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## Generic *Ab Initio*

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## Generic *Ab Initio*

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### ABSTRACT

*From comic conventions to disbanded dioceses, courts continue to struggle with a unique but puzzling question of trademark law. Federal law protects certain terms that refer to a product or service from a specific producer instead of to a product generally. Terms that refer to products are considered generic and cannot receive protection. Courts have also held that a term that was generic at the time the party adopted the mark cannot receive protection, even if the public later views it as being specific to a particular producer. But, many marks*

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*were adopted decades or centuries ago. As a result, courts and parties have struggled to find tools that will let them explore what the public understood a term to mean at the time of its adoption. Current methods, such as dictionaries, have fatal flaws. This paper proposes a new and empirical method to make this determination: corpus linguistics.*

*Corpus linguistics is the study of the meaning of words and phrases using large databases of language use. It allows the user to understand how people used certain words or phrases **at a specific point in time** instead of being limited to how people understand them now. Using two recent cases as examples, this paper shows how corpus linguistics can provide parties and courts with concrete data on the meaning of a term when the party adopted it, eliminating guess work and other unreliable sources.*

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## INTRODUCTION

San Diego Comic-Con (SDCC): the modern Mecca of the science fiction and fantasy nerdism. Held each year in the San Diego Convention Center, it has developed into a pop-culture phenomenon, known for panels with big-name stars, cos-playing fans, and . . . pushing the boundaries of trademark law?

In 2014, the Salt Lake Comic-Con (SLCC), an unrelated event for comic book and science fiction enthusiasts, marketed itself in San Diego during the SDCC. Its advertising strategy included “driving a SLCC-branded vehicle through the streets of San Diego during [SDCC].”<sup>1</sup> In retaliation, Comic-Con International (CCI) (the parent company of the SDCC) sent Dan Farr Productions and Bryan Brandenburg—the organizers of the SLCC—a cease and desist letter, claiming that the SLCC’s use of the term “Comic-Con” violated CCI’s trademark for the term “Comic-Con” and deliberately created confusion between the two unrelated events.<sup>2</sup> For the next six years, the two organizations were locked in an aggressive trademark battle, with CCI claiming that it held the exclusive right to the use of the term “Comic-Con” and Dan Farr Productions claiming that the term was “generic” for comic and science fiction conventions.<sup>3</sup>

Questions of genericness pervade trademark law. For starters, Congress has held that a party cannot trademark a generic term.<sup>4</sup> When determining genericness, the question

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1. Rob Salkowitz, *Jury Decides for San Diego Comic-Con in Trademark Suit*, FORBES (Dec. 8, 2017, 6:52 PM), <https://www.forbes.com/sites/robsalkowitz/2017/12/08/breaking-jury-decides-for-san-diego-comic-con-in-12m-trademark-suit>.

2. *Id.*

3. *See id.*

4. *See* 15 U.S.C. § 1091(a) (“All marks capable of distinguishing applicant’s goods or services . . . may be registered . . .”); 15 U.S.C. § 1065(4) (“[N]o incontestable right shall be acquired in a mark which is the generic name for the goods or services . . .”).

is “**what does the public think the word connotes—the generic name of the product or a mark indicating merely one source of that product?**”<sup>5</sup> “It is the **relevant consumers**, not the courts, who determine whether the term signifies the genus of [products].”<sup>6</sup> But the feud between CCI and Dan Farr Productions implicated a related but underdeveloped question of trademark law: can a generic term ever acquire sufficient specialized meaning to warrant trademark protection? At least on paper, Congress has held that only “marks capable of distinguishing applicant’s goods or services,” i.e., non-generic marks, “may be registered.”<sup>7</sup> But, what happens if a generic term is registered, and it goes unnoticed and unchallenged for years? Dan Farr Productions claimed that within the nerd community—the relevant consumers of comic book conventions—use of the word “Comic-Con” long predated the first SDCC and was used to describe any official gathering of comic book or science fiction enthusiasts.<sup>8</sup> As a result, Dan Farr Productions argued that CCI’s trademark was “generic *ab initio*” and should be deemed invalid.<sup>9</sup> But that was fifty years ago. What evidence could be marshalled to prove that?

This Article is the first to explore the contours of the genericness *ab initio* defense and to develop a methodology for proving it in court using established linguistic tools. Part I will look at genericness *ab initio* from both legal and linguistic perspectives. It will first look at the legal concept of genericness generally and then explore the circuit split

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5. 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:4 (5th ed. 2021) (emphasis added).

6. *Berner Int’l Corp. v. Mars Sales Co.*, 987 F.2d 975, 982 (3d Cir. 1993) (emphasis added).

7. *See* 15 U.S.C. § 1091(a); 15 U.S.C. § 1065(4).

8. Appellants’ Opening Brief at 26, *San Diego Comic Convention v. Dan Farr Prods.*, 807 Fed. App’x 674 (9th Cir. 2020) (No. 18-56221), 2019 WL 2013124.

