

Dear Friends,

It's been a little more than two years since I last wrote.

Most frivolously, Greg Conyers and I just launched a free iPhone app, called [Secondhand Holidays](#) which (as described in [this Freakonomics post](#)) will alert you when unusual moments of celebration are about to occur.

If you liked "[500 Days of Summer](#)," you might enjoy telling your boyfriend or girlfriend when you've been in a relationship for 100 million seconds (after 3.17 years). If you want, the app will also calculate "secondhand" holidays for Facebook friends that you select. Because of this feature, I now know that next week will be a billion seconds since my friend Betsy's graduation from Indiana University (about 32 years ago). The app makes it easy to send to a friend an email, text, or Facebook message about an upcoming holiday. Using the app, I was able to text my nephew the exact moment when his twin toddlers will be a million minutes old (when they're 1.9 years old). The app also lets you easily create calendar events for any of the holidays and, if you want will even warn you 7 days in advance.

Scholarship

Thanks to my many coauthors and many, many research assistants, I have a bunch of new articles:

[Unhappy Meals: Sex Discrimination in Toy Choice at Mcdonald's](#) (working paper 2014) (with Antonia Rose Ayres-Brown). This article co-authored with my daughter has been in the works for more than five years. In the most egregious testing result (which happened to occur at the McDonald's closest to YLS), a girl, after twice asking for a "boy's toy," was denied the offering (even though the store a moment later had the "boy's toy" in stock). The good news is that McDonald's Chief Diversity Officer wrote to us in December saying that the company had decided to change its toy policy.

[The No Reading Problem in Consumer Contract Law](#), STANFORD LAW REVIEW (forthcoming 2014) (with Alan Schwartz). This soon-to-be-published article argues that consumer protection should be centrally concerned with "term optimism" when consumers expected more favorable terms than contained in their contracts. We also propose a "form democratization" mechanism which gives a consumers expanded control over what their contracts disclose. We apply our approach in a small experiment to discover five out of 25 Facebook terms about which consumers hold mistakenly optimistic beliefs.

[Tops, Bottoms, and Versatiles: What Straight Views of Penetrative Preferences Could Mean for Sexuality Claims Under Price Waterhouse](#), 123 YALE LAW JOURNAL 714 (2013) (with Richard Luedeman). This article reports on a new form of associational

aversion toward gay men. Before you click through, take the following pop-quiz. Imagine that Tom (a gay neighbor) invites you and others on your street to a barbeque. Would you be less likely to go if you learned that Tom was a top, bottom or versatile? This paper provoked one of the most memorable criticisms from a seminar participant that I have ever received (“Your instrument too subtly uses the phrase ‘anal sex.’”).

[Beyond Diversification: The Pervasive Problem of Excessive Fees and “Dominated Funds” in 401\(k\) Plans](#) (working paper 2014) (with Quinn Curtis). This paper (and the companion journal article, [Measuring Fiduciary and Investor Losses in 401\(k\) Plans](#)) provides evidence that:

[F]ees lead to an average loss of 86 basis points in excess of low cost index funds. In 16% of analyzed plans, we find that, for a young worker, the fees charged in excess of an index fund entirely consume the tax benefit of investing in a 401(k) plan. We also document a wide-array of “dominated” menu fund options where the costs of fees in holding the fund so outweigh the benefits of additional diversification that rational investors would not invest in these assets. We find that approximately 52% of plans have menus offering at least one dominated fund. In the plans that offer dominated funds, dominated funds hold 11.5% of plan assets and these dominated investments tend to be outperformed annually by their low-cost menu alternatives by more than 60 basis points.

[Evidence and Extrapolation: Mechanisms for Regulating Off-Label Uses of Drugs and Devices](#) (working paper 2014) (with Ryan Abbott). This article argues for an evolutionary, evidence-based approach to the regulation of off-label drug uses.

