- Class 4: Idea/Expression
  - Administrative
    - Next Time: 133-58 (CHANGE: Stop reading after Note 4); sections 101 (three defns), 102(a).
    - Rebecca Tushnet's website (mentioned in syllabus)
    - Trends Monday
  - Last Time
    - Sounds (Wilhelm Scream)
      - Look at Woodpecker sounds (listed in last PDF) at your leisure.
    - Judicial Competence and Bleistein
  - Idea-Expression
    - Basics
      - Definition
        - Ideas aren't copyright protected and expressions are.
        - Goal is to identify the line where idea stops and expression begins
        - A sliding scale--series of abstractions.
      - Levels of Abstraction
        - 117 (in Mannion): Learned Hand quote from Nichols
        - Glass-in-Glass Jellyfish sculptures (124-26)
        - Satava v. Lowry
        - Jeweled Bee Pin (Herbert Rosenthal)
          - Levels of Abstraction
          -
      - Applies to BOTH copyrightability (originality) analysis and to infringement analysis
      - Policy Justification
    - Baker v. Selden
      - Basic Facts
        - Pages 103-104: Blank Accounting Forms
        - Selden came up with new method for accounting.
        - Key innovation: More summary data shown on two facing pages.
        - Selden's book:
          - Introductory essay explaining the system.
          - Blank forms illustrating the system.
        - Baker's book
          - Similar plan, with different columns and headings
          - "If [plaintiff] had the exclusive right to the use of the system explained in the book, it would be difficult to contend that the defendant does not infringe it . . ."
            - But see Note 8 (109).
      - Held (Supreme Court 1880)
        - Many possible
          - Blank Form Rules
            - Blank forms can't amount to copyright protection.
          - Belongs in Patent Law
          - If you have a copyright, you can prevent people from exercising the art.
        - No Copyright infringement -- Selden could not claim exclusive use to this art.
  - Merger
    - Basics
      - Definition
        - If there are only a few ways of expressing something, cannot copyright (any one) form of the expression.
          - Circuit Split: Some courts will still allow you copyright against literal copies.
    - Problems/Examples
      - Jeweled Bee Pins
      - Contest Rules
        - Morrissey v. Procter & Gamble (122)
      - Recipes
      - Photos
        - Mannion v. Coors
          - Basic Facts
          - Procedural Posture
          - Held (SDNY 2005)
          - Rules
        - Revisit Originality of My Photo under three prongs