9. *See San Diego Comic Convention v. Dan Farr Prods.*, No. 14-CV-1865 AJB (JMA), 2017 WL 4227000, at \*9 (S.D. Cal. Sept. 22, 2017), *aff’d*, 807 F. App’x 674 (9th Cir. 2020).

concerning the availability of the generic *ab initio* defense specifically. Next, Part I will develop a linguistic theory of genericness *ab initio* and, finally, identify shortcomings of the various tools used by practitioners to try to establish that a disputed mark was generic *ab initio*. Part II will then demonstrate how corpus linguistics—a well-developed sub-discipline of linguistics that uses large, electronically-searchable databases of real-world texts to investigate language patterns over time—can remedy these shortcomings. Finally, Part III will demonstrate how this methodology works through two case studies drawn from real world cases: *San Diego Comic Convention v. Dan Farr Productions*<sup>10</sup> and *vonRosenberg v. Lawrence*.<sup>11</sup>

## I. GENERICITY: A PRIMER

### A. *Genericness* Ab Initio

When an entity wants “to identify and distinguish [its] goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods,” it can use “any word, name, symbol, . . . device, or any combination thereof.”<sup>12</sup> This “mark” can then receive protection under federal trademark law through registration.<sup>13</sup> And after five years of continual use, the owner of the mark may file to receive “incontestable”

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10. 336 F. Supp. 3d 1172 (S.D. Cal. 2018).

11. 412 F. Supp. 3d 612 (D.S.C. 2019).

12. 15 U.S.C. § 1127.

13. *See id.* (“The intent of this chapter is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.”).

status.<sup>14</sup> An incontestable mark can no longer be challenged on certain grounds. The law is designed to protect the entity's investment in its mark as well as to prevent consumer confusion.<sup>15</sup> But, trademark law is not designed to provide a monopoly on a product or service.<sup>16</sup>

If a mark simply describes the product or service, then it is a generic term,<sup>17</sup> and federal law prohibits a generic term from receiving trademark protection.<sup>18</sup> Courts have noted that generic terms “can never attain trademark status,” because they are “by definition incapable of indicating source” and therefore “are the antithesis of trademarks.”<sup>19</sup> They “cannot be appropriated from the public domain.”<sup>20</sup>

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14. See 15 U.S.C. § 1065 (“[T]he right of the owner to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable . . .”).

15. See *Zippo Mfg. Co. v. Rogers Imps., Inc.*, 216 F. Supp. 670, 694–95 (S.D.N.Y. 1963) (“The law of unfair competition has traditionally been a battleground for competing policies. The interest of the public in not being deceived has been called the basic policy. Moreover, a plaintiff's interest in not having the fruit of his labor misappropriated should not be disregarded. But there is also the policy of encouraging competition from which the public benefits.” (footnotes omitted)).

16. See 1 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 2:11 (5th ed. 2021).

17. See 2 *id.* § 12:1 (“The name of a product or service itself—what it is—is the very antithesis of a mark. In short, a generic name of a product can never function as a trademark to indicate origin. The terms “generic” and “trademark” are mutually exclusive. As noted previously, the function of a mark is to identify and distinguish the goods or services of one seller from those sold by all others.” (footnotes omitted)).

18. See 15 U.S.C. § 1091(a) (“All marks capable of distinguishing applicant's goods or services . . . may be registered . . .”); 15 U.S.C. § 1065(4) (“[N]o incontestable right shall be acquired in a mark which is the generic name for the goods or services . . .”).

19. *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366 (Fed. Cir. 2018).

20. *Pods Enters., Inc. v. U-Haul Int'l, Inc.*, No. 12-CV-01479-T-27MAP, 2015 WL 1097374, at \*2 (M.D. Fla. Mar. 11, 2015) (citing *Welding Servs., Inc. v. Forman*, 509 F.3d 1351, 1358 (11th Cir. 2007)); see *Soweco, Inc. v. Shell Oil Co.*, 617 F.2d 1178, 1183 (5th Cir. 1980) (“A generic term can never become a trademark.” (citing *Miller Brewing Co. v. G. Heileman Brewing Co.*, 561 F.2d 75,



This concept is called generic *ab initio*, meaning simply that the mark was “generic at the time the company adopted it as a trademark.”<sup>21</sup> This concept is so strong that even registered