[Information Escrows](#), 111 MICHIGAN LAW REVIEW 145 (2012) (with Cait Unkovic). This article proposes a mechanism where the victims of sexual assault or harassment can deposit an actionable complaint that will only be released to authorities if another complaint is deposited naming the same defendant. Caitie and I have been working to put this idea into practice in website form.

[Commitments Bonds](#), 100 Georgetown Law Journal 605 (2012) (with Michael Abramowicz). If you like stickk.com, you love the idea of compensated commitment contracts.

[Diversification Across Time](#), 39 JOURNAL OF PORTFOLIO MANAGEMENT 73 (Winter 2013) (with Barry Nalebuff). This recently published article is a scholarly version of our [Lifecycle Investing book](#) and a winner of [the Bernstein Fabozzi/Jacobs Levy Outstanding Article Award](#). Our proposal for leveraged lifecycle funds don’t look as crazy after 5 years of bull markets.

[Enabling Mutual Fund Arbitrage: Short Redemptions and Improved Performance Guarantees](#) (working paper 2013) (with Quinn Curtis). I really think that “Improved

Performance Guarantees” is a million dollar idea that could beneficially disrupt both mutual fund and 401(k) plan markets. Small law reforms could pay huge social payoffs.

[Three Proposals for Regulating the Distribution of Home Equity](#), YALE JOURNAL ON REGULATION (forthcoming 2013) (with Joshua Mitts). This article argues that “leverage bunching” exacerbated the home mortgage crisis and shows how recent Qualified Mortgage regulation could be improved to respond to the problem. In a companion article, [Anti-Herding Regulation](#) Harvard Business Law Review (forthcoming 2014) (with Joshua Mitts), we argue that private parties at times have insufficient incentives to adopt separating behaviors to mitigate systemic risks and that regulators accordingly should at times adopt new regulatory approaches deter “herding.”

[A Randomized Experiment Assessing the Accuracy of Microsoft’s “Bing It On” Challenge Claims](#), 26 LOYOLA LAW REVIEW 1 (forthcoming 2014) (with Emad Atiq, Sheng Li, Michelle Lu, Christine Tsang & Tom Maher). This experiment suggests that Microsoft violated the Lanham Act.

[Skeletons in the Database: An Early Analysis of the CFPB’s Consumer Complaints](#), FORDHAM JOURNAL OF CORPORATE & FINANCIAL LAW (forthcoming 2014) (with Jeff Lingwall, & Sonia Steinway). This article began as a class project in my empirical law and economics seminar.

[The Chastain Effect: Using Title IX to Measure the Causal Effect of Participating in High School Sports on Adult Women’s Social Lives](#), JOURNAL OF SOCIO-ECONOMICS (forthcoming 2014) (with Phoebe Clarke). This article also began in my empirical law and economics seminar. All Hail, Betsey Stevenson. A good instrument is hard to find.

[Anti-Incentives: The Power of Resisted Temptation](#), EUROPEAN FINANCIAL REVIEW 40 (February-March 2012). This thought experiment is, in the next few months, turning into a real-world test.

Popular Press

[The U.S. hypocrisy over Russia’s anti-gay laws](#), Washington Post, January 31, 2014 (with William Eskridge). Wish the Post hadn’t put hypocrisy in the title. Then again the willingness of Kansas and Arizona to propose retrograde legislation does make we think that our work at home is far from over.

[Canceling the shutdown, playing by the rules](#), Los Angeles Times (Oct 4, 2013) (with Bruce Ackerman) Our call for using the rarely-used discharge petition to avoid the shutdown played a small role in ending the shutdown. A discharge petition with our recommended bill was circulated, and may have indirectly reduced the power of the

block coalition. First time that one of my op-eds has prompted a thank-you call from a member of Congress.

[How the Internet Can Save Journalism](#) HUFFINGTON POST (August 7, 2013) (with Bruce Ackerman) Bruce and I find another use for vouchers -- this time to help subsidize journalism.

[How Congress Can Overrule Citizens United](#) HUFFINGTON POST (February 8, 2012) (with Bruce Ackerman) Here, we take the personhood of corporations seriously and suggest that prohibiting federal contractors from contributing would pass constitutional muster.

