Contemporary Topics in IP Law (LAW-962C-001)

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Abstract

In this course, we will review recent Supreme Court intellectual property cases on intellectual property law, as it intersects with administrative law, patentability, litigation, free expression, and more. The cases are studied through the vehicle of *amicus curiae* briefs filed in these cases, so the course further explores this distinctive and often effective avenue for influencing the Supreme Court.

The course will further (new for 2027) introduce students to the craft of moderating and participating a law and policy panel discussion, a valuable but under-taught skill for any legal professional. Students will learn how to organize and conduct a panel, and will have multiple opportunities to practice the skills of panel discussion.

Course Information

Meetings:	Tuesday, 1:30-3:20 PM
Location:	Unknown
Credits:	2
Office hours:	Monday at 1:30-3:30 PM
Prerequisites:	None.
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1 About This Course

To borrow a line from my friend and mentor, Professor Paul Ohm at Georgetown Law (↗): This seminar is an argument in the form of a course. As of 2027, this statement goes twofold.

On the surface, this is a course about recent Supreme Court intellectual property cases. We will explore the theories, tensions, arguments, and policies that have shaped modern IP and technology law over the last decade or so. The topics to be covered will include the administrative law of IP, patentability, the First

Amendment, modern technologies, and more. These cases are important and useful for anyone planning on practicing IP law in any capacity.

The first argument of the course is in the teaching material. Rather than the traditional law school fare of cases and articles, this seminar uses *amicus curiae* briefs filed in the Court as its vehicle for exploring the law. These third-party "friend of the court" briefs, when done well, shed light on the underlying policy, industry, societal, and political concerns that drive doctrinal development. And studying these briefs reveals techniques of effective *amicus* advocacy—and effective advocacy in general.

The second argument is that there is an important legal practice activity should receive more attention in law school. That is the panel discussion. The legal universe is full of these public conversations composed of a moderator and panelists: academic symposia, legal conferences, bar association webinars, media interviews, client meetings, government hearings, and policy events to name a few. (Even an oral argument is, in a sense, a panel moderated by judges with two panelists presenting contrasting viewpoints.) This course will introduce the practice of creating, organizing, moderating, and participating in panels, and students will use these skills by acting as moderators and panelists throughout course discussions.

1.1 Who Am I?

I am a former patent attorney who spent about ten years working at public interest organizations on patent policy. During that time, I filed around seventy amicus briefs on behalf of nonprofit organizations, law professors, library groups, former government officials, software companies, and once a group of cosplayers. These briefs have been cited in the Supreme Court, several federal appellate and district courts, and a variety of other media. In the 2016 Term, I was the sixth winningest amicus counsel in the Supreme Court ↗.

1.2 Who Are You?

This course has no prerequisites. No patent or IP law background is required. In fact, I'd welcome non-patent students in this course. A key question we will tackle in the seminar is how one goes about explaining a body of law as technical as IP law, to a Supreme Court with no specific knowledge of the field.

I would envision at least the following categories of students being interested in this seminar:

- Students intending to practice IP law, who want to know about cutting-edge issues.
- Students in (or aiming to be in) leadership roles in journals, law societies, or other places that put on panel events such as conferences and symposia.
- Students interested in administrative law, antitrust law, or other fields adjacent to IP law. Most of the cases in this course are intersectional between IP and other areas of law.
- Students interested in Supreme Court or appellate advocacy, for which *amicus* practice is a major part.
- Students interested in public interest advocacy, who would like to know how to craft arguments that connect law to broader social and policy issues.

1.3 Learning Outcomes

The following are the learning outcomes anticipated for this course, the manner of assessment, and the provided learning experiences.

Outcome 1 Students will understand and be able to apply theory and policy positions underlying contemporary U.S. intellectual property law.

- **Assessment**: The instructor will evaluate students' progress and and achievement through in-class participation, through the written materials prepared in advance of student-led panels, and through students' performance as moderators, panelists, and audience members during student-run panels.
- **Learning experience**: Students will identify theoretical arguments and stakeholder policy positions through the reading of amicus curiae briefs filed in key intellectual property Supreme Court cases, and engage with those arguments and positions during class discussions. They will then take on the role of *amicus* advocates, presenting arguments in the course of a panel discussion.

