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THE NATION

2 Democrats Criticize Scalia's Refusal to Quit Cheney Case

■ Reps. Waxman and Conyers cite the 1995 recusal of a judge with ties to President Clinton.

By David G. Savage, Times Staff Writer

WASHINGTON — Two House Democrats added to the pressure on Justice Antonin Scalia to withdraw from a pending Supreme Court case involving Vice President Dick Cheney on Friday, saying a recent duck hunting trip the justice took with Cheney posed the same kind of conflict of interest that had forced an Arkansas judge who was a friend of President Clinton to withdraw from a 1995 case.

Reps. Henry A. Waxman (D-Los Angeles) and John Conyers Jr. (D-Mich.) cited that precedent in a letter to Chief Justice William H. Rehnquist and urged him to establish a procedure for "formal review" of justices' possible ethical conflicts.

The case before the Supreme Court could compel Cheney to release documents relating to his energy task force.

Scalia's relationship with Cheney has come under scrutiny because he flew to Morgan City, La., with the vice president on Jan. 5 to hunt. The two were also seen dining together outside Washington in November.

In the Arkansas case, then-independent counsel Kenneth W. Starr pressed U.S. District Judge Henry Woods to step aside from a matter that grew out of the Whitewater investigation. Starr argued that a "reasonable observer would question [his] impartiality" because of the judge's friendship with Clinton and his wife, Sen. Hillary Rodham Clinton.

The judge had balked at withdrawing because charges in the case were brought against Arkansas Gov. Jim Guy Tucker and did not involve the Clintons directly. Nonetheless, Starr persisted, saying that the "public perception" was that the Whitewater investigation involves the Clintons, at least indirectly.

When Starr took the matter to a higher court, the U.S. Court of Appeals in St. Louis agreed and ordered Woods, now deceased, to step aside.

The law requires a judge to remove himself when there is "the appearance of bias," the appeals court said. It does not require the showing of actual bias.

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"We make this request because it appears that Justice Scalia is following a different standard than the lower courts in deciding recusal questions," Waxman and Conyers wrote in their letter to Rehnquist.

"The federal statute requiring a judge to recuse himself 'in any proceeding where his impartiality might reasonably be questioned' applies to Supreme Court justices and other federal judges alike," the lawmakers wrote. "We do not believe that one standard should apply to judges who are friends of the Clintons and another standard should apply to judges who are friends of Mr. Cheney."

On three occasions in late November and early December, the Supreme Court considered an appeal filed by Bush administration lawyers that sought to preserve the secrecy that surrounded Cheney's energy task force.

The Sierra Club and Judicial Watch had sued the vice president, alleging that he violated an open-government law by meeting behind closed doors with corporate lobbyists. A judge ordered Cheney to turn over documents to the lawyers for the two groups, and the U.S. court of appeals upheld that order.

But on Dec. 15, the high court voted to take up Cheney's appeal. The court is due to hear arguments in the case in April.

In response to a Times inquiry, Scalia said this month that he did not see a need to remove himself from the case because Cheney was being sued in his "official capacity, as opposed to [his] personal capacity."

"I do not think my impartiality could reasonably be questioned," the justice said.

In their letter Friday, Waxman and Conyers argued that Cheney is the central figure in the lawsuit: "It is no exaggeration to say that the prestige and power of the Vice President are directly at stake" in the case.

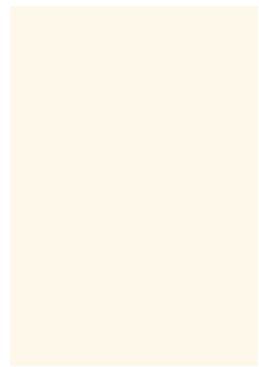
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