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**HEADLINE:** Scalia Was Cheney Hunt Trip Guest; Ethics Concern Grows

**BYLINE:** David G. Savage and Richard A. Serrano, Times Staff Writers

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**BODY:**

Supreme Court Justice Antonin Scalia traveled as an official guest of Vice President Dick Cheney on a small government jet that served as Air Force Two when the pair came here last month to hunt ducks.

The revelation cast further doubts about whether Scalia can be an impartial judge in Cheney's upcoming case before the Supreme Court, legal ethics experts said. The hunting trip took place just weeks after the high court agreed to take up Cheney's bid to keep secret the details of his energy policy task force.

According to those who met them at the small airstrip here, the justice and the vice president flew from Washington on Jan. 5 and were accompanied by a second, backup Air Force jet that carried staff and security aides to the vice president.

Two military Black Hawk helicopters were brought in and hovered nearby as Cheney and Scalia were whisked away in a heavily guarded motorcade to a secluded, private hunting camp owned by an oil industry businessman.

The Times previously reported that the two men hunted ducks together while the case was pending, but it wasn't clear then that they had traveled together or that Scalia had accompanied Cheney on Air Force Two.

Several experts in legal ethics questioned whether Scalia should decide the case.

"In my view, this further ratchets it up. If the vice president is the source of generosity, it means Scalia is accepting a gift of some value from a litigant in a case before him," said New York University law professor Stephen Gillers.

"It is not just a trip with a litigant. It's a trip at the expense of the litigant. This is an easy case for stepping aside."

Aides to Cheney say the vice president, like the president, is entitled to travel to vacation spots on government jets and to take along guests at no cost.

"The vice president is on duty 24 hours, seven days a week," said Kevin Kellems, a spokesman for Cheney. "His security is important, and a certain number of people must accompany him."

Judges are bound by different rules, however. Federal law says that "any justice or judge shall disqualify himself in any proceeding in which his impartiality might be questioned."

When asked about the trip last month, Scalia confirmed that he had gone duck hunting with Cheney, but said he did not see a need to withdraw from the case.

"I do not think my impartiality could reasonably be questioned," he said in a written response to The Times. He said "social contacts" between justices and high-level government officials have not been seen as improper, even when those officials have cases in the courts that concern "their official capacity, as opposed to their personal capacity."

"I expect that all of the Justices were invited to the Vice President's annual Christmas Party. The invitation was not improper, nor was the attendance," Scalia wrote.

This week, the justice was asked whether he had traveled to south Louisiana as Cheney's guest or paid for the trip. He refused to comment.

Two years ago, the Sierra Club and Judicial Watch sued Cheney, seeking to learn whether the vice president and his staff had met behind closed doors with lobbyists and corporate officials from the oil, gas, coal and electric power industries.

A judge ordered Cheney to turn over documents detailing who met with his energy task force. Cheney appealed, and in September, Bush administration lawyers asked the Supreme Court to hear the case and reverse the judge's order.

It "would violate fundamental principles of separation of powers" to force the president or the vice president to disclose who they met with, said U.S. Solicitor Gen. Theodore B. Olson.

After considering the appeal behind closed doors on three occasions, the Supreme Court on Dec. 15 announced that the case of "in re Richard B. Cheney" would be heard in the spring.

It takes the votes of at least four justices to grant review of a case, but the court does not disclose which justices vote in favor of such appeals.

The hunting trip took place three weeks later.

Northwestern University law professor Steven Lubet said a vacation trip with the vice president is not the same as attending a Christmas party.

"This is certainly a level of hospitality that most litigants are not able to extend to Supreme Court justices," he said. "It also reinforces the perception this was an exceptional event, not a run-of-the-mill social event or a White House dinner."

The Washington legal director for the Sierra Club said his group is considering filing a motion to ask Scalia to withdraw from the case.

