A man of integrity

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By Steven Lubet, law professor at Northwestern University and David McGowan, law professor at the University of San Diego
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Supreme Court nominee Samuel Alito Jr. did not play fast and loose with judicial ethics rules in a 2002 appeal involving the Vanguard Group mutual fund company, as some reports suggest.

Eight Senate Democrats have initiated an inquiry into the case, requesting information about Alito's initial decision not to recuse himself even though he held a six-figure investment in Vanguard funds at the time. They are going to discover that Alito's conduct in the matter, though not perfect, actually provides a good example of how judges should ultimately handle financial conflicts of interest.

Here are the known facts: Since at least 1990, Alito has been heavily invested in mutual funds managed by Vanguard, holding $400,000 to $1 million in 11 Vanguard funds. Nonetheless, he participated in a 2002 case in which a Massachusetts woman was suing Vanguard, joining a unanimous court of appeals decision in the company's favor. About a year later, however, the plaintiff learned of Alito's investments and complained that he should have disqualified himself from the case.

Alito did not agree, but he still removed himself. "I do not believe that I am required to disqualify myself," he wrote to his court's chief judge, "however, it has always been my personal practice to recuse in any case in which any possible question might arise." The case was then reassigned and a new panel of judges reaffirmed the original decision.

What are we to make of this? Did Alito violate the rules of judicial ethics, as some have claimed? Was he right all along? Or did he simply make a mistake?

As it turns out, the judicial disqualification statute is surprisingly tricky when it comes to mutual funds. Without parsing the intricate details, it is sufficient to say that Alito should not have heard the appeal if his investment in the individual Vanguard funds amounted to an ownership share in the management company. It is not immediately clear whether that is the case, however, at least from our examination of Vanguard's Web site and promotional materials.

But let's take the worst-case scenario and assume that Alito got it wrong, sitting in the Vanguard case when he should have disqualified himself. He still did the right thing when presented with the plaintiff's complaint. He did not dig in his heels and insist that his judgment was unquestionable. He did not engage in self-righteous self-justification (as other judges have been known to do). Instead, he voluntarily stepped back and allowed the matter to be reconsidered by other judges against whom no claim of any kind could be made. That is good judicial temperament in action.

There is one complicating factor. In 1990, when he was nominated to his current seat on the 3rd U.S. Circuit Court of Appeals, Alito informed the Senate Judiciary Committee that he would disqualify himself "from any cases involving the Vanguard companies." By 2002, it appears that he either forgot about that statement or reconsidered it.

But so what? The plaintiff in the Vanguard case obviously did not rely on Alito's 1990 confirmation hearings and, in any event, it is not at all clear that such blanket disqualification was even required. To be sure, it would have been better for Alito to stick to his original commitment, taking greater care to avoid cases involving any relationship to his Vanguard investments.

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So Alito is not perfect. Who is? Judges make mistakes all the time, on matters great and small. That is why we have appellate courts, and that is why there are nine justices on the U.S. Supreme Court. The truly important question is not whether the judge made an error, but how he responded when it was pointed out to him. You do not need to be a fan of Alito's jurisprudence (and one of us definitely is not) to recognize that he is a man of integrity.

In the final analysis, Alito showed admirable sensitivity to the question of recusal, agreeing to disqualify himself "in any case in which any possible question may arise." Other judges--and justices--would do well to follow that example.