[Don't Tax the Rich. Tax Inequality Itself](#) NEW YORK TIMES A29 (December 18, 2011) (with Aaron S. Edlin) We propose dealing with rising income inequality by capping inequality rather than simply taxing the rich at ever-higher rates. Today, the top 1% earns on average 36 times more than the median American. We could disallow top earners from earning any more than 36 times the median.

[Paying Students to Quit Law School](#) SLATE (November 18, 2011) (with Akhil Reed Amar). This piece annoyed some of our peer institutions. We propose that law schools offer to give students back half of their first-year tuition if they quit law school. We think it would go a long way to reducing the number of potential lawyers who really shouldn't be in law school: students will think twice about attending high-rebate schools and schools will think twice about admitting students with a high probability of backing out.

Blog Posts

And, I have again written a wearying number of blog posts.

An App for a New Kind of Holiday

In 2009, while watching the closing credits of *Invictus*, the film about Nelson Mandela's first years as South African president, I heard [Yollandi Nortjie sing](#) "9000 days were set aside / 9000 days of destiny / 9000 days to thank Gods wherever they may be." Mandela spent 9,000 days in prison (about 24.7 years).

For some reason, I started thinking about the power of expressing the passage of time in alternative incremental units, and after playing around on Excel, I figured out that my spouse and I would soon have the opportunity to celebrate our "ten millionth marriage minute" (a little over 19 years).

It struck my fancy that this was a length of time worthy of observing in some way – even if just as an excuse to share a nice bottle of wine. For whatever reason, I loved discovering these additional, arbitrary moments of celebration and I decided it would be pretty easy to alert people when an unusual holiday was about to occur. [Read More »](#)

Why the CFPB's Qualified Mortgage Rule Misses the Mark

This post grows out of two working papers (downloadable [here](#) and [here](#)) I've written with **Joshua Mitts**, a former student of mine who is now working at Sullivan & Cromwell.

Why the CFPB's Qualified Mortgage Rule Misses the Mark

Ian Ayres & Joshua Mitts

Last Friday, the Consumer Financial Protection Bureau's "[qualified mortgage](#)" rule went into effect. This rule is designed to put an end to the risky lending practices that led to the financial crisis. But a simpler rule could better assure borrowers' ability to repay and simultaneously create greater repayment flexibility.

The purpose of the QM rule is to help assure that borrowers have sufficient monthly income to make their required mortgage payments, lessening the risk of large-scale defaults like those experienced after 2008. The rule creates a lender safe harbor for qualifying mortgages. Lenders can still make non-qualifying loans, but must instead meet more onerous multi-factored underwriting standards. Qualifying loans reduce the risk that lenders will be held liable under Dodd-Frank for failing to make a "reasonable, good faith determination of a consumer's ability to repay." [Read More »](#)

An Economist's Tipping Strategy

I have a friend with whom I regularly eat out at restaurants and from time to time we disagree on how much to tip. Traditionally, I have been a hard-wired 20% tipper. But since studying the [racial effects of taxi-cab tipping](#), I've been more attracted to tipping less – sometimes closer to 15%. This has at times created disagreements between my friend and I on how much to tip. He always wants to tip 20%. But when we've disagreed, we've always resolved the issue by tipping the larger amount. We always split the bill—including the tip—50/50.

But a few weeks ago, my friend and I were eating dinner and experienced exceptionally bad service. The server twice put in the wrong order and charged us for items that we had not ordered. I suggested that we reduce our tip to 10% (I note that while I'm high maintenance in many aspect of my life, I'm not persnickety about restaurant service and the last time I reduced my tip to 10% was probably more than 1000 restaurant meals ago). My friend agreed that the server had made these errors (and indeed, the sever himself acknowledged that the service was subpar), Nevertheless, my friend still wanted us to leave a 20% tip. [Read More »](#)

And the Financial Institution Most Likely to Be Late Responding to a Consumer Complaint Is . . .

