

**Judge's position not untenable**

Your editorial (4/11) asserts that NSW Supreme Court judge Jeff Shaw's position "is rapidly becoming untenable" and that there is "one set of rules for ordinary punters and another for members of the mates' network". Both assertions are flawed.

The assertion that, independently of any conviction for a serious offence (bearing in mind that Justice Shaw has neither been charged with, nor convicted of an offence), Justice Shaw's position as a judge "is becoming untenable", is itself untenable.

In the absence of a conviction, or evidence that Justice Shaw has not performed, or cannot in the future properly perform, the duties of judicial office, there is no basis for implying that he cannot continue to hold office. Suspicion that an offence may have been committed is not the same as proof that it has. All people, including judges, are entitled to procedural fairness and not to be condemned on the basis of allegations or innuendo.

If the second assertion is meant to imply that Justice Shaw has received favoured treatment, *The Australian* has not offered any evidence to support the claim. A sample of blood was apparently taken, as the law requires. It has apparently "gone missing". The police investigation, to that extent, has been compromised. The circumstances of the loss of evidence are to be investigated. Under the law, it is a matter for Justice Shaw to determine whether he made available to the authorities the blood sample returned to him. Views obviously differ as to whether the judge was under a "moral obligation" to do so. In making the blood available, Justice Shaw acted in accordance with precisely the same set of rules that apply to "ordinary punters".

Your claim that the appointment of a former attorney-general to the bench somehow "muddies the separation of powers" is plain silly. Consider the examples of three Chief Justices of the High Court – Sir Isaac Isaacs, Sir John Latham and Sir Garfield Barwick – each of whom had previously served as attorney-general of the Commonwealth.

**JUSTICE RONALD SACKVILLE**  
**Chair, Judicial Conference of Australia**