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79 (7th Cir. 1977)); *Nassau v. Unimotorecyclists Soc’y of Am., Inc.*, 59 F. Supp. 2d 1233, 1238 (M.D. Fla. 1999) (“[T]rademark law prevents a person from removing a word from the general language and appropriating it for his own trademark . . . .”). *But see* Jake Linford, *A Linguistic Justification for Protecting “Generic” Trademarks*, 17 YALE J.L. & TECH. 110, 170 (2015) (“Semantic shift—the addition of meaning to the public lexicon—is driven simultaneously by a need to communicate and a need to resolve confusing ambiguity. Investing a word or phrase with source significance such that it becomes a trademark is a type of semantic shift. Like any other entry into the creative lexicon, trademarks are created to fill a communicative need. But the doctrine of trademark incapacity incongruously disregards restriction, a common form of semantic shift. Ignoring restriction may exacerbate consumer confusion and increase consumer search costs. [¶] Understanding that the formation of trademark meaning is a form of semantic shift reminds us that sound competition policy cannot neglect the importance of consumer comprehension. Instead, trademark law must take into account consumer perception and properly weight consumer confusion. The doctrine of trademark incapacity does neither. The law should instead adopt a primary significance test for determining whether a mark that was once generic has acquired sufficient distinctiveness to merit trademark protection. Trademark law would then better match its accepted search-cost rationale, and trademark acquisition would better reflect the semantic shift of which it is a part.”).

21. *Pods Enters., Inc.*, 2015 WL 1097374, at \*2 (citing *Schwan’s IP, LLC v. Kraft Pizza Co.*, 460 F.3d 971, 974 (8th Cir. 2006)); *see Miller Brewing Co.*, 561 F.2d at 77 (“[B]ecause ‘light’ is a generic or common descriptive word when applied to beer . . . that word . . . may [not] be appropriated as a trademark for beer.”); *San Diego Comic Convention v. Dan Farr Prods.*, No. 14-CV-1865 AJB (JMA), 2017 WL 4227000, at \*4 (S.D. Cal. Sept. 22, 2017) (“[N]on-genericness or generic *ab initio* is when a mark is generic before a producer began using it as a trademark to advertise their products or services.” (citing *Schwan’s IP, LLC*, 460 F.3d at 974)), *aff’d*, 807 F. App’x 674 (9th Cir. 2020). Scholars have also called this concept “trademark incapacity.” *See* Linford, *supra* note 20, at 110. Many courts have refused to consider whether a previously generic mark could become a trademark even if a party transforms its meaning to the public through secondary meaning. *See, e.g., Hunt Masters, Inc. v. Landry’s Seafood Rest., Inc.*, 240 F.3d 251, 254–55 (4th Cir. 2001) (holding that because “crab house” was obviously generic for a restaurant that served crab, “it [was] not necessary to determine whether the term [became] generic through common use, rendering Hunt’s customer survey irrelevant”); *Liquid Controls Corp. v. Liquid Control Corp.*, 802 F.2d 934, 938 n.6 (7th Cir. 1986) (discounting customer affidavits that indicated source significance of “liquid control” as not relevant to whether the term is generic); *Miller Brewing Co. v. Jos. Schlitz Brewing Co.*, 605 F.2d 990, 995 (7th Cir. 1979) (holding that because “light” for low calorie beer was generic, “proof” of secondary meaning “would not advance [plaintiff’s] trademark claim, because . . . if a word is generic it ‘can never become a trademark’”); *Microsoft*

marks that obtain an “incontestable” status after five years of continual use have been found to be generic *ab initio*.<sup>22</sup>

### B. *Generic Ab Initio Disputed*

Although the Lanham Act prohibits generic terms from obtaining trademark protection, courts and legal scholars around the country disagree about whether a registered mark that has achieved “incontestable” status may be cancelled on generic *ab initio* grounds. The term “incontestable” is somewhat misleading as federal law continues to allow such marks to be contested on a number of different grounds.<sup>23</sup> Most importantly for our purposes, an incontestable mark may be cancelled if “[a]t any time . . . the

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Corp. v. Lindows.com, Inc., 69 U.S.P.Q.2d 1863, 1864 (W.D. Wash. 2004) (instructing jury that a genericness inquiry should consider the time the claimant began using the mark, and refusing to instruct the jury that a trademark is valid if the mark was generic when the claimant entered the market but had subsequently acquired source significance); Brief of Trademark & Internet Law Professors as Amici Curiae in Support of Respondent at 14, U.S. Pat. & Trademark Off. v. Booking.com B.V., 140 S. Ct. 2298 (2020) (No. 19-46) (“The reporters are replete with cases where consumers use an ostensible generic term as a source signifier. In some cases, courts have properly extended protection to marks with generic origins.”).

22. See *Liquid Controls Corp.*, 802 F.2d at 935–39; see also *Harley-Davidson, Inc. v. Grottanelli*, 164 F.3d 806, 812 (2d Cir. 1999) (“Our case . . . concerns a mark that starts out generic and is sought to be given trademark significance by a manufacturer. That is what *Abercrombie [& Fitch Co. v. Hunting World, Inc.]*, 537 F.2d 4 (2d Cir. 1976) and other cases forbid.”); *Pods Enters., Inc.*, 2015 WL 1097374, at \*3 (“In any event, this dispute need not be resolved because even assuming that an incontestable trademark can be canceled on the ground it was generic when adopted, U-Haul has failed to show that the evidence is legally insufficient for a jury to find for PODS on the issue, as explained below.”).

