



THE RECKONING

Daniel R. Ernst

This is an amusing – and challenging – epilogue to the article by Professor Ernst in our Spring 2022 issue.

– *The Editors*

TO GIVE AN ENDOWED LECTURE is an honor. To give one at the law school where, as a student, you began your scholarly career, before an audience that includes one of the scholars who set you on your way is an honor but also a reckoning, an occasion to show that a mentor’s confidence in you was not misplaced. When the scholar is Richard H. Helmholz, you know the reckoning is likely to include a question from this most intelligently and learnedly inquisitive of legal historians. That is what happened when I gave the Maurice and Muriel Fulton Lecture in Legal History at the University of Chicago Law School in April 2022.¹

My lecture treated the life and career of Jerome Frank up to his decision to join the New Deal. I devoted a few paragraphs to *Law and the Modern Mind* (1930), the book that established Frank as a leading legal realist and displayed what Felix Frankfurter called Frank’s “playful, dialectic, argumentative” side, which made him a delightful conversationalist but which served him poorly in his first job in Washington. When time came for

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¹ Daniel R. Ernst, *Jerome Frank: The Making of a New Dealer*, 25 GREEN BAG 2d 187 (2022).



*Jerome Frank (right) and his fellow New Dealers on the
Securities and Exchange Commission,
John W. Hanes (left) and William O. Douglas (center) (Jan. 25, 1938).*

questions, perhaps to assess whether the New Dealers should have known what they were getting in Frank, Professor Helmholz asked how many copies of the book were sold.

I shook my head, not to indicate that I did not know, but to signal to the audience that a moment I had expected had arrived. My very first presentation in a faculty workshop, I explained, had been at the University of Chicago Law School when I was still a doctoral candidate in history. The paper I presented, on a topic in the history of American labor laws,

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included a reference to the strike-plagued, full-fashioned hosiery industry. During the question-and-answer session, Professor Helmholtz asked what made hosiery “full-fashioned.”

I knew the answer – full-fashioned hosiery was shaped to the female leg – but only because my maternal grandfather had been the general counsel of the Real Silk Hosiery Company of Indianapolis. Although I escaped on that occasion, Professor Helmholtz’s question had a lasting and doubtlessly intended *in terrorem* effect. Just recently, I told the audience, when researching the marketing agreements of the Agricultural Adjustment Administration, I realized I did not know how Burley tobacco differed from other varieties of the crop. With a sigh, I decided I had better find out, because what would I say if some day Professor Helmholtz asked?

“So, no, Dick, I *don’t* know how many copies of *Law and the Modern Mind* were sold,” I at last confessed. “Well,” he replied, “that gives you something more to work on.”

