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Scalia's Recusal Sought in Guantánamo Case

Charles Lane
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WASHINGTON - On the eve of oral arguments in a key Supreme Court case on the rights of alleged terrorists, a group of retired U.S. generals and admirals has asked Justice Antonin Scalia to recuse himself, arguing that his recent public comments on the subject make it impossible for him to appear impartial.

In a letter delivered to the court late Monday, a lawyer for the retired officers cited news reports of Scalia's remarks on March 8 to an audience at the University of Freiburg in Switzerland. Scalia reportedly said it was "crazy" to suggest that combatants captured fighting the United States should receive a "full jury trial," and dismissed suggestions that the Geneva Conventions might apply to detainees at Guantánamo Bay, Cuba.

Scalia's remarks "give rise to the unfortunate appearance that, even before briefing was complete, he had already made up his mind" about issues in the case, lawyer David Remes wrote. Noting that Scalia reportedly had discussed the rights of accused terrorists in the context of his son Matthew's recent tour as an Army officer in Iraq, Remes wrote that this creates an appearance of "personal bias arising from his son's military service."

The case to be heard today - Hamdan v. Rumsfeld, No. 05-184 - is one of the most important terrorism-related cases to reach the court. It is a challenge by Osama bin Laden's former chauffeur, now being held at Guantánamo Bay, to the legality of the military commission that seeks to try him for war crimes.

Military trials for terrorist suspects are a centerpiece of the Bush administration's anti-terrorism policy, but they have been criticized by human-rights activists, especially in Europe.

The retired officers are Brig. Gen. David Brahms, Brig Gen. James Cullen, Vice Adm. Lee Gunn, Rear Adm. John Hutson and Rear Adm. Donald Guter. They have filed a friend-of-the-court brief in the case opposing the military commissions, on the grounds that denying Geneva Conventions protections to detainees at Guantánamo Bay could result in their denial to U.S. troops by their captors abroad.

In his letter to the court, Remes said Scalia's reported reference to the Geneva Conventions was of particular concern to the retired officers as it is directly at issue in the case. Their brief supports the view of the petitioner, Salim Ahmed Hamdan, that the conventions apply to him and could entitle him to a court-martial trial like that which U.S. soldiers receive.

Other calls for Scalia's recusal came Monday from the Center for Constitutional Rights, a civil-rights organization, and from Rep. John Conyers of Michigan, the ranking Democrat on the House Judiciary Committee.

Court rules say that justices must recuse themselves in cases where their impartiality "might reasonably be questioned." But it is up to each justice to make that decision. Court analysts said Monday it is unlikely Scalia will recuse himself from the case.

This is the third time in recent years that Scalia has faced pressure to recuse himself. In 2004, he recused himself from a case on the constitutionality of the phrase "under God" in the Pledge of Allegiance, after speaking out on the case at a rally in Virginia.

Last year, he faced calls for his recusal in a case involving Vice President Dick Cheney after it became public that they had gone duck hunting together. In that case, Scalia refused to step aside.