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February 27, 2008

Alito's Recusal in the Exxon Mobil Case

As noted in our [story](#) on today's oral argument in the *Exxon Valdez* punitive damages case, Justice Samuel Alito Jr. recused, leaving open the possibility of a 4-4 tie. Like most justices Alito does not explain his recusals, but his latest financial disclosure form indicates he owns between \$100,001 and \$250,000 in Exxon Mobil stock. That's the company in the crosshairs in the case before the Court, Exxon Shipping Co. v. Baker.

Over at the Volokh Conspiracy [blog](#) the recusal has triggered a lively debate over an old issue: why don't justices just sell their stocks and put their money into blind trusts or at least mutual funds, to avoid such recusals? Retired Justice Sandra Day O'Connor, for example, recused in dozens of telecom cases in her years on the bench, for the sole apparent reason that she had small holdings in some Baby Bell companies.

Justices have long resisted selling their stocks, some voicing the opinion privately that they take enough of a hit financially when they join the bench, without having to lose the potential benefits of a rising stock market.

Until justices change their tune, it seems that the best alternative available is for justices to sell stocks selectively to avoid recusals in individual pending cases. Some ethics experts say such "strategic recusals" might give the appearance of impropriety in themselves. But Chief Justice John Roberts Jr, has done it a couple of times, perhaps encouraged by a new law that allows federal judges to avoid capital gains taxes when they sell stock to avoid recusals. So far, no other justice has done the same.

Posted by Tony Mauro on February 27, 2008 at 05:08 PM in [Supreme Court](#) | [Permalink](#)

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"The potential benefits of a rising stock market" can be realized by an index fund. No excuse for not liquidating individual holdings, especially when Congress has granted a tax break for capital gains realized for sales made due to recusal.

Posted by: [Ted Frank](#) | [February 28, 2008 at 09:07 AM](#)