One day last spring, I saw in a Google alert that the Consumer Financial Protection Bureau (CFPB) had announced that it was for the first time making public a consumer complaint database. At the time, I was teaching a course in Empirical Law & Economics at Yale and decided to call an audible. I came into class that day and projected the raw data (which you can see for yourself by clicking [here](#)) and asked the class how we might make use of the information.

With incredible dispatch, **Jeff Lingwall** and **Sonia Steinway** merged the complaint data with other datasets and together we started to put together an [initial draft](#) analyzing the complaint information. When the CFPB made the database public, they [actively encouraged](#) “the public, including consumers, analysts, developers, data scientists, civic hackers, and companies that serve consumers, to analyze, augment, and build on the public database to develop ways for consumers to access the complaint data or mash it up with other public data sets.” This [paper](#) is our attempt to respond to the Bureau’s call to action. [Read More »](#)

Is the “Bing It On” Challenge Lightweight?

Microsoft has now responded, with a [blog post](#) and a [letter](#), to my [post](#) about an [experimental study](#) that I coauthored with Yale Law School students **Emad Atiq**, **Sheng Li**, **Michelle Lu**, **Christine Tsang**, and **Tom Maher**. Our paper calls into question the validity of claims that people prefer Bing nearly two to one.

In response to several commenters: I do not work for and do not have any consulting relationship with Google.

Microsoft claims that our study is flawed because it relied on their own blind comparison website. They now say that “Bing It On” is meant to be a “[lightweight](#) way to challenge people’s assumptions about which search engine actually provides the best results.” To be sure, companies often use [fantastical](#) or [humorous](#) scenarios for free advertising. However, Microsoft’s television commercials present the site as a credible way that people can learn whether they prefer Google or Bing. These commercials show people who discover that they really prefer Bing to Google. The challenge site that they created is either sufficient to provide insights into consumer preferences or it isn’t. The advertisements give the impression that the challenge site is a useful tool. Microsoft can’t have it both ways. If it is a sufficient tool to “challenge people’s assumptions,” then it is sufficient to provide some evidence about whether the assumed preference for Google is accurate. [Read More »](#)

Should I Send \$550 Back to Ford?

My family liked our new Ford C-Max hybrid so much that we bought a second one just a few months later. But in between the two purchases, I learned something that made me think that in buying the second car I might also be buying a cause of action.

Before the second purchase, I learned that [Richard Pitkin](#) of Roseville, Calif., had brought suit against Ford for overstating the C-Max’s fuel efficiency. It apparently is too good to be true that a C-Max can achieve 47 mpg both in the city and on the highway.

Sure enough, two weeks ago, two [\\$550 checks](#) arrived in the mail because Ford had dropped its official mileage estimate from 47mpg to 43mpg. Ford calls the money a “[goodwill payment](#).” [Read More »](#)

Challenging the Bing-It-On Challenge

Did you find this blog post through Bing? Probably not—67% of worldwide searches go through Google, [18% through Bing](#). But Microsoft has [advertised](#) in a substantial [TV campaign](#) that — in the cyber analog to blind taste testing — people prefer Bing “[nearly 2:1](#).” A year ago, when I first saw these ads, the 2-1 claim seemed implausible. I would have thought the search results of these competitors would be largely identical, and that it would be hard for people to distinguish between the two sets of results, much less prefer one kind 2:1.

When I looked into the claim a bit more, I was slightly annoyed to learn that the “nearly 2:1” claim is based on a [study of just 1,000 participants](#). To be sure, I’ve often published studies with similarly small datasets, but it’s a little cheeky for Microsoft to base what might be a multi-million dollar advertising campaign on what I’m guessing is a low six-figure study.

