow."

The affidavit said Mr. Maloney informed the Justice the Government would not be ready; that the case was of such importance as to war-

rant careful preparation; and that "the Government would be placed in a most hazardous position should it be forced to start the trial on such short notice."

SHOUTED THE JUSTICE:

The affidavit continued: "Thereupon, Justice Goldsborough shouted, 'I don't give a --- --- about the Government's position. This case goes to trial not later than Wednesday, Jan. 21, and I am going to try it. You might as well get it thru your heads at once and for all that no other judge in this court can try this case except me, and the trial will start Wednesday, whether the Government is ready or not.'"

The affidavit further related that the Justice declared he "didn't give a --- what the public interest was in the case." His attitude was described as arbitrary, tyrannical and unreasonable."