

Judge Denies Bias, Says He'll Try Viereck

U. S. Lawyers to Appeal To Get Case Moved From Goldsborough

By Dillard Stokes
Post Staff Writer

Justice T. Alan Goldsborough yesterday swept aside a sworn charge that he "has a personal bias or prejudice against the Government of the United States" and insisted upon being the judge who presides at the District Court trial of the German propagandist, George Sylvester Viereck.

Government counsel made the charge in a formal "affidavit of personal bias" filed late yesterday.

Justice Goldsborough refused to disqualify himself and transfer the case to one of the ten other judges of the court, as was demanded by Special Prosecutors William Power Maloney and Edward J. Hickey, jr., of the Department of Justice propaganda squad.

When Goldsborough insisted on continuing with the Viereck trial, Maloney and Hickey refused to take further part in the proceedings and warned that they would ask the United States Court of Appeals here to intervene.

Viereck is under indictment on charges of concealing his propaganda activities on Capitol Hill when he registered with the State Department. His trial was scheduled for February 2 until last Thursday, when Goldsborough assigned himself to conduct the trial and ordered the prosecutors to be ready to start yesterday. When they protested that the trial was of great importance and that they needed the remainder of the month for adequate preparation, Goldsborough gave them until tomorrow. On Saturday he ordered certain preliminary motions argued

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yesterday.

When the time came for this argument, Prosecutor Maloney handed up to the bench an affidavit which asserted that Goldsborough was prejudiced against the Government and could not give a fair and impartial trial. The affidavit said Maloney was "acting under the authority and direction" of Attorney General Biddle.

The affidavit said that on last November 10, Daniel F. Cohalen, jr., one of Viereck's counsel, "without showing any legal basis therefor," made "strenuous representations" that he "preferred that this case should be tried before Goldsborough."

Nevertheless, the affidavit said, the case was set before Justice F. Dickinson Letts, but was postponed because of the trial of George Hill, a secretary to Representative Hamilton Fish. Hill was convicted of perjury last week. Accordingly, both prosecutors and defense agreed to begin the Viereck case February 2.

The affidavit said that last Thursday Goldsborough took over the case and moved up the trial date. When told that such haste would compromise the public interest, the affidavit stated that he replied:

"I don't give a ——— about the Government's position. This case goes to trial not later than Wednesday, January 21, 1942, and I am going to try it. You might as well get it through your head once and for all that no other judge in

vit according to Section 25, Title 28, of the Code of Laws of the United States, which provides:

"Whenever a party to any action, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated . . ."

Goldsborough hastily perused the eight-page document and within three or four minutes after it had been given to him announced:

"The affidavit is not in accord with the facts known to the court, and the court rules that the affidavit is insufficient."

Maloney pointed out that the Supreme Court has declared that filing of such a statement prevents the judge against whom it is directed from going on with the case involved, quoting Justice McKenna, who said:

"Of what concern is it to a judge to preside in a particular case, and of what concern to other parties to have him so preside?"

Arguments by Viereck's Counsel

The prosecutors then said they would withdraw from the hearings and would take the dispute to the Court of Appeals. Goldsborough replied that he would not permit them to withdraw.

While Hickey and Maloney sat resolutely silent, Emil Morosini, jr., of Viereck's counsel, then urged the court to grant a bill of particulars.

Viereck trial, but promised that Morosini would have wide latitude in examining the prospective jurors.

The prosecutors refused to take part in any of these arguments. They claim Goldsborough lost jurisdiction of the case when they filed their affidavit and that his rulings yesterday were nullities.

Following the hearing before Goldsborough, the prosecutors conferred with Clerk Joseph W. Stewart, of the Court of Appeals. They plan to petition the higher court today for a writ of prohibition, for-

bidding Goldsborough to have anything more to do with the Viereck trial.

Meanwhile, the special grand jury on Axis agents, which indicted Viereck, heard testimony from Prescott Dennett, his Washington aide, yesterday morning, adjourning until Thursday.

Justice Goldsborough was appointed to the Federal bench by President Roosevelt in 1939. He went to the bench from the House, where he was serving his tenth term in a Maryland seat at the time of

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"I don't give a ——— about the Government's position. This case goes to trial not later than Wednesday, January 21, 1942, and I am going to try it. You might as well get it through your head once and for all that no other judge in this court can try this case except me, and the trial will start on Wednesday, whether the Government is ready or not. I direct the Government to be ready to start this trial on Wednesday at 10 o'clock."

Maloney's affidavit related that Goldsborough's language "was most abusive throughout the entire interview." Goldsborough, said the affidavit, declared that he "didn't give a ——— what the public interest was in the case."

When the prosecutors renewed their objections yesterday morning, the affidavit said, and reminded Goldsborough that Viereck is an agent of a power with which this country is at war, the affidavit said, Goldsborough repeated his previous remarks. The affidavit said Goldsborough terminated the interview by saying, "I don't care whether the Government's case is prejudiced or not. Get this into your head, this case will be tried Wednesday."

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While Hickey and Maloney sat resolutely silent, Emil Morosini, jr., of Viereck's counsel, then urged the court to grant a bill of particulars, stating exactly who were the people with whose help Viereck is alleged to have carried on his propaganda activities. Goldsborough overruled him.

Morosini then urged the suppression as evidence, and the return, of certain canceled checks and other items seized when Viereck was arrested. Morosini contended that the search was unlawful. Again Goldsborough refused.

Morosini asked that the trial be put off until after the war, or until "public hysteria" subsided. Goldsborough refused. He also refused to call a new jury panel for the

Viereck trial, but promised that Morosini would have wide latitude in examining the prospective jurors.

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Justice Goldsborough was appointed to the Federal bench by President Roosevelt in 1939. He went to the bench from the House, where he was serving his tenth term in a Maryland seat at the time of

the judicial appointment. The 64-year-old jurist, before his appointment, practiced law in Denton, Md., an Eastern Shore town.