To make matters worse, Microsoft has refused to release the results of its comparison website, [Bingiton.com](#). More than 5 million people have taken the Bing-It-On challenge – which is the cyber analog to a blind taste test. You enter in a search term and the Bing It On site return two panels with de-identified Bing and Google results (randomly placed on the right or left side of the screen). You tell the site which side’s results you prefer and after 5 searches the site reveals whether you prefer Bing or Google. (See Below)

Microsoft’s soft ads encourage users to join the millions of people who have taken the challenge, but it will not reveal whether the results of the millions are consistent with the results of the 1,000. [Read More »](#)

When Should You Use a Condom?

Recently I spoke about condom use at TedxYale. It’s based on the article “[A Separate Crime of Reckless Sex](#)” I co-authored with **Katharine K. Baker**. [Read More »](#)

A Conservative Wishtory of the United States

My friend **Jack Hitt** has a funny [piece in *The New Yorker*](#) listing misstatements about American history by conservative politicians, beginning with these doozies:

1500s: The American Revolutionary War begins: “The reason we fought the revolution in the sixteenth century was to get away from that kind of onerous crown.”—**Rick Perry**

1607: First welfare state collapses: “Jamestown colony, when it was first founded as a socialist venture, dang near failed with everybody dead and dying in the snow.”—**Dick Armey**

1619-1808: Africans set sail for America in search of freedom: “Other than Native Americans, who were here, all of us have the same story.”—**Michele Bachmann**

1775: **Paul Revere** “warned the British that they weren’t going to be taking away our arms, by ringing those bells and making sure as he was riding his horse through town to send those warning shots and bells that we were going to be secure and we were going to be free.”—**Sarah Palin**

1775: New Hampshire starts the American Revolution: “What I love about New Hampshire... You’re the state where the shot was heard around the world.”—**Michele Bachmann**

[Ed. note: One of these claims seems much closer to being true: [see page 1336-38 of *Property in Land*](#)].

Freakonomics Nation: can we produce an analogous list of historical misstatements by liberal pols? We'll give out some [Freakonomics swag](#) to a clear winner or two.

Peter Cramton: Medicare Auction Gadfly

My friend and co-author **Peter Cramton** continues his two-year crusade to improve the workings of "[Medicare's Bizarre Auction Program](#)." You can watch his YouTube testimony before the United States House Committee on Small Business [here](#).

(See also his [Oral Testimony](#), [Transcript of Hearing](#), [Video of Entire Hearing](#).)

Peter's supplemental [comments](#) are particularly devastating in rebutting two claims of **Lawrence Wilson**, Centers for Medicare and Medicaid Services (CMS) Director of the Chronic Care Group:

CMS [claim]: "CMS worked closely with stakeholders to design and implement the program."

Mr. Wilson. "CMS worked closely with stakeholders to design and implement the program in a way that is fair for suppliers and sensitive to the needs of beneficiaries."

[Read More »](#)

When Is It Inconsiderate to Press A Crosswalk Button?

I have no problem with pedestrians pressing crosswalk buttons when they wait for the crossing light to change before crossing the intersection. Crossing lights and crosswalk buttons serve important safety function at busy intersections especially for disabled or elderly pedestrians who need a bit more time crossing the street.

But some pedestrians press the button with a conditional intention to cross the street before the crossing light changes if there is a break in the traffic. One often sees pedestrians approach an intersection, press the button, and then immediately cross the street, before the crossing light changes.

The pedestrian probably reasons a) "I have a right to press the button"; and b) having pushed it, I now see I can walk without inconveniencing anyone because there aren't any cars coming. [Read More »](#)

Timing Matters for Armstrong, Clemens and Lin

One of the great lessons of contracts (and of the law more generally) is that the timing of actions can dramatically change legal consequences. An offeree who says "I accept" a moment after the offer is withdrawn is in a very different position than an offeree who says the same thing a moment before an attempt to withdraw.

This past summer three sports stories seemed to turn on matters of timing. **Les**

Carpenter writes that **Lance Armstrong** could have avoided his downfall if he had stayed retired:

The irony is that Armstrong could have remained a hero. He could have been a saint, as well as a beacon of light to millions who never would have thought he had cheated throughout his career. All he had to do was stay retired.