23. See 15 U.S.C. § 1064(4)–(5) (“At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title. At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies . . .”).

registered mark becomes the generic name for the goods or services, or a *portion* thereof, for which it is registered.”<sup>24</sup> But there is a developing circuit split on whether this exemption applies to marks that were generic at the time of registration, as opposed to marks that become “genericized.”

The Second and Fourth Circuits have stated that the exemption does apply. For example, in *Harley-Davidson, Inc. v. Grottanelli*, the Second Circuit rejected an argument that a generic term could “subsequently be appropriated for trademark use” if a “substantial segment of the relevant consumers began to use the term . . . to refer” to the products of a specific company.<sup>25</sup> The dispute arose out of an anti-dilution suit brought by Harley-Davidson against a local motorcycle dealer doing business under the name “The Hog Farm” for infringement of its trademark of the word HOG.<sup>26</sup> The record contained evidence—including dictionary definitions and press usage—that the word HOG had been used to describe large motorcycles irrespective of brand at least as far back as 1965, more than twenty years before Harley-Davidson first registered the mark.<sup>27</sup> In fact, Harley-Davidson had initially averred any association with the word.<sup>28</sup> Nevertheless, “[b]eginning around the early 1970s and into the early 1980s, motorcyclists increasingly came to use the word ‘hog’ when referring to Harley-Davidson

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24. 15 U.S.C. § 1064(3) (emphasis added).

25. 164 F.3d at 811–12.

26. *Id.* at 809, 811.

27. *Id.* at 808–09 (“In the late 1960s and early 1970s, the word ‘hog’ was used by motorcycle enthusiasts to refer to motorcycles generally and to large motorcycles in particular. The word was used that way in the press at least as early as 1965, and frequently thereafter, prior to the 1980s when Harley first attempted to make trademark use of the term. Several dictionaries include a definition of ‘hog’ as a motorcycle, especially a large one. The October 1975 issue of *Street Chopper* contained an article entitled ‘Honda Hog,’ indicating that the word ‘hog’ was generic as to motorcycles and needed a tradename adjective.” (footnotes omitted)).

28. *Id.* at 809 (“However, for several years, as Harley-Davidson’s Manager of Trademark Enforcement acknowledged, the company attempted to disassociate itself from the word ‘hog.’”).

motorcycles,” leading Harley-Davidson to register the mark in 1987.<sup>29</sup> In light of this, the magistrate judge had initially “upheld Harley-Davidson’s anti-dilution claim on the ground that its HOG mark [had] become a strong trademark.”<sup>30</sup> The Second Circuit disagreed, concluding that even “if a generic word could ever be infused with trademark significance, the word must have ceased to have current generic meaning.”<sup>31</sup> Current dictionary definitions indicated that had not occurred. The court ultimately concluded “[t]he public has no more right than a manufacturer to withdraw from the language a generic term, already applicable to the relevant category of products, and accord it trademark significance, at least as long as the term retains some generic meaning.”<sup>32</sup>

Likewise, in *Retail Services, Inc. v. Freebies Publishing*, the Fourth Circuit was called upon to decide whether Freebies Publishing’s trademark of the stylized word “freebies” was still valid.<sup>33</sup> The publisher acquired the trademark originally in 1978 and then, after a period of abandonment, again in 1993 in connection with periodicals, “namely, magazines and newspapers with information about mail order offerings.”<sup>34</sup> Retail Services, Inc. brought suit seeking declaratory judgment that Freebies Publishing’s mark was actually generic and that its use of the word “freebies” did not violate Freebies Publishing’s trademark under the Lanham Act.<sup>35</sup> To support its case, Retail Services, Inc. presented evidence that the word “freebies” had not just *become* generic but had actually been generic for decades

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29. *Id.*

30. *Id.* at 811.

31. *Id.* at 811–12.

32. *Id.* at 812.

33. 364 F.3d 535, 537 (4th Cir. 2004), *abrogated on other grounds by* Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545 (2014).

34. *Id.* at 539–40.

35. *Id.* at 537.

proceeding the mark's registration.<sup>36</sup> The district court agreed, concluding "that the evidence of genericness was so one-sided that no genuine issue of fact existed."<sup>37</sup> On appeal, Freebies Publishing argued that even if its mark lacked secondary meaning, the mark's incontestable status protected them from suit.<sup>38</sup> The Fourth Circuit disagreed, concluding that "incontestability is *never* a shield for a mark that is generic."<sup>39</sup> The court added that "[a]lthough § 1115(b) does not enumerate the generic nature of a trademark as a basis for challenging an incontestable mark, a registration is subject to cancellation at any time 'if the registered mark becomes the generic name for the goods or services . . . for which it is registered.'"<sup>40</sup> Although the court did not say so explicitly, it is clear from context that the Fourth Circuit considered this standard to include the period before registration.

