

THE SUPREME COURT OF UTAH

PLANNED PARENTHOOD ASSOCIATION OF UTAH, ON BEHALF OF ITSELF AND
ITS PATIENTS, PHYSICIANS, AND STAFF,
Respondent,

v.

STATE OF UTAH, ET AL.,
Petitioners.

Corrected Brief of Neal Goldfarb, as Amicus Curiae
in Support of Respondent,
Responding to the Amicus Brief of Pro-Life Utah

On interlocutory appeal from the Third Judicial District Court, Salt Lake County,
Honorable Andrew Stone, District Court No. 220903886

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Interest of Amicus Curiae¹

Amicus curiae Neal Goldfarb is an attorney with an interest and expertise in linguistics and in drawing on linguistics in legal interpretation. In submitting this brief, he takes no position on the legal issue before the Court. Instead, his purpose is to respond to the amicus brief filed by Pro-Life Utah (“PL Utah”), and in particular, to offer a critical commentary on the brief’s use of corpus linguistics—a use that is, as Amicus will show, seriously flawed.

Amicus has done extensive work applying corpus linguistics to issues of legal interpretation, starting in 2010, when he filed (in the United States Supreme Court) what was, as far as he knows, the first brief filed in any court that relied on corpus linguistics.² Since then, he has written about topics such as the legal and linguistic rationale for relying on frequency data in determining ordinary meaning;³ the question of identifying the kinds of

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1. This brief follows two typographic conventions generally followed in linguistics. (a) *Italics* signal that a word or phrase is being used to refer to itself as an expression. E.g., “The word *language* has eight letters.” (b) ‘Single quotation marks’ are used to enclose statements of the meaning of a word or phrase. E.g., “*Closed* means ‘not open.’”
 2. Amicus Brief of the Project on Government Oversight et al., *FCC v. AT & T, Inc.*, 562 U.S. 397 (2010) (No. 09-1279). http://bit.ly/FCCvATT_GoldfabAmicus
 3. E.g., Neal Goldfarb, *The Use of Corpus Linguistics in Legal Interpretation*, 7 Ann. Rev. Ling. 473 (2021) (invited submission); Neal Goldfarb, *Varieties of Ordinary Meaning: Comments on Kevin P. Tobia, Testing Ordinary Meaning* (2020).

issues for which corpus linguistics is (and is not) an appropriate tool;⁴ and the insights into word meaning that have been generated by work in corpus-based lexicography, which are highly relevant to legal interpretation.⁵ He has written extensively about law and linguistics at his blog LAWnLinguistics, most significantly in a series of posts devoted to a corpus-based analysis of the Second Amendment.⁶

Notice, Consent, Authorship, and Funding

Timely notice of Amicus's intent to file this brief has been given to counsel of record for each party to this appeal, and all parties have consented to the brief's filing. No part of this brief was written by any party to this appeal or by any party's counsel. No money that was intended to fund preparing or submitting the brief has been paid by any party, any party's counsel, or anybody other than Amicus.

Introduction and Summary of Argument

1. In this brief, Amicus undertakes a critical examination of the corpus analysis set out in the amicus brief filed by Pro-Life Utah ("PL Utah"). As he will show, that analysis

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4. Neal Goldfarb, *Corpus Linguistics in Legal Interpretation: When Is It (In)appropriate?*, paper presented at the Fourth Annual Law & Corpus Linguistics, BYU Law School (Feb. 6–8, 2019) ("*When Is Corpus Linguistics (In)appropriate?*").
 5. Neal Goldfarb, *A Lawyer's Introduction to Meaning in the Framework of Corpus Linguistics*, 2017 BYU L. Rev. 1359 (2018).
 6. www.LAWnLinguistics.com.

is seriously flawed in multiple respects, and it should therefore play no part in the Court's consideration and decision of this case.

a. PL Utah's brief involves the use of corpus-linguistic methodology in a way that differs strikingly from how corpus linguistics has generally been used in the context of legal interpretation. Rather than using corpus data as evidence as to the meaning of a word or phrase in a legal provision, PL Utah treats it as evidence of public attitudes toward abortion, primarily during the 1890s. That is to say, it tries to use corpus data as a proxy for a public-opinion survey targeting Utahns of the 1890s—a demographic group that no longer exists as such and that, Amicus assumes, has no surviving members.

In order for PL Utah's data to be considered reliable evidence supporting the conclusion PL Utah wishes the Court to reach, it would have to be shown that the attitudes expressed in the texts in the corpus, whatever they might be, are representative of the relevant attitudes of the overall population of 1890s Utah. And that would require that the authors of those texts be shown to have comprised a representative sample of that population.

PL Utah has made no such showing; indeed, it has not tried to do so. And beyond that, it is undeniable that the authors of the newspaper do not constitute a representative sample of Utah's population. To begin with, some of the articles originated out of state, and therefore were not the work of Utahns at all. Moreover, census data from 1890 and 1900 shows that Utah's small population of journalists was predominantly male. So to the extent

the articles were written by Utahns, women are likely to have been underrepresented in that group of authors.

The unrepresentative nature of the newspaper evidence becomes especially clear when considering the fact that during the 1890s, Utah newspapers published more than 2,000 advertisements for what were euphemistically called “female pills”: concoctions that were reputed to be effective in inducing miscarriages and that were used for that purpose. This is evidence that, contrary to what PL Utah contends, Utahns in the 1890s were not united in opposition to abortion.

b. Serious flaws are also found in PL Utah’s collocation data. First, the data as presented by the COHA collocation display (and as reported by PL Utah) data consists of what seem to be 33 uses of *abortion(s)* or *abortionist(s)*. But 22 of those apparent uses reflect multiple counting, in that they come from only five sources, and are therefore attributable to only five authors. When these two flaws are taken into account, the apparent number of relevant uses turns out to have been exaggerated by more than 300%: Rather than 33, there are only 10.

2. With the Court’s indulgence, this brief concludes with a short discussion of several issues that relate generally to the use of corpus linguistics in legal interpretation, and that Amicus thinks it is important for this Court to be aware of.

Statement of Facts Regarding Pro-Life Utah’s Amicus Brief

In every case in which corpus linguistics has been used by this Court or any of its justices, its purpose was to shed light on the meaning of a particular word or set of words in the legal provision at issue.⁷ And the same is true, as far as Amicus is aware, of the use of corpus linguistics by other courts (or judges of such courts)⁸ and by scholars.⁹ But that is not the purpose of PL Utah’s corpus analysis, which concerns a word that doesn’t appear in any of the constitutional provisions on which Planned Parenthood relies. Rather, PL Utah’s use of corpus linguistics is a novel one: it uses corpus methodology in an effort to examine “public viewpoints on abortion” during the 100 years from 1850 through 1949, with emphasis on the 1890s. (Br. 11, 12–17.) (All citations to “Br.” are to PL Utah’s brief.)