[Read More »](#)

UK Game Show *Golden Balls*: A New Solution to the Prisoner's Dilemma

Several years ago, **Felix Oberholzer-Gee**, **Joel Waldfogel** and **Matthew W. White**, published [a fascinating empirical article](#) about the prisoner's dilemma game embedded in the short-lived U.S. game show "Friend or Foe." Their core findings:

Using data from two seasons of a television game show, we provide evidence about how individuals implement conditionally cooperative preferences. We show that (1) contestants forgo large sums of money to be cooperative, (2) players cooperate at heightened levels when their opponents are predictably cooperative, and (3) players whose observable characteristics predict less cooperation fare worse (monetarily) over time, as opponents avoid cooperating with them.

I always thought it might be nice to update the study to test to see whether different kinds of "cheap talk" were more or less effective in establishing cooperation. [Read More »](#)

(Almost) The Triumph of Game Theory at the Super Bowl

One of the amazing things about the Super Bowl game this past weekend was that both coaches understood that [the Patriots would be better off if the Giants scored a touchdown late in the game](#) and reportedly instructed their teams accordingly. To my mind, this represents a high point in the prevalence of strategic thinking.

Was the failure of **Ahmad Bradshaw** to follow through on his coach's instruction merely a failure of execution?

But I wonder whether the Giants failed to strategically optimize on the very next play selection. With about a minute left in the game (and with a timeout remaining for the Patriots), the Giants choose to go for a two-point conversion. My question is not about whether they should have kicked a point after. No, I wonder whether they might have done better by handing the ball to a swift runner, who might have even more perversely attempted to forgo scoring two points and instead tried to burn as many seconds off the clock as possible by merely running away from the other team (toward, but not into, the other endzone!). [Read More »](#)

What Makes Chuck Skinny?

Weight Watchers has ads in heavy rotation with **Charles Barkley** saying: "lose weight like a man."

You can also hear him mention his success in [his Saturday Night Live monologue](#).

Something is working. Since starting WW, he's lost 38 pounds. But what about the Weight Watchers program that has him shedding so much weight?

Is it the group weigh-ins?

Is it the famous Weight Watchers point system?

Or is it something else? [Read More »](#)

Of Lags and Caps: Possible Implementations of a Brandeis Tax

Last Monday, [Aaron Edlin](#) and I published a *cri de coeur op-ed in the New York Times* calling for a Brandeis tax, an automatic tax that would put the brakes on income inequality. This is the third in a series of posts (the first and second posts are [here](#) and [here](#)) explaining more about our rationale and providing more details on how a Brandeis tax might be implemented. You can also listen to my hour-long interview on Connecticut Public Radio's "Where we Live" [here](#).

Of Lags and Caps: More Details About Possible Implementations of a Brandeis Tax

By Ian Ayres & Aaron Edlin

Remarkably of the hundreds of emails we received in reaction to our op-ed, almost no one questioned Brandeis's idea that we can have great concentrations of wealth, or democracy but not both. People questioned other aspects of our proposal, asking questions like (1) how would it work in a world of income bunching; (2) would people still have the incentive to work hard; and (2) is it fair to have very high tax rates on the affluent.

Our [last post](#) talked about alternative potential triggers. Here we tackle some more detailed questions about implementation including how to trade off different kinds of distortions. [Read More »](#)

An Inequality Tax Trigger: The Brandeis Ratio Explained

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An Inequality Tax Trigger

By Ian Ayres and Aaron Edlin

A central idea behind our Brandeis tax proposal was to have a tax that is triggered by increases in inequality. Our Brandeis tax does not target excessive income per se; it only caps inequality. Billionaires could double their current income without the tax kicking in — as long as the median income also doubles. The sky is the limit for the rich as long as the "rising tide lifts all boats." Indeed, the tax gives job creators an extra reason to make sure that corporate wealth does in fact trickle down. [Read More »](#)

There Will Be Rich Always: Finding a New Way to Think About Income Inequality

On Monday, [Aaron Edlin](#) and I published a *cri de coeur op-ed in the New York Times* calling for a Brandeis tax, an automatic tax that would put the brakes on income inequality. In the next few days,

Aaron and I will be publishing a series of posts explaining more about our rationale and providing more details on how a Brandeis tax might be implemented.