As one scholar recently put it, "[t]o use a pretty darned generic example, a chair is a chair is a chair. Forever. All the advertising, sales and even social media engagement in the world won't infuse your 'Chair Brand' line of chairs with secondary meaning."<sup>41</sup>

Nevertheless, a recent Sixth Circuit decision, could cast doubt on the availability of the generic *ab initio* defense.<sup>42</sup> In *NetJets Inc. v. Intellijet Group, LLC*, the court rejected the validity of a different ground for trademark cancellation, void *ab initio*, which occurs when a company registers a mark

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36. *Id.* at 544–46.

37. *Id.* at 546.

38. *Id.* at 548.

39. *Id.* (emphasis added).

40. *Id.* (quoting 15 U.S.C. § 1064(3)).

41. Ron Coleman, *Back from the Void*, LIKELIHOOD OF CONFUSION (June 29, 2021), <https://www.likelihoodofconfusion.com/back-from-the-void/>.

42. *See NetJets Inc. v. IntelliJet Grp., LLC*, 678 F. App'x 343, 355 (6th Cir. 2017).

that it does not use at the time.<sup>43</sup> The court drew a hard line in the sand with respect to incontestability:

The statute provides that the registration of an incontestable trademark is “conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce.” “Once incontestability is established, only the . . . defenses enumerated in § 1115(b) can be interposed in an action for trademark infringement.”<sup>44</sup>

The court concluded that because the void *ab initio* defense was not specifically enumerated in the statute, it could not overcome the presumption of incontestability.<sup>45</sup> The same could be said for generic *ab initio*. The Lanham Act does state that a trademark may be cancelled if “the registered mark *becomes* the generic name for the goods or services, or a portion thereof, for which it is registered.”<sup>46</sup> But “*becomes*” is the problem. There is a compelling textual argument that it does not encompass generic *ab initio* which entails a mark not becoming generic, but always being generic.

At least some courts have implied as much. For example, in *San Diego Comic Convention v. Dan Farr Productions*, discussed in greater detail below, the district court rejected Dan Farr’s generic *ab initio* argument, noting that the Ninth

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43. *Id.* at 347–48.

44. *Id.* at 347 (citations omitted).

45. *Id.* at 348 (“To bring a challenge to NetJets’s mark, IntelliJet Group must establish a valid ground for cancellation. Section 1064 of the Lanham Act limits the ability to challenge a mark that has been registered for five years. Under § 1064(3), petitions for cancellation of a mark registered for five years may be brought only for a limited set of reasons, including fraudulent registration or if the mark has become generic. Void *ab initio*, the basis of IntelliJet Group’s claims, is not one of these reasons and § 1064 bars its counterclaim for cancellation of the mark. The district court did not address the limits of § 1064 in its opinion, but simply moved from the conclusion that NetJets’s mark was not incontestable to its conclusion that it was void *ab initio* because it was not used in commerce at the time of registration. This determination is incompatible with § 1064.” (citations omitted)).

46. 15 U.S.C. § 1064(3) (emphasis added).

Circuit had not even recognized the defense.<sup>47</sup> And on appeal, the Ninth Circuit dodged the issue completely, leaving its validity in the nation's largest circuit highly suspect.<sup>48</sup>

### C. *Generic Ab Initio from a Linguistic Perspective*

Linguists, especially sociolinguists, recognize that social entities such as governments often attempt to “plan” language behavior by controlling, or at least managing, the language performance of the general population. Bernard Spolsky defines language management as “the explicit and observable effort by someone or some group that has or claims authority over the participants in the domain to modify their practices or beliefs.”<sup>49</sup> Through planned or unplanned language policies,<sup>50</sup> governments manage language in their domains by (1) raising or lowering the status of certain community languages (status planning),<sup>51</sup> (2) encouraging or discouraging the acquisition of certain community or immigrant languages (acquisition planning),<sup>52</sup> or (3) proclaiming the “correct” or authorized forms and meanings of words or grammatical units.<sup>53</sup> This latter effort, ironically in the context of our present discussion, is labeled

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47. No. 14-CV-1865 AJB (JMA), 2017 WL 4227000, at \*9 (S.D. Cal. Sept. 22, 2017), *aff'd*, 807 F. App'x 674 (9th Cir. 2020).

48. *See* Dan Farr Prods. v. U.S. Dist. Ct. (*In re* Dan Farr Prods.), 874 F.3d 590, 593–97 (9th Cir. 2017).

49. BERNARD SPOLSKY, LANGUAGE MANAGEMENT 4 (2009).

50. *See generally* William G. Eggington, *Unplanned Language Planning*, in THE OXFORD HANDBOOK OF APPLIED LINGUISTICS 452 (Robert B. Kaplan ed., 2d ed. 2010).