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7. *E.g.*, *Bright v. Sorensen*, 2020 UT 18, ¶¶ 56, 463 P.3d 626; *Richards v. Cox*, 2019 UT 57, ¶¶ 18–20, 450 P.3d 1074; *Fire Ins. Exch. v. Oltmanns*, 2018 UT 10, ¶ 57 n.9, 416 P.3d 1148 (Durham, J., concurring in part and concurring in the result); *State v. Rasabout*, 2015 UT 72, ¶¶ 40–93, 356 P.3d 1258 (Lee, A.C.J., concurring in part and concurring in the judgment).
 8. *E.g.*, *Wilson v. Safelite Group, Inc.*, 930 F.3d 429, 440–45 (6th Cir. 2019) (Thapar, J., concurring in part and in the judgment); *Murray v. BEJ Minerals, LLC*, 464 P.3d 80, 95–96 (Mont. 2020) (McKinnon, J., concurring).
 9. *E.g.*, Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 Yale L. J. 788 (2018); Thomas R. Lee & James C. Phillips, *Data-Driven Originalism*, 167 U. Penn. L. Rev. 261 (2019); Stephen C. Mouritsen, *The Dictionary Is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning*, 2018 BYU L. Rev. 1915.

This is clear from PL Utah’s own explanation of its analysis. It describes having conducted a survey of Utah newspapers from the 1890s to “paint...a picture” of how “Utahns at the time of ratification viewed abortion” (Br. 9), and it relies on that survey to conclude that those who ratified the constitution “viewed abortion as criminally and morally corrupt.” (Br. 11.) PL Utah further contends that the same attitude prevailed during 1880–1949, during which time it asserts, “[t]he Utah articles roundly condemn abortion and consider it a proper subject for legislative regulation.” (Br. 13.)

In addition to focusing on Utah newspapers from the second half of the 19th century, PL Utah looked at collocation data for that period in the Corpus of Historical American English (COHA), which it describes as “provid[ing] some evidence of how 19th-Century Americans viewed abortion.” (Br. 14.) It also examined Utah newspapers from the period 1900–1949 and found results it describes as being “almost identical to the 19th Century.” (Br. 16.) It then describes results for Utah newspapers from the combined 100-year period from 1850 through 1949 as presenting an “overwhelming view of abortion [as being] a crime, immoral, or both.” (Br. 16.)

PL Utah rounds out its analysis with additional 20th-Century data: collocation data from COHA for the period 1900–1949, which is described as “show[ing] similar patterns to Utah newspapers” (Br. 16–17), and data from this Court’s decisions “from the start of statehood until just before *Roe v. Wade*,” which is described as showing that “Utahns did not understand abortion to be a protected right.” (Br. 17.)

Considering its corpus analysis in its totality, PL Utah can perhaps best be described as having used corpus methodology essentially as a proxy for the obviously impossible task of conducting a public-opinion survey targeting Utahns (and Americans generally) from the hundred years beginning in 1850.

Argument

I. Pro-Life Utah’s corpus data does not support the conclusions that it urges the Court to draw.

A. Pro-Life Utah’s 1890s newspaper data does not provide a representative sample of public attitudes toward abortion during that period.

Lurking in the background of any corpus analysis is the issue of representativeness. Analyzing corpus data isn’t generally done solely for its own sake; rather, the analysis is undertaken in the hope that the results will provide a basis for making generalizations about the language at large, or some subset of it.¹⁰ Considerations of representativeness are therefore important in that they are relevant to the degree to which the conclusions drawn from a set of results are generalizable.

In the context of legal interpretation, the issue of representativeness has largely remained in the background; although the issue has been raised by some critics of using

10. *E.g.*, Jesse Egbert, Douglas Biber & Bethany Gray, *Designing and Evaluating Language Corpora: A Practical Framework for Corpus Representativeness* 40 (2022); Tony McEnery & Vaclav Brezina, *Fundamental Principles of Corpus Linguistics* 250–51 (2022).

corpus linguistics in legal interpretation,¹¹ that criticism (which Amicus doesn't agree with) hasn't had much practical impact. That lack of impact may be due in part to the fact that the corpora that are most often used in statutory interpretation—COCA (the Corpus of Contemporary American English) and COHA (the Corpus of Historical American English) were designed with considerations of representativeness in mind.¹²

But in dealing with PL Utah's brief, the issue of representativeness can't remain in the background. The brief doesn't deal with issues of word meaning, as to which there exist conventions that are widely shared by speakers of English, and that enable such speakers to understand other speakers and to make themselves understood. Rather, the brief seeks to use corpus data as evidence of attitudes toward abortion, as to which there are no such shared conventions. Quite the contrary: in contrast to the relative uniformity characterizing language use, public opinion about abortion today is bitterly divided. And the extent to which public opinion in the 1890s Utah may have been united or divided is a question that cannot be answered without historical evidence.

What this means is that the issue of representativeness looms much larger in considering PL Utah's argument than it does regarding the typical use of corpus linguistics in

11. *E.g.*, Anya Bernstein, *Technologies of Legal Meaning*, 2020 Mich. St. L. Rev. 1241, 1259–1261.

12. See Mark Davies, *Expanding Horizons in Historical Linguistics with the 400-Million Word Corpus of Historical American English*, 7 *Corpora* 121, 122–24 (2012); Mark Davies, *The 385+ Million Word Corpus of Contemporary American English (1990–2008+): Design, Architecture, and Linguistic Insight*, 14 *Int'l J. Corpus Ling.* 159, 161–63 (2009).

legal interpretation. And the focus of the inquiry into representativeness differs from the focus in typical cases. In such cases, and in linguistics more generally, the “population” of which the corpus is supposed to be a representative sample is a population of texts. But because PL Utah is in essence trying to use the corpus data as a proxy for public-opinion polling, representativeness is appropriately assessed regarding the relevant population of *people*, not of texts.

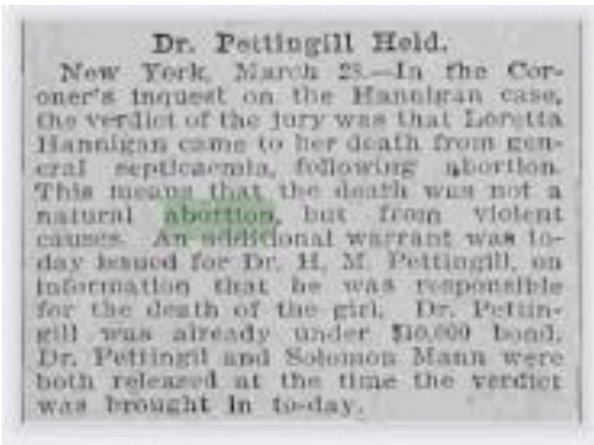
After all, while texts are capable of *communicating* opinions and attitudes, the opinions and attitudes in question are those of their authors. The focus should therefore be on the authors of the texts from which the data is drawn, rather than on the texts themselves. And the relevant question is whether the authors of those texts constitute a representative sample of the population at issue.

