

It's been more than a year since my last letter. Before describing my writing, I thought some you might get a kick out of playing a Dad-or-Daughter contest that that I recently [posted at the Freakonomics](#):

My daughter, Anna, spent a bunch of time this past summer writing songs. One thing led to another and we ended up coauthoring a song together. I have more than [fifty academic coauthors](#), but this is the first time I've ever tried writing music with someone.

Is it easy for people to tell the difference between songs she wrote by herself and a song where I wrote most of lyrics? Is it possible for 52-year-old lawyer/economist to emulate the lyrics of a 14-year-old [Gleek](#)? I think a lot of people would have a surprisingly hard time. But the question is testable.

So today I'm announcing a contest where you could earn a chance of winning an iTunes gift card worth somewhere between \$50-\$500. To play, just click through and listen to these three songs – [Friend Zone](#), [Longer](#) & [Your Way](#), and then leave a comment as a YouTube comment to one of the three songs saying: i) which of the three songs you think I coauthored; ii) identifying a line in that song you believe I wrote; and iii) identifying a line in that song you believe Anna wrote.



[antoniarosemusic](#)

[PLAY ALL](#) » three songs



[Longer: Anna Rose](#)



[Friend Zone: Anna Rose](#)



[Your Way: Anna Rose](#)

An entry will get one point for identifying the coauthored song, one point for identifying an Ian line; and one point for identifying an Anna line.

The contest closes on October 31st at midnight. At that time, I'll figure out how many points to assign to each commenter. If there is only one comment with three points, that commenter will win the gift card. If there is more than one comment earning three points, I'll randomly select one comment from among this set. If nobody submits a three-point comment, I'll repeat the procedure looking at two-point comments, and continue until I've identified a winner.

The more people who listen to these songs, the larger the prize (up to a cap of \$500). On October 31st at midnight, I'll add together the number of "views" listed on YouTube for each song. I'll multiply the total views for the three songs by a penny per view and increase the iTunes gift card amount by this amount. So if by some miracle there are a thousand total views, I'll give one lucky commenter a gift card worth \$60 (\$50 + 1,000*\$.01). I'll add a 10% bonus if the winner tweeted or facebooked "I played the #DadorDaughterContest at <http://www.youtube.com/user/antoniarosemusic>." Under

no circumstances will I give more than one gift card, and under no circumstances will I give a gift card worth more than \$500.

For you contract lawyers out there, I've added the disclaimer:

This is not a legally enforceable offer or agreement. While I intend to give someone a gift card, you shouldn't rely on this post to your detriment. Feel free to say bad things about me though if I don't pay off.

For those wonder why I am willing to put up my own money for something like this?

In part, I'm paying for data. But there is also narcissism at play. I would love for people to have a listen to my and Anna's songs. Indeed, if this works at all, I might come back and see if I can figure out a way to compensate people for downloading and reading some of my academic writing.

I'd also love to learn which song you like the best. But please be gentle. And I've already demonstrated that training in law and economics is not the best precursor to [writing quality poetry](#). You can listen to other songs written by Anna (and maybe glean some information about her solo songwriting style) at [her YouTube channel](#). (I particularly like [Picture Perfect](#) and [What Might Have Been](#).)

As a bonus for people who subscribe to this newsletter, I'll bake and send you a cake if the contest winner happens to also be a subscriber to this newsletter. If you enjoy playing the game, I'd appreciate it if you'd spread the word via twitter/facebook (or possibly good 'ol email) that you "played the #DadorDaughterContest at <http://www.youtube.com/user/antoniarosemusic>." If you're teaching, you might even consider telling your students. A grateful father thanks you.

In addition to song writing, I've spent the last year writing law review articles.

Here's a piece that is a kind of sequel to a default article that I published (gulp) 22 years ago:

[Regulating Opt Out: An Economic Theory of Altering Rules](#), YALE LAW JOURNAL (forthcoming 2012).

