

The Biblical Knowledge of Justice Michael Lee

During the last few years I have been interested to hear the delivery of judgments in certain major and I believe culturally significant cases in Australia. Of particular interest this year was that of the judgment in April from Justice Michael Lee in the Bruce Lehrmann defamation case against Network Ten Pty Ltd (First Respondent) and Lisa Wilkinson (Second Respondent).

The trial judgment has the now famous comment **[note: the words in bold are not highlighted in the original, they are completed in bold to highlight the reference]:**

“Having escaped the lions’ den, Mr Lehrmann made the mistake of going back for his hat.”¹

The first reference would appear to be a reference to *Daniel* Chapter 6 and the story of Daniel’s time in the lion’s den. While there could be a link, the full reference is connected to an African proverb, with some commentators noting as Kenyan and others Somalian. Lions are of course a prominent reference in Africa and well-used in proverbs. In any case, it is an apt way of commenting that it is unwise to go back into a situation that one has been able to get out of, simply because it is unlikely to end well.

In the following judgment on costs in May 2024, there is another more fascinating reference. I will need to reference the whole section for the context.

[72] Before leaving this matter, for completeness, it is appropriate to refer briefly to a further matter canvassed at the recent hearing.

[73] In the judgment, Network Ten’s attributed conduct relating to the giving of the Logies speech, for the reasons it was given (Relevant Conduct), was held to be grossly improper and unjustifiable as amounting to conduct apt to cause disruption to the criminal justice system (at J [1041]) and amounted to conduct that could be characterised as egregious (at J [1077]) (Relevant Findings)

[74] Following the delivery of judgment, however, a solicitor spokesman retained on behalf of Network Ten made what might be described as a “victory” tour and expressed public comments relating to the Relevant Findings and repeatedly expressed the view that the Logies speech not only did not have the tendency to interfere with the administration of justice but presented no difficulty whatsoever.

¹ [1091] FEDERAL COURT OF AUSTRALIA Lehrmann v Network Ten Pty Limited (Trial Judgment) [2024] FCA 369 File number: NSD 103 of 2023 Judgment of: LEE J Date of judgment: 15 April 2024

[75] In the wake of these comments, I indicated to Network Ten that it appeared open to infer and, if relevant, act upon the basis that the considered view to be attributed to Network Ten (as informed by internal and external legal advice) is that the Relevant Conduct was appropriate and similar comments may be made again if the broadcaster was similarly placed in relation to a future and immediately pending jury trial.

[76] Notwithstanding the position taken by Network Ten at the hearing and the comments of its spokesman after judgment, after these issues were raised, further affidavits and submissions explaining the considered and current view of Network Ten were provided to the Court. **This material suggests that (Saul of Tarsus-like) the scales have belatedly fallen from the anthropomorphic eyes of Network Ten** – in the circumstances, no further comment or action from this Court is necessary nor appropriate.²

This reference is clearly biblical and even more prominent for those familiar with the bible. A nod to Paul's story of his enlightenment and conversion on the Road to Damascus, this reference succinctly captures the 'about face' situation that befell Channel Ten. The bible passage referred to is provided below for context.

(Acts 9: 10-19, ESV)

Now there was a disciple at Damascus named Ananias. The Lord said to him in a vision, "Ananias." And he said, "Here I am, Lord." And the Lord said to him, "Rise and go to the street called Straight, and at the house of Judas look for a man of Tarsus named Saul, for behold, he is praying, and he has seen in a vision a man named Ananias come in and lay his hands on him so that he might regain his sight." But Ananias answered, "Lord, I have heard from many about this man, how much evil he has done to your saints at Jerusalem. And here he has authority from the chief priests to bind all who call on your name." But the Lord said to him, "Go, for he is a chosen instrument of mine to carry my name before the Gentiles and kings and the children of Israel. For I will show him how much he must suffer for the sake of my name." So Ananias departed and entered the house. And laying his hands on him he said, "Brother Saul, the Lord Jesus who appeared to you on the road by which you came has sent me so that you may regain your sight and be filled with the Holy Spirit." And immediately something like scales fell from his eyes, and he regained his sight. Then he rose and was baptized;

I am sure that Justice Lee was not suggesting that Channel Ten was like Saul in being previously an evil murderer, as the point was to simply highlight the significant change from their old position of the self-justified media corporation to that of the new humble and penitent servant of the court.

² FEDERAL COURT OF AUSTRALIA Lehrmann v Network Ten Pty Limited (Costs) [2024] FCA 486 File number: NSD 103 of 2023 Judgment of: LEE J Date of judgment: 10 May 2024

And again in the judgment on costs there is a ‘digression’ to help explain a substantially important legal concept that was deeply relevant to this case.