Outcome 2 Students will practice identifying the interests and positions of non-litigant stakeholders, and make arguments from the unique perspective of an *amicus curiae* in a case.

- **Assessment**: The instructor will evaluate students' progress and and achievement through in-class participation, through the written materials prepared in advance of student-led panels, and through students' performance as moderators, panelists, and audience members during student-run panels.
- **Learning experience**: Students will evaluate and discuss the argumentative and rhetorical strategies used by a wide variety of practitioners in amicus curiae briefs filed, and critique their effectiveness during class. They will then take on the role of *amicus* advocates, presenting arguments in the course of a panel discussion.

Outcome 3 Students will learn to organize a panel discussion, and learn how to moderate and participate in a panel discussion.

- **Assessment**: The instructor will evaluate students' progress and and achievement through in-class participation, through the written materials prepared in advance of student-led panels, and through students' performance as moderators, panelists, and audience members during student-run panels.
- **Learning experience**: Students will be given instruction on how to organize and conduct a panel discussion. Then, they will have the opportunity to organize and moderate at least one student-led panel discussion, and then participate as a panelist in at least two such discussions.

2 Coursework

This course is not structured like a normal seminar, where I provide cases and articles for you to read. In many of these cases, dozens of *amicus* briefs are filed. These briefs are optional reading for the courts, and a judge (or more likely, a judicial clerk) is not going to give every filed brief a complete and detailed review. Part of the goal of this course is to learn how to find briefs that stand out from the pack—and how to make your own briefs stand out.

There are two parts to this course: the "seminar" part and the "presentation" part. The activities during each part are different. Each part is described below, along with the preparatory work you will perform before each class.

2.1 Seminar Part

Each day in the seminar part of the course will include two activities: (1) group discussion of a case, and (2) a topic on how to conduct a panel discussion. Your preparation for these course days is as follows:

1. Read any background materials listed in the class schedule.
2. Select and read six *amicus* briefs, three per side, that you find the most interesting. On some days, the schedule includes a list of briefs for you to select from; select only among those. On other days, the schedule links to a docket listing of all briefs. Select six, following the directions given in Section 3.2.
3. Fill out the **Seminar Worksheet** form, available on Canvas, based on the briefs you selected.
4. Submit the completed form under the corresponding assignment on Canvas.
5. Be prepared to discuss in class the two briefs you selected as the most interesting. If you did a good job filling in the form, then you should be prepared.

2.2 Presentation Part

Each class during the presentation part of the course will consist of one to two panel discussions, each panel presenting a Supreme Court case. **You will be assigned to be a moderator once and a panelist twice**. Panelists will further be assigned to support either the petitioner or the respondent. I will be the third panelist on every panel.

Panels will run 45 minutes, with 5 minutes to debrief afterwards and a 10 minute break in between. Since the first few presentation days have only one panel scheduled, the extra hour will be used for your pre-panel meeting so you do not need to hold it separately.

If, for a given class, you are either a panelist or a moderator, then follow the directions below based on your role. You are not an audience member for that class. However, **if you are neither moderator nor a panelist for any panel on a given day, then you are an audience member** and should perform the appropriate assignment below.

2.2.1 Audience Members

If you are an audience member, your assignment is:

1. Read one *amicus* brief for each case to be discussed this day (see Section 3.2).

2. Prepare one question per case to ask of the panel, as if you were representing the *amicus* party who filed the brief you read. A good question should be 3–4 sentences long and attract awareness of your chosen *amicus* party's interests or concerns.

If there are two cases being discussed in one day, then audience members prepare two questions, one per case.

2.2.2 Panelists

If you are a panelist, your assignments are:

1. Read any background materials on the case so you understand what the question presented is.

2. **Two weeks before panel**: Choose an *amicus* brief for which you would like to speak on behalf of as a panelist (see Section 3.2). The brief must support the position you are assigned to. You may choose to present a brief in support of neither party as long as, in substance, the brief supports the position you are assigned to.

3. **Two weeks before panel**: Read your chosen brief. Fill in the **Panelist Worksheet** available on Canvas. Submit it in the appropriate assignment on Canvas.

4. **Two weeks before panel**: Email your moderator with your chosen *amicus* brief.

5. **One week before panel**: Participate in the pre-panel meeting that your panelist holds. Update your Panelist Worksheet with any additional information you would like to have. You may resubmit updated versions to Canvas; only the last version will be graded.