Whenever a rule is contractible, the law must establish separate rules governing *how* private parties can contract around the default legal treatment. To date, contract theorists have not developed satisfying theories for how optimally to set "altering rules," the rules that set out the necessary and sufficient conditions for displacing a default. This article argues that efficiency-minded lawmakers in setting altering rules should consider both the costs of altering and the costs of various kinds of error. There are two broad reasons for altering rules to deviate from attempts to minimize the transaction cost of altering. First, the article develops theoretical conditions when minimizing the costs of party error (especially non-drafter error) and third-party error (especial judicial error) will be paramount. The article proposes a variety of specific altering interventions – including "train and test" altering rules, "arbitrary" altering rules, and "thought-requiring" altering rules that might be deployed to reduce altering error. Second, when externalities or paternalism concerns are insufficient to justify a full-blown mandatory rule, lawmakers might usefully impose "impeding" altering rules which deter subsets of contractors from contracting for legally dispreferred provisions. Impeding altering rules produce an intermediate category of "quasi-mandatory" or "sticky default" rule which manage but do not eliminate externalities and paternalism concerns. These two deviations from transaction-cost minimization can often be usefully complemented by what this article calls "altering penalties" which penalize one or both contractors who utilize dispreferred

altering methods. Specifically, altering penalties can channel contractors' altering efforts toward means that better reduce error or better control externalities or paternalism. More explicitly theorizing altering rules as a distinct category of law can make visible legal issues that have largely gone unnoticed and lead toward the development of more defensible choices about how best to regulate opt out.

Anna makes an importance appearance in this article too – this time as academic collaborator. Anna and I collected information on how McDonald's sells Happy Meals. We ultimately filed a suit before the Connecticut Human Rights Commission claiming sex discrimination. The opinion telling us we lost let us know that the Commission was not inclined to “engage its resources for the purposes of titillation or sociological experiment.”

Here's an empirical article more centrally about testing for disparate treatment that was literally years in the making:

[Race Effects on eBay](#), working paper (2011) (with Mahzarin Banaji and Christine Jolls).

We investigate the impact of seller race in a field experiment involving baseball card auctions on eBay. Photographs showed the cards held by either a dark-skinned/African-American hand or a light-skinned/Caucasian hand. Cards held by African-American sellers sold for approximately 20% (\$0.90) less than cards held by Caucasian sellers, and the race effect was more pronounced in sales of minority player cards. Our evidence of race differentials is important because the on-line environment is well controlled (with the absence of confounding tester effects) and because the results show that race effects can persist in a thick real-world market such as eBay.

Here are three shorter pieces:

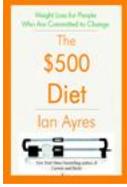
[How to Hire A Federal Watchdog](#), WASHINGTON POST (June 23, 2011). In this oped, I argue that Obama might have made a recess appointment of Elizabeth Warren and simultaneously nominated a compromise candidate for the same position.

Meador Lecture: Using Commitment Contracts to Further Ex Ante Freedoms: The Twin Problems of Substitution and Ego Depletion, 62 [ALABAMA LAW REVIEW 811](#) (2011). It's based on a chapter of [Carrots and Sticks](#).

[The Erasure of the Affirmative Action Debate in the Age of Obama](#), in THE OBAMAS AND A (POST) RACIAL AMERICA (Gregory Parks & Matthew Hughey, eds. Oxford University Press) (2011). This is just 3-pages long but includes a seldom discussed fact:

On the very day of Obama's election(November 4, 2008), the Court of Appeals for the Federal Circuit struck down as unconstitutional one of our nation's most important affirmative action laws, Section 1207, which countenanced the use of 10% bidding credits for firms “owned and controlled by socially and economically disadvantaged individuals” if necessary to reach an overall procurement goal of directing 5% of “contract dollars to businesses owned by socially and economically disadvantaged businesses.” . . . In a very short time, affirmative action has changed from being a hot-botton issue to a non-issue.

Last and probably least, your intrepid author becomes the second law professor to publish a diet plan:



[The \\$500 Diet: Weight Loss for People Who Are Committed to Change](#) (Kindle Select, 2011). [Read an Excerpt](#). I had a blast writing it. It really is a very different kind of plan.

And as usual, I've have a wearying number of blog posts:

[Will First-to-File Hurt Small Inventors?](#)

The U.S. [just passed](#) the first major patent reform in nearly sixty years – which includes as a central provision a change to the patent priority rule. Instead of awarding a patent to the first person to invent, we will join other nations in awarding patents to the first person to file an invention.

