

Cheney v. U.S. District Court

On June 24, 2004, the United States Supreme Court decided the case of *Cheney v. U.S. District Court*. Believing that U.S. Vice President Dick Cheney's handling of an energy task force violated the Federal Advisory Committee Act, and suspecting undue influence in governmental deliberations by the energy industry, two environmental groups—the Sierra Club and Judicial Watch—sued to discover official documents relating to the meetings. Cheney and other government defendants moved to dismiss the lawsuit, but the federal district court in Washington D.C. ordered defendants to produce information about the task force. Defendants appealed, and the Circuit Court also held that they had to turn over the information. Defendants appealed again to the Supreme Court. A majority of the Supreme Court, for largely procedural reasons, held that the Circuit Court should reconsider the appeal in light of new legal guidelines that the Supreme Court set out. Dissenters argued that the lower courts had ruled correctly, and the case should be returned to the District Court where it could go forward. Justice Antonin Scalia voted with the majority, but also said that he favored dismissing the case and ruling for Cheney and the other defendants. Justice Scalia also filed a statement explaining why he was refusing requests that he recuse himself from the case.

Justice Scalia's opinion in favor of Cheney was controversial. While the case against Cheney was pending, Scalia had taken a widely publicized duck hunting trip with defendant Cheney and others. Federal law states that "any justice or judge shall disqualify himself in any proceeding in which his impartiality might be questioned." Critics of Justice Scalia thought it reasonable to question his impartiality. Stephen Gillers, a New York University law professor and expert on legal ethics, noted, "A judge may have a friendship with a lawyer, and that's fine. But if the lawyer has a case before the judge, they don't socialize until it's over. That shows a proper respect for maintaining the public's confidence in the integrity of the process."

Defenders of Justice Scalia argued that these criticisms were politically motivated by people who wished that Scalia not be able to vote in the case. They said it is common for justices to be friends with political actors who might be involved in cases coming before the Court. Defending his actions, Scalia stated, "Social contacts with high-level executive officials...have never been thought improper for judges who may have before them cases in which those people are involved... For example, Supreme Court Justices are regularly invited to dine at the White House, whether or not a suit seeking to compel or prevent certain presidential action is pending."



Discussion Questions:

- 1) Do you think there is a conflict of interest in this case? Why or why not?

- 2) Psychological studies indicate that people have an easy time understanding how conflicts of interest may sway the decisions of other people, but often have great difficulty perceiving that similar conflicts might prejudice their own decisions. Is there evidence of this in the case of *Cheney v. U.S. District Court*? Briefly explain.
- 3) Do you think it would be easy to rule against a friend or a former employer in a high-stakes case? Does this create a conflict of interest between a judge's natural motivation and the duty to render justice impartially? Why or why not?
- 4) What do you think would have been the most ethically defensible action for Justice Scalia to take? Explain your reasoning.
- 5) What is your reaction to the following passage by professors Max Bazerman and Anne Tenbrunsel commenting upon Justice Scalia's opinion in this case:
"Scalia's comments [on conflict of interest] indicate that he rejects or is unaware of the unambiguous evidence on the psychological aspects of conflicts of interest. Even more troubling than this lack of understanding are the Supreme Court's rules which, like most guidelines and laws that are intended to protect against conflicts of interest, guard only against intentional corruption. Yet most instances of corruption, and unethical behavior in general, are unintentional, a product of bounded ethicality and the fading of the ethical dimension of the problem."
Do you agree with their assessment? Why or why not?

Resources:

28 U.S.C. sec. 455(a) – Disqualification of Justice, Judge, or Magistrate Judge

<https://www.gpo.gov/fdsys/granule/USCODE-2011-title28/USCODE-2011-title28-partI-chap21-sec455/content-detail.html>

Cheney, Vice President of the United States, et al. v. United States District Court for the District of Columbia, 541 U.S. 913 (2004)

<https://law.resource.org/pub/us/case/reporter/US/541/541.US.913.03-475.html>

Cheney, Vice President of the United States, et al. v. United States District Court for the District of Columbia et al., 542 U.S. 367 (2004)

<https://law.resource.org/pub/us/case/reporter/US/542/542.US.367.03-475.html>

Justices Scalia and Kagan Duck Washington for Hunting Getaway

<http://blogs.wsj.com/law/2014/12/17/justices-scalia-and-kagan-duck-washington-for-hunting-getaway/>

Was the duck hunt a conflict of interest?

<http://www.csmonitor.com/2004/0213/p02s01-usju.html>

Scalia's Explanation for Recusal Refusal is Unconvincing

<http://www.jurist.org/forum/ross1.php>

Trip with Cheney Puts Ethics Spotlight on Scalia

<http://articles.latimes.com/2004/jan/17/nation/na-ducks17>

Scalia Angrily Defends His Duck Hunt with Cheney

<http://www.nytimes.com/2004/03/18/politics/scalia-angrily-defends-his-duck-hunt-with-cheney.html>

Scalia and Cheney's outing: No ordinary duck hunt

http://usatoday30.usatoday.com/news/washington/2004-02-06-cheney-scalia_x.htm

Blind Spots: Why We Fail to Do What's Right and What to Do About It

<http://www.worldcat.org/title/blind-spots-why-we-fail-to-do-whats-right-and-what-to-do-about-it/oclc/679940661>

Conflicts of Interest: Challenges and Solutions in Business, Law, Medicine, and Public Policy

<http://www.worldcat.org/title/conflicts-of-interest-challenges-and-solutions-in-business-law-medicine-and-public-policy/oclc/939111700>

Author:

Robert Prentice, J.D.

Department of Business, Government and Society

McCombs School of Business

The University of Texas at Austin