6. **Before panel**: Print your Panelist Worksheet and other materials you would like to have during your panel. I would advise against using an electronic device, and definitely do not have a laptop in front of you as it will block your face while you are presenting.

2.2.3 Moderators

If you are a moderator, your assignments are:

1. **Two weeks before panel**: Fill in as much as you can of the **Moderator Worksheet**, available on Canvas. This should include at least the information about the case and preliminary ideas for questions. Submit this in the appropriate assignment on Canvas, and email it to your panelists.

2. **Two weeks before panel**: Email your panelists to hold a pre-panel meeting. We will discuss during class what you should do during this meeting. I would recommend scheduling the meeting for a half hour before or after class the week before your panel. If you do this, I will try to join. You can schedule for other times as well and may do it virtually, though I can't guarantee I'll attend. (It's fine if I'm not there.)

3. **At least one week before panel**: Hold your pre-panel meeting. Update your Moderator Worksheet based on that meeting. You should resubmit your updated worksheet to Canvas; only the last version will be graded and the graded version should be complete.

4. **At least 2 days before panel**: Circulate your Moderator Worksheet to all the panelists. You can remove any information on the worksheet that is for your own personal use.

5. **Before panel**: Print your Moderator Worksheet and other materials you would like to have during your panel. I would advise against using an electronic device, and definitely do not have a laptop in front of you as it will block your face while you are presenting.

3 Course Logistics

3.1 Reporting Attendance

Please record your attendance and absences on the following website:

https://www.cduan.com/attend/?course=LAW-962C-001 ↗

This website will also contain the Zoom link for attending virtually, and will provide access to recordings of class if you are absent.

There is no need to email me in advance for absences; just report them, ideally in advance, on this website. You are also permitted to update your attendance record after the fact. For example, if you forgot to sign in during class, you can do so at home using this same website later.

The policy for absences is later in this document.

3.2 Course Materials

The required reading materials for this course are available freely online and linked in the schedule. You do not need to purchase anything.

If you would like an additional and optional resource on how to moderate panel discussions, I would recommend Katrina Dudley, *The Moderator's Handbook* (2025). Consider buying it from the local book shop Politics and Prose, as the staff there recommended the book to me.

For each class, you will read one or more *amicus* briefs from Supreme Court cases. On some days, the briefs for you to read or choose among are given in the class schedule. On other days, you will select briefs from among all the briefs filed in a case. The easiest way to do so is on the website SCOTUSBlog (↗), which maintains unofficial copies of case dockets. Links to the dockets are given in the syllabus.

The dockets are color-coded as illustrated in Figure 1. You should be selecting among the light green and dark green briefs. **Do not select any brief where I am listed as counsel.** I'll be talking about those.

Before about 2017, SCOTUSBlog linked to the ABA's website copies of briefs, but the ABA has since removed them. You can still access them through the Internet Archive (↗). For your convenience, the schedule provides links to archived copies of older dockets.

Cert petition	
Petition-stage amicus	Do not read these
Opposition to petition	
Petition GRANTED.	Do not read anything above this
Petitioner's merits brief	
Amicus briefs for petitioner	**Choose among these**
Amicus briefs for neither party	**and these**
Respondent's merits brief	
Amicus briefs for respondent	**Choose among these**
Amicus briefs for government	Do not read these

Figure 1: Layout of a typical SCOTUSBlog docket, indicating which of the briefs to select from in preparation for classes.

4 Schedule

Please carefully read the instructions on how to complete these reading assignments. **You do not need to read all the assigned materials as explained above.**

"ISO" stands for "in support of."

4.1 Introduction

January 12—Introduction

Choose: *Fundamentals of Preparing a United States Supreme Court Amicus Brief*, 5 J. Appellate Prac. & Process 523 ↗.

Optional: *The Amicus Machine*, 102 Va. L. Rev. 1901 (2016) ↗.

4.2 Seminar

January 19—*Alice v. CLS Bank*, and How to Be a Panelist

Background: *Previewing CLS Bank v. Alice*, Patent Progress (Feb. 7, 2013) ↗.

Optional: *Narratives of Gene Patenting*, 43 Fla. St. U. L. Rev. 1133 ↗. At least read the table on page 1193.