David Abrams and **Polk Wagner** have a [great paper](#) looking at whether the proposed change in our patent system from a “first to invent” regime to a “first to file” regime is likely to disadvantage individual inventors. The concern is that corporate inventors will have an easier time than the individual in gearing up to draft and file a patent application.

The paper ingeniously looks to see what happened when Canada introduced a similar reform in 1989. The paper is also a great way to teach yourself about the difference-in-difference approach to estimation. The paper first estimates the pre-reform difference between the U.S. and Canada in the proportion of patents going to individual inventors. It then looks to see whether this difference changed – that is, whether there was a difference in the difference – after the Canadian first-to-file reform went into effect. [Read More »](#)

[Wanna Buy a Tony Award?](#)

People give to charities for all kinds of reasons – some more noble than others. But one important motivation is recognition. If Yale mandated that it would only accept anonymous donations, its fundraising would be decimated.

There are a lot of different ways to garner public recognition. If I had 3 million bucks to throw around, I'd think long and hard about trying instead to buy myself a Tony Award. For as little as \$200,000, you might be able to purchase an 8% chance at winning a Tony.

Let me emphasize that this is at best a crude ballpark estimate. Over the last 5 years, [12.2 new plays have been produced on Broadway each year](#). For a play, which generally runs about \$2.5-3 million these days, my friend **Jack Thomas** at Bulldog Theatrical tells me you can usually find yourself among those listed above the title for about \$200,000. Some investors split this minimum ante and put up or raise just \$100,000 each and get listed as Bulldog Theatrical / Cantab Theatrical. [Read More »](#)

[The Liberation of Use-Them-Or-Lose-Them Frequent Flyer Miles](#)

This year, [Daniel Kahneman](#) has me wondering about what is the best way to organize my vacation time. In this great [TED talk – The Riddle of Experience versus Memory](#), he talks about

the tradeoffs we must make in increasing our moment-to-moment experience of happiness versus increasing our memories of happiness.

If you want to maximize your memories of happiness, you should spend more time taking pictures of your vacation and jam more events into each day. If you want to maximize your moment-to-moment experience of happiness, you spend less time recording your experience and more time experiencing them directly. [Read More »](#)

[Education As Incapacitation: Why Are States Making it Harder to Get a Learner's Permit?](#)

I got in trouble earlier this summer when a teacher caught me [surfing the Internet](#) during a “Safe Driving Practices” class I had to attend so that my son could get his Connecticut driver’s license. While a parent has to attend for 2 hours, a 16-year-old must attend for a mind-numbing 8 hours before qualifying to take a written test. The mandatory class is part of Connecticut’s graduated driver licensing requirements, which make it (i) harder for a 16 or 17-year-old to get a learner’s permit, (ii) harder to get a license, and (iii) severely limits the kinds of driving you can do with these licenses.

I was surfing the Internet during class, because something the instructor said about accident statistics since the program was rolled out in 2008 seemed defensive – so I started to look up Connecticut statistics online.

Having attended 2 hours of the training, I seriously doubted that the 8-hour classes serve an educational function. Nonetheless, surfing made me feel somewhat better about having to sit there because I learned that the new requirements are having an impact: they’re deterring young people from getting their licenses. Look, for example, at what happened to the number of 16 and 17-year-olds receiving learner permits in 2008 when the law took effect (which I calculated from [this data](#)): [Read More »](#)

[Appoint and Nominate: How to Fill the Vacancy Atop the CFPB](#)

Last week, I published [an op-ed in the Washington Post](#) suggesting an “appoint and nominate” method by which President Obama could make a recess appointment of **Elizabeth Warren** to the Consumer Financial Protection Bureau, while still respecting the Senate’s confirmation process. I suggested that the president “should make a recess appointment of Elizabeth Warren and simultaneously nominate **Sarah Raskin** for the same position.” [Read More »](#)

[The Bad Man's View: Home Robbery as Opportunity](#)

One of the occupational hazards of teaching law is that I often take what **Oliver Wendell Holmes** called a “bad man’s view” of human motivation (my beloved spouse just told me this is the understatement of the century). Holmes, in his paradigm shifting “[The Paths of the Law](#),” said :

If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.