"On the face of it, that makes things worse," said the Sierra Club's David Bookbinder, referring to the justice's trip aboard an Air Force jet. "The fact that the vice president is his host and, in effect, is paying for his vacation puts it in an even more awkward light for Justice Scalia."

The decision is likely to rest with Scalia himself. In a response to a recent inquiry from two Senate Democrats prompted by the hunting trip, Chief Justice William H. Rehnquist said the high court does not have a formal policy or rules for reviewing decisions by justices on whether to withdraw from a case.

Gillers said he found Rehnquist's response troubling as well.

"This has exposed a gap in the ethics rules. This is a federal law that applies to the justices, but in this instance, Scalia is the judge of his own case. I would think the full court has an interest in its institutional reputation and would want to review a decision like this."

In south Louisiana -- the state bills itself as the "Sportsman's Paradise" -- the Cheney-Scalia trip drew the attention of local officials because of the unusual security precautions.

Scalia had hunted ducks in the state's southern marshes several times before, and in November, Secret Service agents visited the area to plan for a visit by the vice president.

Ken Perry, who runs the Perry Flying Center at the Harry P. Williams Airport, said Secret Service agents were there in November to study security plans for the upcoming trip. They returned for a second trip around the Christmas holidays when the nation's terror level was raised to orange, or high, he said.

He and St. Mary Parish Sheriff David Naquin said that on the morning of Jan. 5, a large security contingent was in place -- two Black Hawk air combat rescue helicopters, a line of armored sport utility vehicles and a ring of federal agents and sheriff's deputies who set up a security perimeter. The area was declared a no-fly zone for other aircraft.

It was raining when the two blue-and-white jets, with the U.S. flag on their tails and the fuselages clearly marked "United States of America," appeared under the clouds. Perry said the planes radioed that "Air Force Two was on its approach." Perry said Cheney was among the first to deplane, followed by Scalia and a young woman who was identified to Perry as one of the justice's daughters.

Both Perry and Naquin said there were orders prohibiting photographs of those who exited the planes and climbed into the motorcade. But two days later, Cheney returned to the airport without Scalia, and photographs were allowed. Perry and Naquin said the vice president happily posed with them for photos at the Patterson airport.

Scalia stayed on to hunt for a few more days, the sheriff said, but local officials said it was unclear how he returned to Washington.

Perry said the planes were piloted by Air Force crews, and he added that the Air Force paid \$2,000 for fuel to return to Andrews Air Force Base in Maryland.

Lt. Col. David Branham, a spokesman at the base, said the 10- and 12-seat planes are assigned to the 89th Airlift Wing there and are typically used for trips to rural airports too small to handle larger aircraft. "That's part of the package for moving the president and the vice president," he said.

The hunting camp is on private land and in a secluded section of a bayou. According to several local hunters, it includes a large floating camp where guests stay overnight. During the day, hunters armed with shotguns go out in small boats to duck blinds to position themselves for shooting.

Scalia and the sheriff said the hunting was not good in early January, probably because of inclement weather. "It was terrible," Naquin said. "There were very few ducks killed."

The camp is owned by Wallace Carline, the head of Diamond Services Corp., an oil services firm that is on 41 acres of waterfront property in Amelia, La. The company provides oil dredging, pile driving, salvage work, fabrication, pipe-rolling capability and general oilfield construction.

Carline, who founded the company 42 years ago, also contributes money to local Republicans running for office in Louisiana. He refused to comment on the visit by Cheney and Scalia.

Carline's secretary said he was in Mexico and had nothing to say about the hunting trip. "He enjoyed the visit," she said. "But it's over with now. It's old news. He's not going to talk to you."

Serrano reported from Patterson, La., and Savage reported from Washington.

**GRAPHIC:** PHOTO: HOST, GUEST: Vice President Dick Cheney, left, and Supreme Court Justice Antonin Scalia went after ducks together. Before it was disclosed that Scalia was Cheney's guest, the justice said he could be impartial in judging a case before the high court involving the vice president. PHOTOGRAPHER: Reuters PHOTO: (no caption)