Choose: Paul R. Michel ISO Neither Party ↗.
- IEEE-USA ISO Neither Party ↗.
- Advanced Biological Laboratories ISO Petitioner ↗.
- American Civil Liberties Union ISO Respondents ↗.
- Microsoft ISO Affirmance ↗.
- Electronic Frontier Foundation ISO Respondents ↗.

Prepare: Follow the instructions in Section 2.1.
- Submit your completed Seminar Worksheet on Canvas.
- Rank the cases in the Presentations section according to your preferences for being on the panels.
- Prepare a question or comment based on the following prompt: Think about panel discussions that you have observed in the past. What was something that you saw a panelist do or say that you thought was effective? Or, what is a situation that you would like to know how to handle as a panelist?

January 26—*Amgen v. Sanofi*, and Assembling a Panel

Background: *Court to Decide How Specific a Patent Disclosure Must Be*, SCOTUSblog (Mar. 23, 2023) ↗.

Optional: *The Trouble with Amicus Facts*, 100 Va. L. Rev. 1757 ↗.

Choose: American Chemical Society ISO Petitioners ↗.
- National Association of Patent Practitioners ISO Petitioners ↗.
- Nature's Fynd ISO Petitioners ↗.
- High Tech Inventors Alliance ISO Neither Party ↗.
- Alliance of U.S. Startups and Inventors for Jobs ISO Petitioner ↗.
- Fresenius Kabi ISO Respondents ↗.
- Small and Medium Biotechnology Companies ISO Respondents ↗.
- Unified Patents ISO Respondents ↗.
- Sir Gregory Paul Winter ISO Respondents ↗.

Prepare: Follow the instructions in Section 2.1.
- Submit your completed Seminar Worksheet on Canvas.
- Think of a topic for a panel discussion that you would like to moderate. We will workshop these ideas as examples in class.

February 2—*Kimble v. Marvel*, and Pre-Panel Preparation

Background: 42 ABA Preview U.S. Sup. Ct. Cas. issue 6 ↗, pages 238–241, "Your Friendly Neighborhood Patent License:" through "these two bodies of law.".

Choose: University of Massachusetts Biologic Laboratories ISO Petitioners ↗.
- Intellectual Property Owners Association ISO Petitioners ↗.
- Memorial Sloan Kettering Cancer Center ISO Petitioners ↗.
- New York Intellectual Property Law Association ISO Petitioners ↗.
- Robin Feldman ISO Neither Party ↗.
- American Intellectual Property Law Association ISO Neither Party ↗.
- Licensing Executives Society ISO Neither Party ↗.
- William Mitchell College of Law Intellectual Property Institute ISO Respondent ↗.
- Washington Legal Foundation ISO Respondent ↗.

Prepare: Follow the instructions in Section 2.1.
- Submit your completed Seminar Worksheet on Canvas.
- What is a question that you think should be asked during the pre-panel meeting, either by a panelist or by the moderator? Try to come up with something important but nonobvious. For example: How are all the panelists' names pronounced?

February 9—*Jack Daniel's v. VIP Products*, and the Art of Moderation

Background: Ronald Mann, *Dog Toy Poking Fun at Jack Daniel's Leads to Dispute over Parody Exception to Trademark Protections*, SCOTUSBlog (Mar. 20, 2023) ↗.

Docket: *Jack Daniels* ↗.

Prepare: Follow the instructions in Section 2.1.
- Submit your completed Seminar Worksheet on Canvas.
- Prepare a question based on the following prompt: What is your nightmare scenario as a panel moderator? Imagine a difficult situation that could arise and ask for ideas on how to handle it.

4.3 Presentations

February 16—*Impression Products v. Lexmark*

Background: 44 ABA Preview U.S. Sup. Ct. Cas. issue 6 ↗, pages 183–185, "What Is the Scope of" through "manufacturing practices in the modern".

Docket: *Impression* ↗.

Prepare: Follow the instructions in Section 2.2.

- The pre-panel meeting will be held in the first hour of class. You do not need to conduct a separate pre-panel meeting, and all deadlines are moved later by one week. Print out your Moderator/Panelist Worksheets with plenty of blank space so you can write on them.