I find that this cynical tool for legal prediction – which parallels a presumption of narrow economic self-interest – often guides the way I interpret actions and events. [Read More »](#)

[Layers of Accountability](#)

In this final installment with BizIntelligence.tv (the first two installments can be found here and here), Bruno and I discuss my new seven-step diet plan, The \$500 Diet, and how creating “layers of accountability” can enhance your chance of losing weight and keeping it off. [Read More »](#)

[Carrots and Sticks at the RSA](#)

Watch a clip of Freakonomics contributor Ian Ayers speaking to the Royal Society for the Encouragement of Arts, Manufactures and Commerce, about his book, Carrots and Sticks. [Read More »](#)

[Chebyshev Is Ready for her Close Up](#)

In this second installment of my three BizIntelligence TV episodes, you can see my dog, Chebyshev (named after the mathematician who derived Chebyshev’s inequality), and learn what she has to do with Carrots and Sticks. [Read More »](#)

[Let Teams Choose Their NCAA Bracket Position](#)

Nate Silver has (another) truly insightful post demonstrating the possible perverse advantage of receiving an 11th seed instead of an 8th seed in the NCAA tournament. He explains: “[An average] team like Arizona would have a considerably better chance — about two-and-a-half times better, in fact — of winning its second round game and advancing to the Round of 16 as a No. 12 seed than as a No. 8 or No. 9 seed. This, of course, is because it has not yet had to face the No. 1 seed.” [Read More »](#)

[Wine, Movies and Love](#)

Back in January, on the day of one of the year’s particularly crippling blizzards, I was scheduled to travel to New York City to tape a segment of BizIntelligence TV with Bruno Aziza. The trains that day were running massively late, and I somewhat sheepishly called to cancel. For me, this was a non-discretionary snow day. But Bruno wouldn’t accept defeat. He heroically spent several hours with his camera crew and came to New Haven. They ended up taping three episodes at various places in my house. [Read More »](#)

[Coase Goes to War](#)

A “Smart Bribe” can be a lot cheaper than a “Smart Bomb.” [Read More »](#)

[Memo to Syria](#)

Readers of this blog may be surprised to learn that in 2005 I coauthored an article with Jonathan Macey which made explicit predictions about the future of democratization in Egypt. In 2005, Jonathan and I wrote: “We also posit that economic reform will bring increased pressure for democratization in countries such as Egypt and Syria. For this reason, economic reform of the kind we discuss in this Article (simplifying and reducing the costs of business formation) will be a good “leading indicator” of political leaders’ real interest in implementing meaningful democratic reforms that go beyond mere public relations gimmicks.” [Read More »](#)

[Against \(Discretionary\) Snow Days](#)

I awoke last week to another foot of snow adding a third blanket of winter to our city of Elms. I am reminded of the joy I felt as a child waiting to learn if school was canceled. Something has been lost in our age of instant information — who can forget huddling around the radio, holding your breath while the radio announcer lists the seemingly endless roster of closings? Today, we received the decidedly less romantic robo-calls at 5:33 in the morning. [Read More »](#)

[‘Tis the Season Puzzler](#)

Which markets exhibit this kind of trend in Google searches? [Read More »](#)

[Marketing Privacy](#)

Several years ago, Matthew Funk and I proposed a mechanism for moving beyond the all-or-nothing choice of the do-not-call list to a system where you also could choose how much you would like to be paid for telemarketing calls. [Read More »](#)

[The Economics of Tiger Parenting](#)

When my daughter Anna was 7, she told me she desperately wanted a dog. I looked her in the eye and said, “You can have a dog if you publish an article in an academic peer-reviewed journal.” I wasn’t kidding. I really, really didn’t want a dog because I thought it would disrupt our family routine, which included large dollops of what Amy Chua’s controversial new book, *Battle Hymn of the Tiger Mother*, refers to as Tiger parenting. [Read More »](#)

[Because It Works](#)

To my mind, WeightWatchers is the industry leader in performing rigorous testing of their services. Under the leadership of Karen Miller-Kovach, its chief scientific officer, it has sponsored several randomized control trials comparing the effectiveness of the WeightWatchers point system to other diet approaches. For example, Miller-Kovach is a co-author of this 2003 JAMA study (which showed that after 2-years WeightWatchers helped overweight dieters lose about 3 percent of their body mass – reducing their average weight from 207 to 201 pounds). But I’m troubled by the current advertising campaign that accompanies the rollout of the New PointsPlus system. [Read More »](#)

[How Can We Stop Handicap Fraud?](#)

A few years ago, a colleague of mine off-handedly mentioned that he “tried not to use” his spouse’s disability placard to park in handicapped spaces when she wasn’t in the car. Frankly, I was appalled. The implication was that he sometimes succumbed to the temptation to use the placard to park in a handicapped place.