*Most first-year law students are introduced to the possibility of error of wrongful convictions and erroneous acquittals. They are (or at least were) made aware of what is often referred to as “Blackstone’s ratio”, being the fourth of five discussions of policy by Sir William Blackstone in his 1765 treatise *Commentaries on the Laws of England*, vol IV, ch 27 (Oxford University Press, 2016) (at 352) that “all presumptive evidence of felony should be admitted cautiously: for the law holds, that it is better that ten guilty persons escape, than that one innocent suffer”. I digress to note that this notion is ancient: the idea it is better to allow some guilty to escape rather than punish an innocent has **Biblical origins (Genesis, 18:23–32)** and later was the subject of discussion by Talmudic scholars (see Maimonides, *The Commandments*, Commandment No 290 (Charles B. Chavel, trans. 1967) (at 270)). Indeed, sixteen years before Blackstone, the concept had been expressed by Voltaire – albeit in a different ratio: “tis much more prudence to acquit two persons, tho’ actually guilty, than to pass Sentence of Condemnation on one that is virtuous and innocent”: Voltaire, *Zadig; or, The Book of Fate: An Oriental History* (1749) (at 53).³*

Justice Lee is certainly adept at incorporating a biblical reference, but I also note cultural references as well. The following comment capturing the intensity of the moment in relation to the time that was spent at a well-known Canberra bar.

Mr Lehrmann must have known that the relevant CCTV footage (Ex R42 / Ex 17A) would be examined by some with the intensity that others analyse the Zapruder film.⁴

Abraham Zapruder being famous for shooting the shortest and probably most important real-life film in the world.

In a review essay on the biographical consideration of High Court Judge and politician Doc Evatt by Gideon Haigh, Justice Lee points to the contextual impact of the bible in legal history in Evatt’s overall judgment on a major case before the High Court; *Chester v the Council of the Municipality of Waverley* (1939) HCA 25.

³ [106] FEDERAL COURT OF AUSTRALIA Lehrmann v Network Ten Pty Limited (Trial Judgment) [2024] FCA 369 File number: NSD 103 of 2023 Judgment of: LEE J Date of judgment: 15 April 2024

⁴ [158] FEDERAL COURT OF AUSTRALIA Lehrmann v Network Ten Pty Limited (Trial Judgment) [2024] FCA 369 File number: NSD 103 of 2023 Judgment of: LEE J Date of judgment: 15 April 2024

This influence was through the earlier judgement *Donoghue v Stevenson* [1932] AC 562 and Australian born British Judge, Baron Atkin, who used the biblical injunction about loving one's neighbour in the context of the Good Samaritan's 'Who is my neighbour?' This developed the concept of negligence with respect to duty of care.⁵

I conclude with highlighting Justice Lee's Ceremonial welcome to the Federal Court in April 2017.⁶ Introduced by then Attorney General, the Hon. G. Brandis QC, this is a wonderful and informative record of the event, including welcomes from two more legal representatives. The Hon. George Brandis highlighted Justice Lee's wide literary knowledge and resourcing, including the Bible.

Justice Lee in his response referred to the possibility that he may have become a priest, a journalist or a lawyer, highlighting a job at the Sacred Heart Monastery in Kensington and potential conflicts of interests with the order's vows.

There is also mention of a personal connection with some visiting actors from the American legal television series *Suits*, a drama famous now for one actress who married Prince Harry. I found *Suits* to be a very interesting program and it has many long-running themes concerning ethics and the philosophy of law. *Suits* concludes with perhaps the best use or one of the best uses of a song, blending the camerawork seamlessly to make a poignant statement and summary not only about the show and the main character, but some may argue the legal profession as a whole.

A final comment about our cultural connection. Would many people understand these biblical references today? Few attend Sunday School compared to the 1950s, and even fewer would have basic biblical literary knowledge. Perhaps it remains to those of us who may know 'the Word' to help others understand this heritage and indeed this may be a way of sharing the gospel.

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⁵ Evatt at his peak: Review essay by Justice Michael Lee, Gideon Haigh, *The Brilliant Boy, Doc Evatt and the Great Australian Dissent* (Scribner 2021), **Southern Highlands Newsletter #243**

⁶ O/N H-774162 **FEDERAL COURT OF AUSTRALIA, CEREMONIAL SITTING OF THE FULL COURT FOR THE WELCOME OF THE HONOURABLE JUSTICE LEE**