February 23—*Google v. Oracle*

Background: Sarah Jeong, *The Supreme Court Is Taking On Google and Oracle One Last Time*, The Verge (Oct. 6, 2020) ↗.

Docket: *Google* ↗.

Prepare: Follow the instructions in Section 2.2.

- The pre-panel meeting will be held in the first hour of class. You do not need to conduct a separate pre-panel meeting, and all deadlines are moved later by one week. Print out your Moderator/Panelist Worksheets with plenty of blank space so you can write on them.

March 2—*Georgia v. Public.Resource.Org* and *Helsinn v. Teva*

Background: Amy Orlov, *Georgia v. Public.Resource.Org Inc.*, Geo. Wash. L. Rev. ↗.

- Ronald Mann, *Of Patents, Prior Art and Secret Sales*, SCOTUSBlog (Nov. 27, 2018) ↗.

Docket: *Georgia* ↗.

- *Helsinn* ↗.

Prepare: Follow the instructions in Section 2.2.

March 8–14—NO CLASS: Spring Break

March 16—*SCA Hygiene v. First Quality* and *Samsung v. Apple*

Background: Ronald Mann, *Justices to Consider $400 Million Verdict for Samsung's Infringement of the Design of Apple's iPhone*, SCOTUSblog (Oct. 4, 2016) ↗.
— Ronald Mann, *Stakes Are High as Justices Consider Laches as a Bar to Patent Damage Suits*, SCOTUSblog (Oct. 25, 2016) ↗.

Docket: *SCA Hygiene* ↗.
— *Samsung* ↗.

Prepare: Follow the instructions in Section 2.2.

March 23—*Commil v. Cisco* and *Star Athletica v. Varsity Brands*

Background: 42 ABA Preview U.S. Sup. Ct. Cas. issue 6 ↗, pages 228–230, "Is a Good-Faith Belief That" through "where cost calculations are paramount.".
— Ronald Mann, *Court to Consider Copyright Protection for Cheerleading Uniforms*, SCOTUSblog (Oct. 24, 2016) ↗.

Docket: *Commil* ↗.
— *Star Athletica* ↗.

Prepare: Follow the instructions in Section 2.2.

March 30—*TC Heartland v. Kraft Foods* and *Van Buren v. United States*

Background: 44 ABA Preview U.S. Sup. Ct. Cas. issue 6 ↗, pages 165–168, "Is 28 U.S.C. § 1400(b)" through "Court over the past decade.".
— Ronald Mann, *Justices to Consider Breadth of Federal Computer Fraud Statute*, SCOTUSblog (Nov. 29, 2020) ↗.

Docket: *TC Heartland* ↗.
— *Van Buren* ↗.

Prepare: Follow the instructions in Section 2.2.

April 6—*Oil States v. Greene's Energy* and *United States v. Arthrex*

Background: *Patent Law: A Primer and Overview of Emerging Issues* (Congressional Research Service 2017) ↗, pages 38–40, Viability of Inter Partes Review Proceedings.
— *Supreme Court to Consider Whether Patent Judges' Appointments Are Constitutional* (Congressional Research Service, 2021) ↗.

Docket: *Oil States* ↗.
— *Arthrex* ↗.

Prepare: Follow the instructions in Section 2.2.

April 13—*Hikma v. Amarin* and *Cox v. Sony*

Background: Ronald Mann, *Court to Consider Thorny Dispute Between Manufacturers of Medication and Its Generic Substitute*, SCOTUSblog (Apr. 24, 2026) ↗.
— Ronald Mann, *Court to Consider billion Dollar Judgment for Copyright Infringement*, SCOTUSblog (Nov. 25, 2025) ↗.

Docket: *Hikma* ↗.
— *Cox* ↗.

Prepare: Follow the instructions in Section 2.2.

5 Course Policies

In addition to the policies below, please note the Honor Code for the Washington College of Law, the Grading and Examination policies of the Registrar, and other policies stated in the WCL Catalog ↗ and the American University Student Conduct Code ↗.

5.1 Assessment

Your grade in this course will be determined as follows:

15% Your preparation for moderating your panel. This is based primarily on your Moderator Worksheet.

15% Your performance as a moderator. This is based primarily on your initial presentation of the issue of the case being discussed and the quality of your

initial questions to the panelists.

20% Your preparation each time you were a panelist. This is based primarily on your Panelist Worksheets.