1. The newspaper data does not provide an adequate representation of Utah’s population during the 1890s.

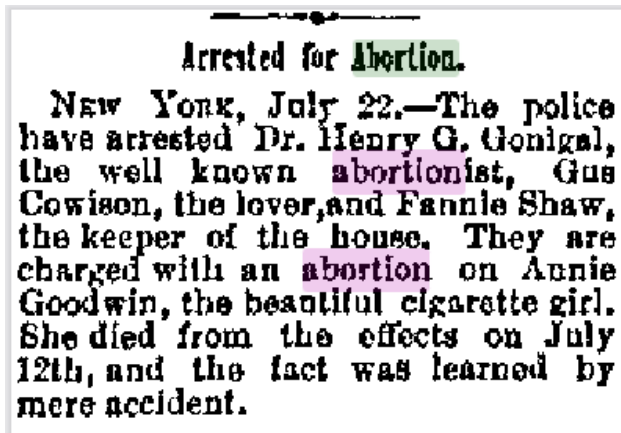
As defined by PL Utah, the relevant segment of the population is “Utahns.” (Br. 9, 11, 17, 20.) In order for its newspaper data to be accepted as representative of the attitudes and opinions of Utah residents, at least two conditions must be satisfied: (1) the articles comprising PL Utah’s data must have been written by residents of Utah, and (2) those Utah-resident authors must be shown to constitute a representative sample of the Utah population as a whole.

On both counts, PL Utah’s data fails the test.

First, only some of the articles originated in Utah. Although Amicus has not reviewed all 667 articles generated by a search for *abortion** in the Utah Digital Newspapers database covering the period 1890–1899,¹³ a significant number of the articles he has looked at have datelines indicating that they originated out-of-state, as in the following examples:



Salt Lake Tribune, March 3, 1895, at 2.
<https://tinyurl.com/29bee8o6>.



Ogden Daily Standard, July 23, 1890, at 1.
<https://tinyurl.com/22zy8cc>.

Amicus is unable to say what proportion of PL Utah’s data falls into this category, but he doesn’t have the burden of proof on this issue. It is PL Utah that wants the Court to rely on its data, but except for snippets of information (Br. 12–13 & n.4), it hasn’t submitted the data to the Court or otherwise made it available in a form that doesn’t require the Court to spend hours conducting its own search and reviewing the results on the Utah Digital Newspapers website. Moreover, with respect to PL Utah’s search of 20th-century newspapers, even that cumbersome process is unavailable. Its brief describes having “randomly sampled 100 from each of three alternate decades: the 1900s, 1920s, and the

13. <https://tinyurl.com/23cwxluk>.

1940s” (Br. 11), but it doesn’t explain how to identify those articles that were included in their sample. Finally, Amicus has asked PL Utah’s counsel for a copy of their data, but despite statements by then-Justice Lee and James Phillips that one of the benefits of using corpus linguistics is its transparency,¹⁴ counsel have not responded. Under these circumstances, PL Utah is not entitled to the benefit of the doubt.

The second flaw in PL Utah’s data is that it fails the test of representativeness even if one considers only the articles that did originate in Utah. Unsurprisingly, Utah’s population during the 1890s was more or less evenly divided by gender. According to census data, females comprised 46.8% of Utah’s population in 1890 and roughly 48.8% in 1900.¹⁵ This means that to accept the articles written by Utahns as accurately reflecting public attitudes regarding abortion, roughly half of the articles would have to have been written by women.

But the likelihood of that having been the case is vanishingly small. Census data from 1890 and 1900 reports the number, broken down by gender, of Utahns who were employed

14. E.g., *Data Driven Originalism*, *supra* note 9.9

15. United States Census Bureau, Report of the Population of the United States at the Eleventh Census: 1890, General Tables Part 1: Sex, General Nativity, and Color, Table 9 at 395, *available at* <https://tinyurl.com/3n7edmmv>; United States Census Bureau, 1900 Census: Vol. I, Part 1, General Tables Part 2: Sex, General Nativity, and Color, Table 9 at 482, *available at* <https://tinyurl.com/ycxa5eyf>.

as journalists in each of those years, and those numbers show women to have been grossly underrepresented:¹⁶

Census data: Utahns employed as journalists

	Men		Women	
1890	84	(97.7%)	2	(2.3%)
1900	93	(93.0%)	7	(7.0%)

This imbalance has special significance in the present context. Abortion and its regulation are issues that obviously affect women in ways different in both kind and degree than how they affect men. As a result, there are likely to have been gender-based differences in opinions and attitudes about those issues, and those differences would not be adequately reflected in the data.

2. The unrepresentative nature of Pro-Life Utah’s data is highlighted by relevant evidence not reflected in that data.

The newspaper database that served as PL Utah’s corpus provides abundant evidence that undermines (or at least greatly casts doubt on) the contention that public opinion in Utah was uniformly hostile to abortion. That evidence consists of advertisements for products having names such as Mesmin’s French Female Pills, Chichester’s English

16. United States Census Bureau, Report of the Population of the United States at the Eleventh Census: 1890, General Tables Part 1: Occupations, Table 79 at 336, *available at* <https://tinyurl.com/39shape8>; United States Census Bureau, 1900 Census: Volume II, Part 2, General Tables: Occupations, Table 93 at 540–41, *available at* <https://tinyurl.com/ycyzcmts>.

Diamond Brand Pennyroyal Pills, and Dr. Mott's Pennyroyal Pills—the phrase *female pills* being a euphemism for 'abortifacient'¹⁷ and pennyroyal being an herb that was reputed to have abortifacient properties and was marketed (in euphemistic terms) as such.¹⁸ One such ad is shown below, and several others are reproduced in Addendum 1.



Provo Daily Enquirer, 2-27-1897, at 3
<https://tinyurl.com/yc5rwws4>

Two points about the advertisement are worth noting. First, pennyroyal was not the only named ingredient of Mesmin's French Female Pills that was believed to be effective in in-

17. See, e.g., Janet Farrell Brodie, *Contraception and Abortion in 19th-Century America* 71, 106, 225–26, 282 (1994); Linda Gordon, *Woman's Body, Woman's Right: Birth Control in America* 53–54 (rev. ed. 1990); R.W. Holder, *Oxford Dictionary of Euphemisms: How Not to Say What You Mean* 25, 177 (4th ed. 2008).

18. See, e.g., Brodie, *Contraception and Abortion in 19th-Century America*, *supra* note 17, at 43–44, 119, 225; John M. Riddle, *Eve's Herbs: A History of Contraception and Abortion in the West* 232–38 (1997).

ducing abortions; the same thing is true of the other ingredient, cotton root.¹⁹ Second, the advertisement is one of at least 200 identical ads that were placed during the 1890s by Smoot Drug Co.,²⁰ the owner of which was Reed Smoot,²¹ who was soon to become a member of the Quorum of the Twelve Apostles of the LDS Church and, subsequently, a United States Senator.

Amicus first discovered the Smoot Drug Co. ads among the results of a broader search, which had used *pennyroyal* as the search term. With the search limited to the period 1890–1899, there were 2,003 results that were tagged by the database as advertisements.²² Amicus has reviewed 435 of those results, and can confirm that in each of them, there appeared an ad similar to the one above and those reproduced in Addendum 2. The results for the remaining ads are highly likely to be the same as for those Amicus reviewed.²³

PL Utah’s argument about Utahns’ attitudes toward abortion is impossible to square with the fact that Utah newspapers published so many advertisements for preparations that

19. *E.g.*, Janet Farrell Brodie, *Menstrual Interventions in the Nineteenth-Century United States*, in *Regulating Menstruation: Beliefs, Practices, Interpretations* 39, 50 (Elisha P. Renne & Etienne van de Walle, eds. 2001).

