

Goldsborough Steps Out of Viereck Trial

Jurist's Withdrawal Follows Government Protest of Bias

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Justice T. Alan Goldsborough withdrew this afternoon as the jurist scheduled to preside in the pending trial at District Court of George Sylvester Viereck, indicted Nazi agent.

His withdrawal followed protests charging he was too biased for the Government to secure a fair trial. The action came before the Justice Department carried out its intention of seeking a writ requiring Justice Goldsborough to disqualify himself.

Justice Goldsborough will certify the case to another District Court jurist. The trial of Viereck on charges that he failed to register fully with the State Department as a foreign agent is tentatively scheduled for February 4.

Announcement that Justice Goldsborough would not sit in the case followed a series of conferences. William E. Leahy, prominent Washington attorney, acted as a friend of the court and aided in bringing about the change of plans.

Affidavit Recalled.

Earlier it was reported that Solicitor General Charles Fahy was ready to ask the Court of Appeals for writs of prohibition and mandamus requiring Justice Goldsborough to disqualify himself from presiding



JUSTICE GOLDSBOROUGH.

at the trial. The subsequent development apparently obviated such action.

Although George Power Maloney and George E. McNulty, special assistant to the Attorney General, conferred with Chief Justice D. Lawrence Groner of the Court of Appeals, no papers were filed requesting a writ in the case.

The Government, meantime, officially recalled an affidavit of prejudice which Mr. Maloney had filed charging Justice Goldsborough with being biased in the Viereck case.

Mr. Maloney in open court before Justice Goldsborough withdrew his affidavit and urged the jurist to reconsider the previous action in setting the Viereck trial for tomorrow. Mr. Maloney asked for a continuance of the case because of "compelling reasons." He added that there are several witnesses involved in the case who are scheduled to go before the grand jury later this week.

February 4 Agreed On.

Justice Goldsborough observed that he presumed the evidence of these witnesses before the grand jury might have a bearing on the Viereck case.

Mr. Maloney suggested tentatively that February 2 be set for the trial and said he had planned a conference with Defense Counsel Emil Morosini, jr., of New York, here on Thursday. Then, he said, the trial date would finally be determined.

Justice Goldsborough said he has scheduled an anti-trust case, dealing with the price of bread in Washington, before him on February 4. He said that if a later date than tomorrow was set, it would be necessary to set the case down before another judge.

Clerk Samuel Silverman called the attention of the court to the fact that February 2 is the last date for the present jury. A new jury will be drawn on February 3.

Fight to Delay Trial Of Viereck Going To Appeals Court

Government Will Seek Writ to Disqualify Justice Goldsborough

Backing up the Government's charges of a personal prejudice and bias filed yesterday against District Judge T. Alan Goldsborough, the Justice Department prepared today to ask the Court of Appeals to prevent Justice Goldsborough from going ahead tomorrow with the trial of George Sylvester Viereck, widely known Nazi publicist, who is accused of violating the Foreign Agents Registration Act by filing incomplete registration statements with the State Department.

After a conference at the Justice Department this morning it was decided that Solicitor General Fahy would ask the Court of Appeals for writs of prohibition and mandamus requiring Judge Goldsborough to disqualify himself from presiding at the trial.

The department expected to apply for the writs directly to Chief Justice D. Lawrence Groner, but it was possible that another member of the appellate body would act on the case. There were three possible developments out of this action, it was said at the department. The writs may be granted immediately, they may be denied or they may be set down for hearing by the Court of Appeals.

If a hearing were ordered, a temporary stay of the Viereck trial would be directed also pending final action on the Justice Department's application.

If Justice Goldsborough were immediately disqualified, the Viereck trial might go on tomorrow, but that point was not definitely decided.

William Power Maloney, special assistant to the Attorney General, who is representing the Government in the Viereck prosecution, filed the charges against Judge Goldsborough late yesterday when the jurist announced his intention of going ahead with the trial tomorrow despite the contention of the Government that its case had not been adequately prepared. The Government had not expected the Viereck trial would come up until next month.

Claims Attitude "Arbitrary."

Claiming that Justice Goldsborough's attitude in his chambers on January 15, when Government counsel called upon him, was "arbitrary, tyrannical and unreasonable," Mr. Maloney filed the affidavit of prejudice against the jurist as he was about to hear defense motions to suppress evidence.

Mr. Maloney asserted in his affi-

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davit that Justice Goldsborough shouted at him: "Get this into your head. I am going to try this case and no one else." He said the remarks were made on the occasion of the visit to the jurist's chambers with Edward J. Hickey, jr., special assistant to the Attorney General. Mr. Maloney said in filing his affidavit that because of the personal bias of the judge the Government cannot obtain a fair trial.

The affidavit asserts that Justice Goldsborough has "a personal bias or prejudice against the Government of the United States in this case." During the course of the conversation in chambers, Mr. Maloney claims, Justice Goldsborough declared:

"I don't give a * * * about the Government's position," when the lawyer had requested that the original trial date of February 2 be adhered to and said that no one would be prejudiced by the delay.

Sets Wednesday.

After he had overruled the defense motions argued by Emil Morosini, jr., of New York, Justice Goldsborough remarked:

"I cannot anticipate the future, but I know of no reason why this case cannot be tried on Wednesday."

Mr. Maloney maintains that February 2 was set as the trial date by Justice F. Dickinson Letts some time ago. District Court, by a general term order issued early in December, directed that the jurist presiding in Criminal Court No. 1 have charge of the assignment of criminal cases. Justice Goldsborough has been officiating there since the fall.

Mr. Maloney asserted he has just finished the trial before Justice Letts in which George Hill, second secretary of Representative Fish, Republican, of New York, was found guilty of perjury before the District grand jury in its inquiry into Nazi propaganda activities. He says that to require him to go to trial tomorrow is "rushing" the Government into the case.

Justice Goldsborough at yesterday afternoon's hearing told Mr. Maloney that he had five clear days' notice of the trial tomorrow, and that the Government, anxious for a quick trial, has been ready to try the case since November. The jurist asserted from the bench that he was not prejudiced either against Mr. Maloney or Mr. Hickey and declared that while he was annoyed by the former's conduct in his chambers, the conduct was "rather juvenile."

"The court is utterly astounded at your filing such an affidavit," declared Justice Goldsborough, and Defense Counsel Morosini spoke up to say that the defense had nothing to do with setting the case and was satisfied with Justice Goldsborough or any other judge.