20% Your performances as a panelist. This is based primarily on your opening statements.

15% Your Seminar Worksheets.

15% Your general class participation, including your questions as an audience member. High quality participation involves respectfully listening to your classmates and thoughtfully reflecting on their comments, the readings, and the topics of discussion.

5.2 Attendance and Participation

I expect that all students will attend class regularly, complete the assigned readings and any assigned practice questions, arrive to class promptly and be prepared to participate in the class discussion when called upon. To be prepared for class means that you have read the assignment and have made an effort to think through the materials and any problems or questions in the notes (though no outside research is necessary or encouraged).

The manner of recording your attendance is given above in this document.

You may miss up to three class sessions for any reason and without penalty (no need to email me in advance). Any additional absences must be excused for good cause in advance of the class meeting. Further unexcused absences will have a negative impact on your grade, at my discretion. If you face particular challenges that make attendance difficult, contact the Office of Student Affairs.

Please be aware, though, that if you miss a class where you are scheduled to present or moderate, it may not be possible to reschedule your presentation. If such a situation arises, please let me know as far in advance as possible to see what can be done.

Classes will generally not be recorded, since most classes involve panel discussions, either involving students or from outside speakers where permission may be required. If you need a class recorded for a particular reason, please let me know and I am happy to discuss.

5.3 Artificial Intelligence and Other Assistance

The following quotation is the official policy of this course with respect to generative AI; the rest is just for you to think about.

> The use of generative AI programs is permitted for completing any written take-home assignments in this course. While AI is a powerful tool, it should not be used as a substitute for independent studying and work; further, there are inherent risks and potential ethical violations when using AI. As such, students must affirm that they have verified the authenticity and attest to the accuracy of the AI output upon submission of their work. Failure to do so could result in a lower grade on the respective assignment and potentially constitute an Honor Code violation.
>
> Please attach the following certification to any work to which more than one non-quoted sentence was initially generated by AI or any other source: "I certify that any language drafted by generative artificial intelligence, including quotations, citations, paraphrased assertions, and legal analysis, has been checked by me for accuracy, using, for example, print reporters or traditional legal databases. I understand I will be held responsible for the contents thereof according to applicable rules of the course syllabus and WCL Honor Code, regardless of whether generative artificial intelligence drafted any portion of this submission."

I'm generally permissive about what tools you use to produce writing. I study technology, after all, and have used computer programs to assist my writing for years. You'll have these tools available in your work, and lawyers have been using automation to speed up their workflow ever since the invention of the printing press.

That said, I would be cautious about over-relying on AI at this early stage in your legal career, for three reasons.

Writing is practice. You can't get good at the piano by listening to recordings; you have to move your fingers to learn. In the same way, if you want to be a great communicator of legal arguments—that is, a lawyer—you can't just sit back and listen to what ChatGPT says; you need to do the skill of communicating, over and over again, faster and faster. Law school writing is the slow practice of argument: Today you spend an hour every day writing IRAC paragraphs in the comfort

of your home, so that tomorrow you can spin out IRAC paragraphs with your voice in seconds before an adversarial court. AI can help you write something right now, but it can't build your memory bank of turns of phrase and sentence structures that will serve you for the rest of your career.

Skepticism is your job. It is the very role of lawyers to challenge purported claims of the law, and to do so by digging deep into sources of authority. If opposing counsel puts forward a legal rule under which your client loses, you wouldn't just blindly trust it—you'd scrutinize all of the cases and laws cited, and research the counterarguments. So should you blindly trust AI in the same way? Instead, use generated statements the same way you would use any other slick-sounding but probably biased source of opinion (which, by the way, includes *lots* of third-party legal sources): a helpful starting point, but something to be verified.

Where we're going, we don't need AI. Practice these skills of constructing arguments and skeptical research enough, and faster than you expect you'll discover what top lawyers know already—legal writing and reasoning are not that hard once you've done them enough, and AI isn't much of a speed help. That might be hard for you to believe today. But remember when you were learning to add and complained that you could just use a calculator? How fast can you solve 5 + 7 now?

Right now, writing feels like a slog, and it's hard to see why you need to do it when this shiny new tool can. But put in the work, and soon enough you'll produce arguments as easily as ChatGPT—and yours will be better.