20. Amicus’s search can be replicated using this URL: <https://tinyurl.com/3ndn6m3j>.

21. Harvard S. Heath, ed., *In the World: The Diaries of Reed Smoot* 280 n.43 (1997).

22. Amicus’s search can be replicated using this URL: <https://tinyurl.com/23esbnv8>.

23. Specifically, there is a 95% probability that the results for all 2,003 ads would be the same as for the ones Amicus reviewed, within a margin of error of less than 5%. This can be confirmed by using an online sample-size calculator such as the one below.
<http://www.raosoft.com/samplesize.html>

were regarded as abortifacients. The advertisers would not have incurred the cost of running the ads if they didn't think the ads would generate sales, and the fact that women were buying the pills is circumstantial evidence that they were using them. And there is evidence suggesting that during the 1890s there were, in fact, Utah women—including LDS women—who were having abortions.²⁴

B. Pro-Life Utah's COHA collocation data is insignificant when taken at face value, and upon close examination one sees that it is even less significant than it seems.

Perhaps the first thing one notices about PL Utah's collocation data is how little of it there is. Having conducted two searches that together cover a span of 100 years, PL Utah found what it thought were relevant collocates-search results for only seven items: (six words and a Roman numeral), with the number of "hits" for the individual items ranging from three to seven and adding up to a total of 33 (Br. 14, 17):

COHA collocation data as reported by PL Utah
(not including results PL Utah deemed irrelevant)

1850s-1890s		1900s-1940s	
XVI	4	infanticide	7
hideous	4	illegal	6
crime	4	criminal	5
miserable	3		

24. See Amanda Hendrix-Komoto, *The Other Crime: Abortion and Contraception in Nineteenth- and Twentieth-Century Utah*, Dialogue: A Journal of Mormon Thought, Spring 2020, at 33, 40-43 (discussing the book *What Every Woman Must Know* (1896) by an LDS physician named Hannah Sorenson).

This would be unimpressive under the best of circumstances, but given the enormous chronological scope of the search, the number is minuscule. These skimpy results don't provide an adequate basis for generalizing about public attitudes toward abortion.

What's more, that conclusion is based on reading the results in the light most favorable to PL Utah; it takes the results shown above at face value, without consulting the concordance lines on which those results are based. And that isn't good, because in looking at the concordance lines, and considering them in light of the use that PL Utah makes of the collocation numbers, it becomes apparent that those numbers present a misleading impression in two respects. First, 22 of the 33 results displayed by COHA's collocation display (and reported by PL Utah) reflect multiple counting, in that they come from only five separate sources and therefore are attributable to only five separate authors. Second, 6 of the remaining 11 results need to be thrown out because in each of them the word *abortion* is used in a sense other than 'termination of a pregnancy.'

1. The collocation data reflects multiple counting of sources, and therefore of authors.

As previously discussed, what matters for purposes of evaluating the representativeness of PL Utah's data is not the number of distinct uses of a word or phrase, but the number of different authors who bear responsibility for the relevant texts. But the results as displayed by the corpus interface, and as reported by PL Utah, reflect the counting of several texts (and therefore authors) multiple times.

These fall into two groups: the results for *XVI* and *crime* on the one hand and those for *infanticide*, *illegal*, and *criminal* on the other.

***XVI* and *crime*.** As shown by the screenshots below from COHA, (1) five results (all of those for *XVI* and one for *crime*) come from a single source, which is identified in the concordance display as “Danger!ATrueHistory”), and (2) the remaining three results for *crime* are from a single source, identified as “PhysicalLifeWoman.”²⁵

XVI:

Danger!ATrueHistory			and the Fish who are Expected to Bite, CHAPTER XVI . Abortion and the Ab
Danger!ATrueHistory			their whole life a burden and a misery. CHAPTER XVI . ABORTION AND THE A
Danger!ATrueHistory			Held Out, and the Fish who are Expected to Bite, CHAPTER XVI . Abortion ar
Danger!ATrueHistory			short, makes their whole life a burden and a misery. CHAPTER XVI . ABORTI

25. Information confirming these attributions can be accessed in the COHA interface by clicking on any of the first three cells in each concordance line:

CLICK FOR MORE CONTEXT				
1	1851	NF/ACAD	GlancesAtEurope	
2	1861	NEWS	NVT Day	

crime:

Danger!ATrueHistory	🔍	🔍	🔍	leap from a temporary sorrow into the arms of Death. The dark crime of abortic
PhysicalLifeWoman	🔍	🔍	🔍	-- When it is proper -- Justifiable means -- Injurious means -- The crime of aborti
PhysicalLifeWoman	🔍	🔍	🔍	appeal has been made for the sake of morality itself. The detestable crime of ab
PhysicalLifeWoman	🔍	🔍	🔍	is opposed to every sentiment of nature and morality. We mean THE CRIME OF /

Note that all four of the results for *XVI* are due to the chapter heading “CHAPTER XVI. Abortion and the Abortionists,” which appeared in the source document twice: once in the table of contents and once in the text. Each of the two instances of that string of six words yielded two instances of *XVI* within five words of *abortion(s)* or *abortionist(s)*:

XVI. Abortion and the Abortionists

XVI. Abortion and the Abortionists

Infanticide, illegal, and criminal. A single source (“CourtshipMarriage”) accounts for ten concordance lines: one for *infanticide*, five for *illegal*, and four for *criminal*. The remaining three results for *infanticide* are from only three sources: two are from a single source identified as Dial and another pair are from a different single source (Harpers). And the source information about these three collocates has been confirmed by the same method as described above as to *XVI* and *crime*.

infanticide:

Bontodgorot	🔍	🔍	🔍	. Thus the breaking down of this peculiar form of infanticide may have begun. # Ab
Dial	🔍	🔍	🔍	enemy. He finds that in addition to perennial warfare the practices of infanticide an
Dial	🔍	🔍	🔍	on the absolute necessity for limiting the population of the State and who advocat
Harpers	🔍	🔍	🔍	a chance to become fond of it. But the fact remains that infanticide and abortions .
Harpers	🔍	🔍	🔍	five years of one another, and in the South Sea Islands the technic of abortion is hig
Time	🔍	🔍	🔍	he covered the origin and evolution of marriage and family, religion, government, al
CourtshipMarriage	🔍	🔍	🔍	and termination of pregnancy, as well as the initial prevention thereof. Infanticide a

illegal:

Nation	⊕	⊖	Q	recent report of Special Prosecutor John Amen which estimates that between 100,000 and :
CourtshipMarriage	⊕	⊖	Q	2,000,000 ¹⁸ annually, with an estimated 70 per cent of the total consisting of illegal aborti
CourtshipMarriage	⊕	⊖	Q	of this situation clearly precludes any accurate tabulation of spontaneous, therapeutic, or il
CourtshipMarriage	⊕	⊖	Q	the social implications are serious. An estimated 10,000 women die every year after illegal
CourtshipMarriage	⊕	⊖	Q	, the great majority (some authorities say 90 per cent) of all illegal abortions occur among
CourtshipMarriage	⊕	⊖	Q	already have several children and do not want any more. ¹⁹ Only a minority of illegal abort

criminal:

Harpers	⊕	⊖	Q	toward birth control is to blame for a great many criminal as well as therapeutic abortion:
CourtshipMarriage	⊕	⊖	Q	or will be seriously endangered by its continuance. c. CRIMINAL ABORTION. Criminal abor
CourtshipMarriage	⊕	⊖	Q	the mother is or will be seriously endangered by its continuance. c. CRIMINAL ABORTION.
CourtshipMarriage	⊕	⊖	Q	or will be seriously endangered by its continuance. c. CRIMINAL ABORTION. Criminal abor
CourtshipMarriage	⊕	⊖	Q	the mother is or will be seriously endangered by its continuance. c. CRIMINAL ABORTION.