Apparently, he isn’t alone. [Read More »](#)

[If at First You Don’t Succeed ...](#)

Last fall, I saw my recidivist coauthor, Barry Nalebuff, and was struck by how much weight he’d lost. He had a clearly different body shape. I told him he looked great. Barry turned to my spouse (and coauthor) Jennifer Brown and said, “I’m doing it on my own, so I don’t have to use that [expletive] stickK.com.” [Read More »](#)

[When Is “Undersight” Unconstitutional?](#)

If oversight is when a superior has the right to disapprove of an underling’s decision, what is “undersight”?

It’s my term for when an underling has the right to disapprove of a superior’s decision. It’s not surprising to see principal-agent contracts with oversight provisions, but in two recent statutes the lame duck Congress has arguably imposed undersight provisions on the President acting as our commander-in-chief. [Read More »](#)

[Giving Back the Tax Cuts: A Guest Post](#)

My colleagues Jacob Hacker and Daniel Markovits have created a cool website called www.GiveItBackForJobs.org that not only includes a useful tool to let you calculate the size of your tax cut, but suggests that “Americans who have the means should collectively give back our Bush tax cuts, by making donations to organizations that promote fairness, economic growth, and a vibrant middle class.” Here’s a post from the creators themselves that gives more details.

[Read More »](#)

[Iatrogenic Legal Assistance?](#)

Harvard Professors Jim Greiner and Cassandra Pattanayak have posted a remarkable randomized experiment (“What Difference Representation?”) with evidence showing that offers for free legal representation from the Harvard Legal Aid Bureau (HLAB) ended up hurting unemployment claimants. [Read More »](#)

[We Hold These Truths to Be Universal](#)

The behavioral revolution in economics and psychology has successfully identified and named close to three dozen biases (my favorite behavioral folk song defines them in verse). I had thought that these biases transcended issues of culture. Indeed, both neoclassical and behavioral economists were united in a belief that cultural variables were of secondary importance when it came to the deep drivers of behavior. But a series of experiments now has me thinking that the underlying heuristics are less universal. [Read More »](#)

[Addicted to Rationality](#)

Here's another hilarious xtranormal send-up – this time lampooning the Becker/Murphy theory of rational addiction. [Read More »](#)

[Visualizing Mortality History](#)

Hans Rosling, a guru of data animation, is at it again. [Read More »](#)

[Here Is Your Mother](#)

In a previous post, I asked why the writers of the TV show House chose for last week's episode ("A Pox on our House") to have a sick family composed of a recently married husband and wife who each bring to the marriage a child from a previous relationship. [Read More »](#)

[A House Puzzler](#)

Here's a puzzler for people who have seen the latest episode of the TV show House. [Read More »](#)

[Super Sad Super Crunching](#)

Gary Shteyngart's new novel, Super Sad True Love Story (more here), paints a compelling but amazingly bleak picture of a future ravaged by the twin evils of predictive analytics and texting. Following the truly prescient Snow Crash, his characters are obsessively plugged into their "AppArts," souped-up versions of today's app phones. (One of the funnier lines occurs when one character makes a disparaging reference to another character's outmoded hand device, saying: "What is this, an iPhone?" (Kindle 1244).) Here is a world where credit scores, eHarmony-compatibility predictions and rankings are ubiquitously at hand. Characters routinely choose the reality of the shadows on their screen over the real world. [Read More »](#)

[Recanting a Small Part of Lifecycle Investing](#)

On page 9 of Lifecycle Investing, Barry Nalebuff and I write:
"[B]efore you invest in stocks, first pay off all your student loans and credit card debts."
On reflection, we were only half right. You should pay off your high-interest-rate credit card loans before investing in stock. But in this post from our Forbes blog, Barry and I show why young investors need not pay off their student loans before investing in stock. [Read More »](#)

[Are Public Commitments Counterproductive?](#)

The music entrepreneur Derek Sivers gave a TED Talk with the provocative claim that you're more likely to reach your goals if you keep them secret. [Read More »](#)

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