51. *See* William G. Eggington, *Language Revitalisation Planning Within a Power/Solidarity Framework*, 2 CURRENT ISSUES LANGUAGE PLAN. 242, 243 (2001).

52. *See generally* William G. Eggington, *Focusing on the Challenges: Institutional Language Planning*, in ESL READERS AND WRITERS IN HIGHER EDUCATION 36 (Norman W. Evans, Neil J. Anderson & William G. Eggington eds., 2015).

53. *See generally* EDWARD FINEGAN, ATTITUDES TOWARD ENGLISH USAGE (1980).

“corpus planning.” Corpus planning has a long history within the development and standardization of the English language. Dictionaries, school systems, law schools, standardized examinations, grammar books, even spelling bees perform corpus planning functions. In addition to these efforts, there is a more subtle, even magical, aspect to corpus planning.

Seattle law professor and linguist Janet Ainsworth discusses how the request “Can I speak to a lawyer?” has been rejected by appellate courts as an invalid invocation of Fifth Amendment Miranda Rights on the grounds that it is an indirect request.<sup>54</sup> In her discussion, Ainsworth cites British language philosopher, J.L. Austin’s notion that legal language provides “quintessential exemplars of words that [do] things.”<sup>55</sup> Austin labels language performers as “speech acts.”<sup>56</sup> Thus, given appropriate felicity conditions,<sup>57</sup> the expression “I now pronounce you man and wife” performs, what Ainsworth labels, “word magic.”<sup>58</sup> The use of these words has legal consequence.

This notion of “word magic” can be extended to an understanding of trademark law from a linguistics perspective. Within a corpus planning orientation, the government decrees that certain words or expressions can be used only to perform certain speech acts or to refer to certain entities, not to any similar entities. Thus, for example, in granting trademark protection, the government has decreed that Kimberly-Clark Worldwide, Inc. has control over the use of the word “Kleenex.” In a sense, a magic spell has been cast over the word; so much so that ferocious tempests of

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54. Janet Ainsworth, *You Have the Right to Remain Silent . . . but only if You Ask for It Just So: The Role of Linguistic Ideology in American Police Interrogation Law*, 15 INT’L J. SPEECH, LANGUAGE & L. 1, 17 (2008).

55. *Id.* at 2.

56. *Id.*

57. That is, socially and pragmatically appropriate conditions.

58. Ainsworth, *supra* note 54, at 4.



litigation would be unleashed should the wholesale club store Costco label their facial tissue product “Costco Kirkland Kleenex,” regardless of its alliterative essence and, more importantly, the fact that, as far as most English speakers are concerned, the word “Kleenex” has gone through such a semantic shift that its meaning has broadened to refer to all facial tissues.

However, there is more going on here. Linguists once thought that language was rule-governed behavior.<sup>59</sup> Within this theory, we absorbed and created a set of rules that allowed us to generate ever more complex language. However, that theory has been overtaken by a steady stream of evidence, based upon natural language processing studies, that suggests that we develop our language behavior through frequent exposure to exemplars, or analogical patterns of language.<sup>60</sup> Our linguistic knowledge and performance is usage-based rather than rule-based. As Joan Bybee states:

A usage-based view takes grammar to be the cognitive organization of one’s experience with language. Aspects of that experience, for instance, the frequency of use of certain constructions or particular instances of constructions, have an impact on representation that is evidenced in speaker knowledge of conventionalized phrases and in language variation and change.<sup>61</sup>

When an expression begins to be used by those within our language network, we subconsciously absorb that expression into our mental lexicon and begin using it in our production, especially if the expression has positive and meaningful associations. Montserrat Martínez-Vázquez details this process in her study of the rise of the “I’m lovin’ it” expression where a stative verb, “love” (as in, “I love your blog”), is being used more frequently as a dynamic verb in

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59. See, e.g., NOAM CHOMSKY, ASPECTS OF THE THEORY OF SYNTAX at v, 8 (1965).

60. See generally ROYAL SKOUSEN, ANALOGICAL MODELING OF LANGUAGE (1989).

61. Joan Bybee, *From Usage to Grammar: The Mind’s Response to Repetition*, 82 LANGUAGE 711, 711 (2006).

the progressive form (i.e., with “-ing”), something only heard of with dynamic verbs (e.g., “I’m talking with her now”).<sup>62</sup> Of relevance to this present study, Martínez-Vázquez traces the beginnings of this trend to a 2003 McDonald’s marketing campaign that elevated the frequency of the expression into the general speech community to the point where language behavior changes.<sup>63</sup> She came to this finding through a corpus-based study.<sup>64</sup> Similar findings are emerging as more linguists employ corpus-based studies within a usage-based model of how new words and meanings are developed and incorporated into the general social lexicon.