The results for *criminal* are similar to those for *XVI* in that all four concordance lines are attributable to a single stretch of four words (“CRIMINAL ABORTION. Criminal abortion”) that together constitute a heading and the first two words of the immediately following sentence:

CRIMINAL ABORTION. Criminal abortion is the...
CRIMINAL ABORTION. Criminal abortion is the...
CRIMINAL ABORTION. Criminal abortion is the...
CRIMINAL ABORTION. Criminal abortion is the...

2. The collocation data includes instances of *abortion* being used in a sense other than ‘termination of a pregnancy’.

Shown below are screenshots of the concordance lines underlying the collocation data for *hideous* (comprising four lines) and *miserable* (three lines). Of those seven lines, six of them are irrelevant to this case because they feature the use of *abortion* to express a sense other than ‘termination of a pregnancy’—specifically, a figurative sense described by the

Oxford English Dictionary as meaning “a person or thing not fully or properly formed; an ill-conceived or badly executed action or undertaking; a monstrosity”.²⁶

hideous:

MobyDickWhale	#all-pervading whiteness makes him more strangely hideous than the ugliest abortion . Why should this be s
Danger!ATrueHistory	#was talked of but the hideous crimes of the woman abortionist . People lost sight of the war, then raging in
MidnightQueen	#cause of all - that loathsome, misshapen, hideous abortion has banned and cursed my whole life! He is my
NewEngMag	#be a sham stucco classic temple with the most hideous abortions in the shape of Doric and Corinthian port

miserable:

GlancesAtEurope	👇 🗨️ 🔍	taken so much trouble with us if American taste and skill were really the miserable abortions they repre
NYT-Reg	👇 🗨️ 🔍	parts were to have been executed simultaneously, but which has eventuated in a miserable abortion . W
MasterWilliamMitten	👇 🗨️ 🔍	, and save his innocent friends from punishment, but, shielded by this miserable abortion of College co

The lines in question are the first, third, and fourth for *hideous* and all three lines for *miserable*. All six of those lines are appropriately understood (especially after reading their expanded context, *see* Addendum 2) as using *abortion* in the figurative sense discussed above. Needless to say, that sense is irrelevant here.

Amicus assumes that PL Utah was unaware that the data it submitted via its brief included these irrelevant results, because if it had realized that the results are irrelevant, it presumably wouldn't have included them. But if that was the case, it suggests that nobody looked at the concordance lines; if somebody *had* looked at them, they surely would have noticed that all six of the lines identified by *Amicus* seemed to use *abortion* in a figurative sense.

26. abortion, n., sense 2, OED Online (3d ed. Dec. 2022), [bit.ly/OEDabortion](https://www.oed.com/dictionary/abortion_n). The literal sense from which the figurative sense developed is glossed in the OED as “[a]n aborted or miscarried fetus; an abortus[.]” *Id.*

Jumping from the collocation display to the underlying concordance lines is simple; it requires nothing more than clicking on the relevant word in the collocation display.



1	🔍	★	XVI	4
2			HIDEOUS	4
3	🔍	★	CRIME	4
4	🔍	★	MISERABLE	3
5	🔍	★	PRODUCE	3

And while concordance lines typically provide enough context to enable one to determine the sense in which the keyword is used, more context is available by clicking on any of the first four columns of the concordance line (see note 25, *supra*).

PL Utah’s failure to review the concordance lines before relying on the collocation data is evidence that it has not heeded statements by former Justice Lee and his sometime co-author James Phillips that would seem to counsel against drawing firm conclusions from collocation data without checking the underlying concordance data (emphasis added to all quotes, except as noted):

- “[C]ollocation...tends to be an exploratory tool rather than one that is used to test hypotheses about language.”²⁷
- Collocation data can “show *the possible range* of linguistic contexts in which a word typically appears and can provide useful information about the *range of possible* meanings and sense divisions.”²⁸

27. *Data Driven Originalism*, *supra* note 9.9

28. *Judging Ordinary Meaning*, *supra* note 9.9

- “From the collocates of vehicle displayed by the NOW Corpus and the COHA, we can make the following *preliminary* observations (*observations that we can later confirm by reviewing KWIC data*).”²⁹
- “We see more collocates that *appear* to be related to the narrower, office/public employee sense of ‘emolument’ than related to the broader, general sense of ‘emolument.’ For instance, [various collocates]...all seem to reflect the narrower sense—*emphasis on seem since collocation is an exploratory analysis*.” (Emphasis on “seem” in the original.)³⁰

PL Utah’s failure in this regard is not a matter of mere excusable neglect. Its brief reflects an awareness that *abortion* had multiple senses. For example, it notes that “[t]he *relevant use* of the term ‘abortion’ here is the intentional killing of an unborn child” (Br. 12 (emphasis added)), thereby implicitly acknowledging that there also existed *irrelevant* uses.³¹ It also notes that during the 1890s, there were 482 newspaper articles in which *abortion(s)* was used in the relevant sense, but the newspaper database includes 694 articles from the 1890s in *abortion(s)*—212 more than are included in PL Utah’s results.³² Someone on PL Utah’s team must therefore have gone through every one of the 694 articles and culled out those in which *abortion* was used in an irrelevant sense. That would have provided

29. *Id.* at 839.

30. James Cleith Phillips & Sara White, *The Meaning of the Three Emoluments Clauses in the U.S. Constitution: A Corpus Linguistic Analysis of American English from 1760–1799*, 59 S. Tex. L. Rev. 181, 211 (2017).

31. *See also* Br. 18 (noting this Court’s use of *abortion* “in a pejorative/insult sense and in...an animal miscarriage sense”).

32. The relevant search can be run by using this URL: <https://tinyurl.com/d3vd9t82>.

reason for PL Utah to anticipate that the COHA results might similarly include uses of *abortion* having nothing to do with the termination of a pregnancy.

3. Once the flaws in the collocation data are taken into account, the data's significance is even less than it initially seems.

Amicus's description of described PL Utah's collocation data as "unimpressive" and "skimpy" was based on taking PL Utah's description of the data at face value. But the discussion above has shown that taking the results at face value is inappropriate. To accurately determine the results' significance, it is necessary to recalculate them in order to cure the problems that Amicus has identified. And the effect of that recalculation is to cut back PL Utah's claims regarding the collocation data by *more than two-thirds*. The necessary calculations (set out below) show that while PL Utah seeks credit for 33 results, omitting the irrelevant results and eliminating multiple counting reduces the number to 10.

Recalculation of PL Utah's collocation results

Explanation of column headings:

Col. 1: Collocation frequency as stated in COHA and reported by PL Utah.

Col. 2: Assuming the frequency stated in Col. 1, the number of collocations involving the relevant sense of *abortion*.