There Will Be Rich Always

By Ian Ayres & Aaron Edlin

In one of the more memorable lyrics from the musical *Jesus Christ Superstar* (based on [Matthew 26:11](#)), Jesus tells his disciples “[There will be poor always.](#)”

The same is true of the rich. There will always be a top 1 percent of income earners. But what it takes to be rich can change drastically over the course of even a single generation. In 1980, you would have had to earn at least [\\$158,000](#) to be a one-percenter; but by 2006 the qualifying amount had more than doubled to [\\$332,000](#). (You can produce an estimate of your own household income percentile – albeit using a different definition of income that produces a much higher 1 percent cutoff – at [this wsj.com site](#).) The rise is not due to inflation as both these numbers are expressed in inflation-adjusted, constant 2006 dollars. [Read More »](#)

NBA Players’ Union Decertification As Owner Opportunity: What if Mark Cuban Had Gone Maverick?

David Stern ran roughshod over owners during the recent NBA lockout negotiations. He was [willing to levy stiff fines](#) for any public comments that might undermine an image of management unity.

But the league’s power to control dissident owners possibly changed on Nov. 14, when the union representing NBA players formally dissolved. The league treated dissolution as a bad faith bargaining ploy by the players to gain bargaining power. You see, sports leagues can engage in collusive conduct that would otherwise violate the Sherman Antitrust Act – so long as the collusion takes place as part of a collective bargaining agreement. By disbanding the union, the players were threatening to expose the league to massive antitrust liability.

The league treated the players’ dissolution as though it had no impact on its control of team behavior. But imagine for a moment that one of the team owners took the players decertification seriously. [Read More »](#)

Tattoo Taboo

I was in Tokyo a few weeks ago speaking at IBM’s [Business Analytics Forum](#). At 6:30 in the morning a few hours before my talk, I had a wonderfully rejuvenating swim at the [Royal Park Hotel](#). But I was surprised to see a pool-side sign stating “Persons With Body Tattoos Not Allowed.”

I have swum at dozens of pools in the United States and have never encountered such a restriction. Is there any valid public health reason for tattoo discrimination? Is the pool policy driven by irrational health concerns (a la the early days of [HIV hysteria](#))? [Read More »](#)

National Treasure 2.7 Deciphered

In one of my previous [posts](#), I asked for help interpreting a rather bizarre dream imagining a new plotline for a *National Treasure* [movie](#). These movies often involve deciphering secret codes, and so did my post. My [day]dream was actually an aid to help me remember 40 digits of the irrational, transcendental constant of [Leonhard Euler](#), e .

Here is the dream again with numeric annotations in brackets: [Read More »](#)

Paying People to Quit: What Law Schools Can Learn From Zappos

[My favorite incentives book](#) tells the story of how after a week of training, Zappos offers new employees a one-time, one-day offer of a cash bonus if they will quit (As noted in the Freakonomics Radio hour, "[The Upside of Quitting](#)"). I describe this as an anti-incentive because even though the Zappos offer on its face gives employees an additional reason to quit, in practice it keeps employees on the job longer.

The vast majority of trainees turn down the offer during training – resisting the temptation to take the money and run. Then almost no one quits in the initial months after training because they'd feel like fools to quit for nothing when they could have quit for money. The cognitive dissonance would be too great. This is the power of resisted temptation.