One more example is relevant for the purposes of this paper. Through a corpus-based study, Lisa Fontaine examines the rise of the neologism BREXIT from its 2012 coinage to its complete absorption into the mental and social lexicon of almost all of the English-speaking world by 2015.<sup>65</sup> With respect to BREXIT, Fontaine notes:

BREXIT has incorporated the features of a complex nominal, including the potential for argument structure, inherited from the event meaning of *exit*, which as already stated, forms the base of the blend. It is perhaps because *exit* is fully maintained (orthographically and phonologically) that it carries this meaning so strongly. In this sense, it is not a typical example of a blend since it has not lost any part of its form, at least not the “exit” part, and yet it is not a full compound either.<sup>66</sup>

“Comic-Con” possesses similar attributes where the essential phonology, orthography, and meaning or argument of the term, that is, “comic,” has been maintained, thus making it highly communicative and vulnerable for easy

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62. Montserrat Martínez-Vázquez, *I’m Loving It! A Corpus-Based Study of the Progress of Love*, 46 *J. ENG. LINGUISTICS* 140, 140–41 (2018).

63. *Id.*

64. *See id.* at 161.

65. Lisa Fontaine, *The Early Semantics of the Neologism BREXIT: A Lexicogrammatical Approach*, 4 *FUNCTIONAL LINGUISTICS*, Mar. 2, 2017, at 1, 1–2.

66. *Id.* at 13.

absorption into the general social lexicon.

The opposite of semantic broadening is semantic narrowing, which occurs when the meaning of a word is reduced from a broad category to a narrower referent. “Meat” (formerly any food), “skyline” (any horizon), “deer” (any four-legged beast), “girl” (a person of any gender), and “disease” (any discomfort, or unease) are common examples of this process. According to the results presented below, “comic-con” appears to have begun its life as a broad descriptor of comic conventions. In 1997, the government attempted to narrow its meaning by giving it “magic-word” status, where it could only be used to refer to a particular comic convention, the one in San Diego. But its already ubiquitous absorption into the general lexicon made that a complicated—if not impossible—spell to cast. While the government may have conferred a narrower meaning to “comic-con” officially, the natural linguistic processes continued within the speech community interested in comic conventions. In that community, its meaning continued to be applied to a broad range of events involving popular culture. The courts can try to preserve this spell that the government allowed to be cast—indeed the threat of litigation has caused many, but not all, comic book conventions to change their name in the aftermath of the lawsuit against Dan Farr Productions.<sup>67</sup> But as a matter of policy should it? A relevant linguistic question involves trying to determine at what point in usage frequency, or time, does a linguistic innovation such as “comic-con,” in its early usage period, cross a threshold when

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67. See Christopher Spata, *Tampa Bay Comic Con Changes Name in Wake of San Diego Comic Con Trademark Case*, TAMPA BAY TIMES (Sept. 5, 2018), [https://www.tampabay.com/things-to-do/events/In-wake-of-San-Diego-Comic-Con-trademark-case-Tampa-Bay-Comic-Con-changes-name\\_171525269/](https://www.tampabay.com/things-to-do/events/In-wake-of-San-Diego-Comic-Con-trademark-case-Tampa-Bay-Comic-Con-changes-name_171525269/); John Wenzel, *Denver Comic Con Will Change Its Name to Denver Pop Culture Con for 2019*, DENV. POST (Sept. 24, 2018, 8:34 AM), <https://www.denverpost.com/2018/09/24/denver-comic-con-changes-name/>; Josh Frigerio, *Phoenix Comic Con Changes Name to Phoenix Comic Fest Ahead of 2018 Convention*, ABC15 ARIZ. (Jan. 2, 2018, 5:02 PM), <https://www.abc15.com/entertainment/events/phoenix-comic-con-changes-name-to-phoenix-comic-fest>.

it can be labeled as a generic descriptor?

Such a question touches on hugely complex linguistic issues far beyond the scope of this Article. We can, however, provide a response relative to certain linguistic innovations such as “comic-con.” William Labov’s research on language change divides the linguistic innovation process into five phases which he labels as incipient, new and vigorous, mid-range, nearing completion, and completed.<sup>68</sup> Labov has also shown that much non-stigmatized language change begins with, and is spread by, those from the nonconformist, upwardly mobile social class,<sup>69</sup> a group that likely is interested in comic-cons. It appears that, with respect to general usage, “comic-con” has traversed most of Labov’s innovation phases, and it has done so by being adopted by a social class that is perfectly tuned to fostering its growth. It appears, then, that comic-con’s spread toward generic usage is the result of a set of optimal variables: a perfect language innovation storm that makes any attempt to narrow its meaning to one specific conference an exercise in word-magic futility. Other trademarked terms may follow a different pathway, one that can be traced effectively through corpus research.