Col. 3: Frequency as adjusted to eliminate double-counting of sources.

Col. 4: Assuming the adjusted frequency stated in Col. 3, the number of collocations involving the relevant sense of *abortion*.

	1	2	3	4
	Stated Freq.	# Relevant	Adj. Freq.	Adj. # Relvnt.
1850s-1890s				
XVI	4	4	1	1
hideous	4	1	-	-
<i>a</i> : Excluded b/c source is same as for "XVI"			[see note a]	[see note a]
crime	4	4	1	1
<i>b</i> : Three occurrences excluded b/c same source as XVI			[see note b]	[see note b]
miserable	3	0	3	-
1900s-1940s				
infanticide	7	7	5	5
illegal	6	6	1	1
criminal	5	5	2	2
Total	33	27	18	10

II. The flaws in Pro-Life Utah’s arguments are symptomatic of more general problems affecting much of the practice of law and corpus linguistics as it has developed to date.

With the Court’s indulgence, Amicus would like to offer some comments placing his criticisms of PL Utah’s brief in the context of some longstanding concerns that he has had about the state of the enterprise that is referred to variously as Law & Corpus Linguistics or Legal Corpus Linguistics (either way, “LCL”) and about the direction in which it seems to be going. This Court has been a leader in the adoption and promotion of LCL, and with Justice Lee’s departure and the appointment of two new justices, it faces something of a transition with regard to LCL. And while Amicus obviously is not disinterested as to this point, he believes that his concerns raise issues that the Court should be aware of as it deals with what will probably be an increasing number of cases in which litigants rely on corpus linguistics.

* * *

Amicus’s criticism of PL Utah’s brief is, to some extent, a manifestation of the concerns he has referred to; he sees PL Utah’s brief as being an *example* of the problem underlying one of his concerns, and he sees that problem in turn as being a *result* of a deeper problem, which is another of his concerns.

The first of those problems is the one Amicus addressed in his paper *Corpus Linguistics in Legal Interpretation: When Is It (In)appropriate?* As the paper’s title suggests, Amicus believes that while corpus linguistics can be a useful tool in dealing with certain kinds of legal/linguistic issues, there also exist issues as to which using corpus linguistics

would be a bad idea. One such issue, which is discussed in the paper, is the question presented in the *Rasabout* case as to the meaning of *discharge a firearm*.³³ In Amicus’s view, the meaning of *discharge a firearm* doesn’t change depending on how many shots were fired, just as the meaning of *parent* doesn’t change depending on the gender of the parent in question. Rather than having two meanings (or maybe more?—would there be additional senses meaning ‘fire two shots,’ ‘fire three shots,’ and so on?), the phrase *discharge a firearm* has a single meaning that is noncommittal with respect to the number of shots that are fired.

That being the case, corpus data doesn’t provide any information that might be useful in deciding the legal issue. And the problem isn’t merely that using corpus linguistics as to such an issue is a waste of time. There is a risk that the corpus analysis will result in a conclusion that is at odds with how language is actually used—precisely the opposite of what corpus linguistics is for. And here, too, Amicus sees *Rasabout* as being illustrative, in that he disagrees with Justice Lee’s interpretation of the corpus data.

Amicus regards PL Utah’s brief as being another instance of corpus linguistics being used regarding an issue for which it is inappropriate. Although some of the brief’s flaws (those relating to the collocation data) are due to carelessness in carrying out the corpus analysis, others are inherent in the nature of the project. And although the reasons that the brief’s use of corpus linguistics strikes Amicus as inappropriate differs from his reason for

33. *When Is Corpus Linguistics (In)appropriate?*, *supra* note 4, at 40–47 (discussing *State v. Rasabout*, 2015 UT 72, 356 P.3d 1258).

thinking that using corpus linguistics in *Rasabout* is inappropriate, the fact is that both the brief and the opinion are examples of the inappropriate use of corpus linguistics.

This brings up the second problem that Amicus referred to at the start of this discussion, which in his view is one of the underlying factors contributing to the use of corpus linguistics in connection with issues as to which corpus linguistics is not suited. That problem is the overly rosy picture painted by some proponents of LCL of what it takes for lawyers and judges to become competent in corpus linguistics. Amicus has in mind what Justice Lee wrote about that subject in *Rasabout* and in an article he co-authored not long after *Rasabout* was decided.³⁴ The following excerpt from the article does a good job of summing up the attitude that has prompted Amicus's concerns:

[C]orpus-based analysis is similar to how lawyers and judges use legal databases or historical texts to determine how a word or phrase has been understood, either in the law or in common usage. "Corpus analysis is like math"—anyone can do it at some level, and it can be helpful to use a calculator....No doubt there will be an initial learning curve. But the initial foreignness will dissipate quickly both at the individual level and for the profession overall, just as Westlaw and LexisNexis replaced paper digests and became virtually second nature for legal research.³⁵

34. *Rasabout*, 2015 UT 72, ¶¶ 114–19 (Lee, A.C.J., concurring in part and concurring in the judgment); James C Phillips, Daniel M. Ortner, & Thomas R. Lee, *Corpus Linguistics & Original Public Meaning: A New Tool To Make Originalism More Empirical*, 126 Yale L.J. Forum 21, 30–31 (2016).

35. *Corpus Linguistics & Original Public Meaning*, *supra* note 34, at 30–31 (paragraph break omitted) ([link](#)).

This attitude, Amicus believes, can charitably be described as overoptimistic, and it is to this attitude, he believes, that the flaws in PL Utah's brief can ultimately be traced.

Conclusion

For the reasons stated, the Court should decline to consider PL Utah's corpus data, or in the alternative should conclude that it is entitled to no weight. In addition, the Court should consider addressing the issues relating to corpus linguistics that are discussed in Part II, *supra*.

DATED this 3rd day of February, 2023.

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Certificate of Compliance

I hereby certify that:

1. This brief complies with the word limits set forth in Utah R. App. P. 25(f) because it brief contains 6,340 words, excluding the parts of the brief exempted by Utah R. App. P. 25(f).
2. This brief complies with the typeface requirements of Utah R. App. P. 27(a) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2021 in 13-point Equity A, except for small-caps text, which is in Equity Caps A.
3. This brief complies with Utah R. App. P. 21(h) regarding public and non-public filings because it contains no non-public information.

DATED this 3rd day of February, 2023.

/s/ Julie J. Nelson

Julie J. Nelson

Certificate of Service

I certify that on February 3, 2023, a true and correct copy of the foregoing brief was filed with the Court and served on the following by electronic mail, as follows:

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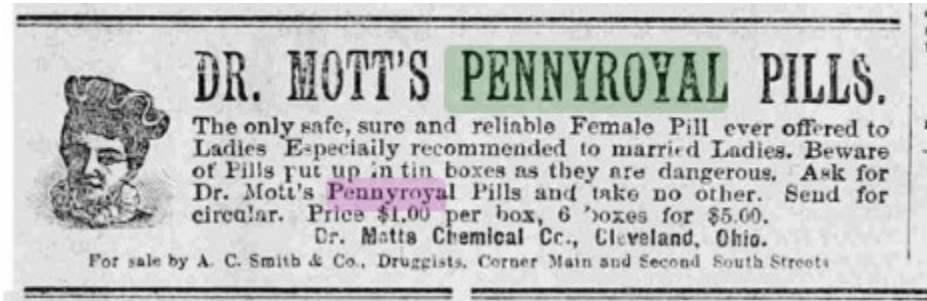
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Addendum A

Screenshots of selected ads for “female pills”
appearing in the Utah Digital Newspapers database



DR. MOTT'S PENNYROYAL PILLS.