But in a [recent Slate piece](#), **Akhil Amar** and I deploy the Zappos idea for a different purpose – to reduce the concern that law schools are admitting students who are unlikely to pass the bar. [Read More »](#)

National Treasure Puzzler

During a break in my contracts class the other week I told the students about a strange dream I had. Here's what I said:

I don't know whether it's because we just read [a case about the War of 1812](#), but I dreamed a kind of screenplay that begins with a tight close up with two identical faces of **Andrew Jackson**. As the camera pulls back, we see that the Jacksons are struggling to break free from being inside a cramped triangle. To make matters worse, we see that their bodies are jerking about because they are holding between them an electrified neon equation blinking " $2+3=5$ ". The equation is encased in some kind of phosphorescent circle.

They aren't willing to drop the circle, because on closer inspection one can make out a miniature Andrew Jackson who is trapped inside the circle. To make matters worse, out of nowhere an airplane swoops in and hooks the top of the triangle so that the Jacksons and the rest of the triangle's contents are suddenly dangling in midair behind the aircraft. [Read More »](#)

Dad-or-Daughter Contest: We Have a Winner

I'm happy to announce that **Elizabeth Simpson** won the [Dad-or-Daughter Songwriting Contest](#) by correctly identifying [Friend Zone](#) as the song that I coauthored with my daughter, as well as correctly identifying a line in that song that I composed (“But you just laughed it off and said we’d always be bros”), and a line in the song that Anna composed (“I bought a shirt today with your favorite band.”). Elizabeth turns out to be a former student from my 2006 small group in contracts. In her email, she describes the method behind her entry: [Read More »](#)

How to Be Sure Your Waiter Brings You Decaf (And Thwart Tiger Attacks Too!)

You’ve just finished a dinner at a nice restaurant and you order decaf coffee instead of regular so that you won’t have trouble falling asleep. A few minutes later, your server brings you a steaming cup of Joe. You want to drink, but you’re worried it might have caffeine. At this point, I normally ask something like “Are you sure this is decaffeinated?”

But my friend (and newly tenured colleague) [Yair Listokin](#) tells me that **Oprah** suggests that we ask instead: “Is this regular coffee?” Or, “Are you sure this is regular coffee?”

It’s not fool proof, but asking “is it regular” will let you find out whether the waiter is willing to say “yes” to any question, possibly to avoid the extra work of having to go get a replacement? Framing the question doesn’t work if the restaurant follows the [“after 8 p.m. or so, all the coffee is decaf”](#) convention. [Read More »](#)

A Dad-or-Daughter Songwriting Contest

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 [50 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 the lyrics? Is it possible for a 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 to this post or 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. Here they are: [Read More »](#)

A Common Joke About Common Knowledge

If you enjoy this joke (which is discussed [here](#), and comes from the folks at [Spiked Math Comics](#)) as much as I do, you might be a gearhead.

It illustrates one of the many surprising and subtle impacts of [common knowledge](#). Yale's [John Geanakoplos](#) provides an even more perverse version of the bar cartoon, in this incredibly [helpful chapter](#) :

Imagine three girls sitting in a circle, each wearing either a red hat or a white hat. Suppose that all the hats are red. When the teacher asks if any student can identify the color of her own hat, the answer is always negative, since nobody can see her own hat. But if the teacher happens to remark that there is at least one red hat in the room, a fact which is well-known to every child (who can see two red hats in the room) then the answers change. The first student who is asked cannot tell, nor can the second. But the third will be able to answer with confidence that she is indeed wearing a red hat.

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Probabalistic Auctions: Why Don't Universities Raffle off Chair Endowments?

A recent [post](#) of mine was addressed to the super-rich who are considering endowing a chair in order to garner public recognition. But what about the *merely rich* who wish to have their names recognized in perpetuity with an eponymous endowed chair at their university? Is there anything they can do? Yes. There are two things.

First, a much larger swath of people can follow the **Benjamin Franklin** strategy and endow a delayed chair. Franklin famously bequeathed about \$4,000 in 1790 to the Commonwealth of Pennsylvania. Franklin:

[instructed that \[his bequest\] be invested](#) for two hundred years and at the end of that period, the money should be used to do good. Franklin died in 1790. In 1990, his gift had grown to over \$2 million.

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