

Ex Ante

ward statutes, “often directly contrary to Evidence” The incentive to false witness inherent in the reward statutes gave rise to major scandals evidencing the danger.

Next come the reward scandals, which are fascinating.

• *See weighty*, OED ONLINE (2d ed. 1989; vis. Aug. 16, 2009); JOHN H. LANGBEIN, RENÉE LETTOW LERNER, AND BRUCE P. SMITH, *HISTORY OF THE COMMON LAW* 674, 677-78 (Wolters Kluwer 2009) (footnotes omitted).

SOME WISDOM OF BARNEY FRANK

In his capacity as chairman of the Financial Services Committee in the U.S. House of Representatives, Barney Frank made an opening statement at a hearing on July 21. (The subject of the hearing is irrelevant for our purposes.) He made two especially enlightening observations. First, on the subject of email he said:

I have looked carefully at the deliberations we have seen about the Bank of America-Merrill Lynch issue. And our colleagues on the Government Reform Committee have had a number of hearings on that. I must say one of the most interesting and potentially instructive things that came out [of] it was Secretary Paulson’s explaining that he could not produce e-mails, because he has never sent them. That is a practice I recommend to many others. I follow it myself.

Second, on the subject of economics and tenure he said:

Not for the first time, as a – a – an elected official, I envy economists. Economists have available to them, in an analytical approach, the counterfactual. Economists can explain that a given decision was the best one that could be made, because they can show what would have happened in the counterfactual situation. They can contrast what happened to what would have happened. No one has ever gotten reelected where the bumper sticker said, “It would have been worse without me.” You probably can get tenure with that. But you can’t win office.

• *See Barney Frank on Politicians and Academics*, INSIDER HIGHER ED, www.inside-highered.com/news/2009/07/22/qt#203932 (vis. Aug. 14, 2009); *The House Holds a Hearing on the Semi-Annual Report of The Fed on Monetary Policy*, WASH. POST, www.washingtonpost.com/wp-dyn/content/article/2009/07/21/AR20-09072101505.html (vis. Aug. 14, 2009) (transcript).