The only safe, sure and reliable Female Pill ever offered to Ladies. Especially recommended to married Ladies. Beware of Pills put up in tin boxes as they are dangerous. Ask for Dr. Mott's Pennyroyal Pills and take no other. Send for circular. Price \$1.00 per box, 6 boxes for \$5.00. Dr. Motts Chemical Co., Cleveland, Ohio.

For sale by A. C. Smith & Co., Druggists, Corner Main and Second South Streets

Salt Lake Tribune, June 16, 1892, page 6

<https://tinyurl.com/u52srrpf>



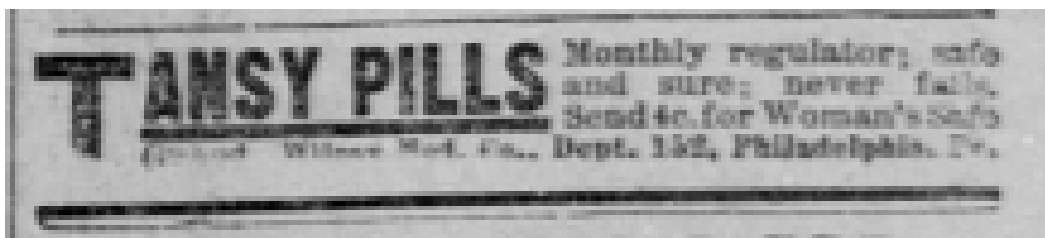
PENNYROYAL WAFERS.

A specific monthly medicine for ladies to restore and regulate the menses, producing free, healthy and painless discharge. No cramps or aches on approach. Now used by over 25,000 ladies. Once used will be again. Invigorate these organs. Buy of your druggist only those with our signature across face of label. Avoid substitutes. Sealed particulars mailed to stamp. \$1.00 per box. Address, EUREKA CHEMICAL COMPANY, DETROIT, MICH.

A. C. Smith & Co., Druggists, Agent Salt Lake

Salt Lake Tribune, Feb. 9, 1891, page 7

<https://tinyurl.com/yd5wfcc4>



TANSY PILLS Monthly regulator; safe and sure; never fails. Send to: for Woman's Safe Dept. 125, Philadelphia, Pa.

Salt Lake Herald-Republican, May 15, 1898, page 8

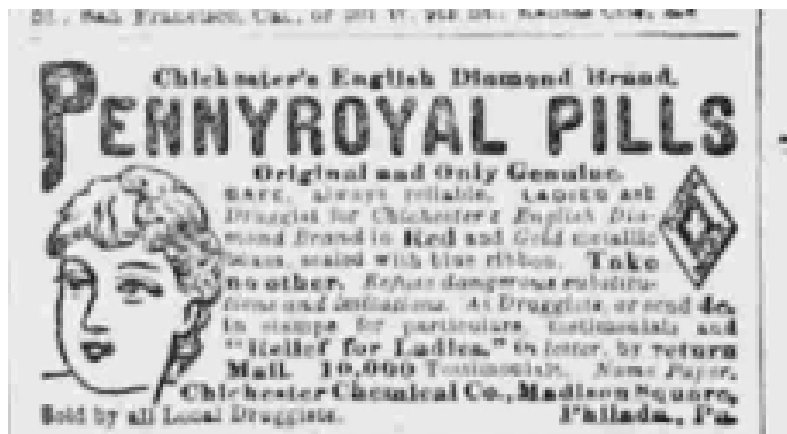
<https://tinyurl.com/36txk7xc>



LADIES DO YOU SUFFER
DR. FELIX LE BRUN'S
Steel & Pennyroyal Treatment
 is the original and only FRENCH,
 safe and reliable cure on the mar-
 ket. Price, \$1.00, sent by mail.
 Genuine sold only by
 F. C. SCHRAMM, McCormick Building,
 corner Main and First South streets, Salt
 Lake City.

Salt Lake Tribune, July 12, 1898, page 3

<https://tinyurl.com/2p8np845>



Chickster's English Diamond Brand.
PENNYROYAL PILLS
 Original and Only Genuine.
 Rare, almost reliable. Ladies ask
 Druggists for Chickster's English Dia-
 mond Brand in Red and Gold metallic
 boxes, sealed with blue ribbon. Take
 no other. Refuse dangerous substitu-
 tes and imitations. As Druggists or send 4c.
 in stamps for particulars, testimonials and
 "Relief for Ladies." in letter, by return
 Mail. 10,000 Testimonials. Name Paper.
 Chickster Chemical Co., Madison Square,
 Philada., Pa.
 Sold by all Local Druggists.

Salt Lake Tribune, September 5, 1891

<https://tinyurl.com/3xyfmp64>

Addendum B

Expanded context: *hideous* (lines 1, 3 & 4)

Source	Moby Dick, or, the whale
Date	1851
Title	Moby Dick, or, the whale
Author	Melville, Herman, 1819-1891

Expanded context

be questioned from what stands on legendary record of this noble horse, that it was his spiritual whiteness chiefly, which so clothed him with divineness; and that this divineness had that in it which, though commanding worship, at the same time enforced a certain nameless terror. But there are other instances where this whiteness loses all that accessory and strange glory which invests it in the White Steed and Albatross. What is it that in the Albino man so peculiarly repels and often shocks the eye, as that sometimes he is loathed by his own kith and kin! It is that whiteness which invests him, a thing expressed by the name he bears. The Albino is as well made as other men -- has no substantive deformity -- and yet this mere aspect of all-pervading whiteness makes him more strangely hideous than the ugliest **abortion**. Why should this be so? Nor, in quite other aspects, does Nature in her least palpable but not the less malicious agencies, fail to enlist among her forces this crowning attribute of the terrible. From its snowy aspect, the gauntleted ghost of the Southern Seas has been denominated the White Squall. Nor, in some historic instances, has the art of human malice omitted so potent an auxiliary. How wildly it heightens the effect of that passage in Froissart, when, masked in the snowy symbol of their faction, the desperate White Hoods of Ghent murder their bailiff in the market-place! Nor, in some things, does the common, hereditary experience of all mankind fail to bear witness to the supernaturalism of this hue. It can not well be doubted, that the one visible quality in the aspect of the dead which most appals the gazer, is

Source	The Midnight Queen
Date	1888
Title	The Midnight Queen
Author	Fleming, May Agnes, 1840-1880

Expanded context

us all, why, why does He permit such monsters to live? " " Because He is more merciful than his creatures, " replied Sir Norman, with calm reverence, - though His avenging hand is heavy on this doomed city. But, madame, time is on the wing, and the headsman will be here before your story is told. " " Ah, that story! How am I to tell it, I wonder, two words will comprise it all - sin and misery - misery and sin! For, buried alive here, as I am - buried alive, as I've always been - I know what both words mean; they have been branded on heart and brain in letters of fire. And that horrible monstrosity is the cause of all - that loathsome, misshapen, hideous **abortion** has banned and cursed my whole life! He is my first recollection. As far back as I can look through the dim eye of childhood's years, that horrible face, that gnarled and twisted trunk, those devilish eyes glare at me like the eyes and face of a wild beast. As memory grows stronger and more vivid, I can see that same face still - the dwarf! the dwarf! - Satan's true representative on earth, darkening and blighting ever passing year. I do not know where we lived, but I imagine it to have been one of the vilest and lowest dens in London, though the rooms I occupied were, for that matter, decent and orderly enough. Those rooms the daylight never entered, the windows were boarded up within, and fastened by shutters without, so that of the world beyond I was

Expanded context: *hideous* (cont'd)

Source	Carlyle and Ruskin and their Influence on English Social Thought
Date	1893
Publication information	New England Magazine: December 1893: 473-489
Title	Carlyle and Ruskin and their Influence on English Social Thought
Author	William Clarke

Expanded context

acted on English social life, and that Carlyle found them so acting. Their general effect was to draw away men's attention from social duty to introspection and to make a distinction between what is secular and what is sacred, which leads straight to individualism alike in religion and in the state. I turn from the religious to the artistic feeling of the time. By art I do not understand the product of individual genius, but the general artistic sense as diffused through the nation. When Carlyle settled down at Chelsea, nearly sixty years ago, England had indeed in Turner a painter of great genius; but as a nation she had no art. The most sordid and vulgar ugliness prevailed everywhere. If any particularly grand edifice was to be reared, it would be a sham stucco classic temple with the most hideous **abortions** in the shape of Doric and Corinthian porticos. The usual edifice was of what William Morris calls the "square box" order of architecture, where the house, town hall, or chapel was made to look like a travelling trunk. No wonder people believed in a dreadful place of torment; for it really is the only fitting receptacle for those who could defile the earth with these abominable structures. But it was especially in the economic sphere that the spirit of the time was most fully marked. The "cash nexus," as Carlyle put it, was the one bond between man and man. It was the era of the glorious gospel of "Smithianism," to use the German phrase for the so-called orthodox English theory of political economy. - a phrase which, let me say, does Adam Smith great wrong, for his wide and comprehensive mind can

Expanded context: *miserable*

Source	Glances at Europe In a Series of Letters from Great Britain, France, Italy, Switzerland, &c. D
Date	1851
Title	Glances at Europe In a Series of Letters from Great Britain, France, Italy, Switzerland, &c. D
Author	Greeley, Horace, 1811-1872

Expanded context

the Exhibition, while the Jurors appointed to judge and report upon the merits of rival fabrics were making the requisite investigations. Their verdict is thus substantially forestalled, and the millions who visit the Exhibition are invited to look at the American department merely to note the bad taste and incapacity therein displayed, and learn to avoid them. But the self-constituted arbiters who thus tell the American people that Art is not their province -- that they should be content to grow Corn and Cotton, looking to Europe for the satisfaction of their less urgent necessities; their secondary wants -- are they impartial advisers? Are they not palpably speaking in the interest of the rival producers of Europe, alarmed by the rapid growth and extension of American Art? Would they have taken so much trouble with us if American taste and skill were really the miserable **abortions** they represent them? These indications of paternal care for American Industry, in danger of being warped and misdirected, are not quite novel. An English friend lately invited me to visit him at his house in the neighborhood of Birmingham, holding out as an inducement the opportunity of inspecting the great Iron and Hardware manufactories in that neighborhood. A moment afterward he recollected himself and said, " I am not quite sure that I could procure you admittance to them, because the rule has been that Americans were not to be admitted. Gentlemen taking their friends to visit these works were asked, at the door, ' Is your friend an American?' and if the answer was affirmative, he was not allowed to enter -- but I think this restriction has been generally abrogated. " Here you see, was a compassionate regard for American Industry, in danger of being misled

Source	FROM THE REBEL STATES.; Movements in Eastern Tennessee.The Destruction of the Rebel Communications. GREAT ALARM IN RICHMOND.Rebel Losses at the battle
Date	1861
Publication information	New York Times: (Features): 1861 1123
Title	FROM THE REBEL STATES.; Movements in Eastern Tennessee.The Destruction of the Rebel Communications. GREAT ALARM IN RICHMOND.Rebel Losses at the battle

Expanded context

739350 txt The Cabinet, I hear, was actually in session at the President's house, where they dined en famille, deliberating upon the latest advices, but the nature of these has not as yet transpired. NOTHING SERIOUS APPREHENDED. " From the Memphis Appeal, Nov.16. We apprehend nothing sedans from the recent outbreak in East Tennessee but regard it, on the contrary, at least in point of time, as one of the most fortunate incidents of the crisis. It was evidently one act in a carefully arranged programme of the enemy, all of whose parts were to have been executed simultaneously, but which has eventuated in a miserable **abortion**. We have long been aware that there sys a deeply disaffected element in this section of the State, and have repeatedly pressed upon our authorities -- State and Federal -- the necessity of exercising a proper espionage over their movements. A traitorous combination, headed by BROWNLOW, Taswuir, and other lesser lights, and in league with the exiles JOHNSON and MANTAnn, are known to have been in constant communication with the enemy, and cognizant of his project to attempt the invasion of Tennessee through Cumberland Gap or some other inlet through that range of mountains. It was a stroke of policy merely that induced the abandonment of the Greenville Convention and the ostensible acknowledgment of the Confederate Government by the, arch conspirators who were encouraging this scheme. In fact, it was a most dangerous part of their conspiracy, inasmuch as it disarmed our authorities, and the adherents of our cause in

Expanded context: *miserable* (cont'd)

Source	Master William Mitten; or, A Youth of Brilliant Talents, Who Was Ruined by Bad Luck.
Date	1864
Title	Master William Mitten; or, A Youth of Brilliant Talents, Who Was Ruined by Bad Luck
Author	Longstreet, Augustus Baldwin, 1790-1870

Expanded context

in a College; but should they occur, it is very doubtful whether the informer would find any quarter among his college companions. " But let us come to a case very likely to occur. It is a rule in some Colleges, (in most of them, I believe,) that if a student is charged with an offence, and another is called on to testify in his case, and refuse, he shall be dismissed. Every student who enters the College pledges himself to keep this law; and yet, in the judgment of seven-tenths of the students, it is considered basely dishonorable to testify, if his testimony would prove the guilt of the accused! The culprit himself has not the magnanimity to confess his guilt, and save his innocent friends from punishment, but, shielded by this miserable **abortion** of College comity, he avoids detection, sees them disgraced, driven off and robbed of man's richest boon, (a liberal education,) while he quietly retains his place, and ultimately pockets his Parchment! And yet, black, rotten and foetid as he is, some of the unimplicated congratulate him on his escape, and many of them hold fellowship with him, not only without nausea, but with an agreeable relish!! The dirty lump of humanity should be turned over to the scavenger, by the unanimous verdict of the College, and pitched into the remotest sewer from it. Now this case has actually happened, and it may happen again while you are in College. if so, and you are cognizant of the offence, (not a participant in it,) and summoned as a witness against an offender, go to him and tell