This overview of the linguistics involved in trademark protection has shown that semantic shift, including broadening and narrowing of meaning, is a natural human language occurrence with the rate and sustainability of the process dependent upon factors such as a term’s frequency of use within a speech community, its salience and meaningfulness, the status of its initial users, its linguistic makeup, and its ease and efficiency of use in relation to alternative terms. These broadening and narrowing forces with respect to a trademarked term are countered, or

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68. See 1 WILLIAM LABOV, PRINCIPLES OF LINGUISTIC CHANGE: INTERNAL FACTORS 79–83 (1994).

69. See 2 WILLIAM LABOV, PRINCIPLES OF LINGUISTIC CHANGE: SOCIAL FACTORS 516–18 (2001).

encouraged, by word magic usage restrictions through established language planning entities.

D. *Current Methods for Determining Generic Ab Initio and Their Shortcomings*

As shown above, questions related to trademark genericness are—at their core—linguistic questions related to the meaning ascribed to particular words in a particular speech community at a particular time. Yet, litigators and judges frequently rely on flawed, unscientific evidence to determine genericness. This Section examines the most commonly relied upon types of unscientific evidence and describes their major weaknesses in making the ultimate determination of whether the relevant consumers thought that the term was either generic or source-identifying.

1. Legal Test

To determine if a mark is generic *ab initio*, federal law requires courts to look at the “*primary significance* of the registered mark *to the relevant public*.”<sup>70</sup> Courts have broken this requirement into a two step-inquiry. First, a court must determine “what is the genus of goods or services at issue?”<sup>71</sup> Second, it must determine if the term is “understood by the relevant public primarily to refer to that genus of goods or services?”<sup>72</sup> And a court must focus on the purchasers’ “understanding” of the mark, not their “motivation.”<sup>73</sup> But, the “critical issue in genericness cases is whether members of the relevant public primarily use[d] or [understood] the term sought to be protected to refer to the genus of goods or

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70. 15 U.S.C. § 1064(3) (emphasis added).

71. *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 1366 (Fed. Cir. 2018) (quoting *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 990 (Fed. Cir. 1986)).

72. *Id.* (quoting *H. Marvin Ginn Corp.*, 782 F.2d at 990).

73. *In re MBNA Am. Bank, N.A.*, 340 F.3d 1328, 1336 (Fed. Cir. 2003).

services in question.”<sup>74</sup>

Also, “a term can be generic for a genus of goods or services if the relevant public . . . understands the term to refer to a *key aspect* of that genus.”<sup>75</sup> Thus, “the test is not only whether the relevant public would itself [have] *use[d]* the term to describe the genus, but also whether the relevant public [*understood*] the term to be generic.”<sup>76</sup> In other words, “a term is generic if the relevant public [*understood*] the term to refer to *part of the claimed genus of goods or services*, even if the public [*did*] not understand the term to refer to the broad genus as a whole.”<sup>77</sup>

To determine the relevant consumers, courts look at “the relevant public limited to *actual or potential purchasers of the goods or services*.”<sup>78</sup> “The test is thus one of meaning to the *usual buyer or other relevant members of the public*.”<sup>79</sup> Though, “[s]ometimes, the relevant public will not be the potential purchasing public as a whole but rather ‘a relatively small group of highly trained and knowledgeable

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74. *Royal Crown Co.*, 892 F.3d at 1366 (quoting *H. Marvin Ginn Corp.*, 782 F.2d at 989–90).

75. *Id.* at 1367 (quoting *In re Cordua Rests., Inc.*, 823 F.3d 594, 603 (Fed. Cir. 2016)); see also *id.* at 1368 (“[I]f the public understands ZERO when used in combination with a designated beverage name to refer to a sub-group or type of beverage that carries specific characteristics, that would be enough to render the term generic. Because TCCC only seeks to use ZERO as part of combination marks, moreover, the Board may not divorce the public’s perception of the term ZERO from its perception of that term as part of a beverage combination mark.”).

76. *Id.* at 1367 (quoting *In re Cordua Rests.*, 823 F.3d at 603).

77. *Id.* (quoting *In re Cordua Rests.*, 823 F.3d at 605).

78. See, e.g., *Magic Wand, Inc. v. RDB, Inc.*, 940 F.2d 638, 641 (Fed. Cir. 1991) (emphasis added); see also *Pods Enters., Inc. v. U-Haul Int’l, Inc.*, No. 8:12-CV-01479-T-27MAP, 2014 WL 12597067, at \*1 (M.D. Fla. July 15, 2014) (citing *Magic Wand, Inc.*, 940 F.2d at 640) (“The ‘relevant public’ is the group of public consumers who purchase or may purchase the goods or services at issue.”).

79. *H. Marvin Ginn Corp.*, 782 F.2d at 989 (emphasis added).

customers.”<sup>80</sup> It will not be the general public.<sup>81</sup> But, it could include users of the products and not just the operators and manufacturers.<sup>82</sup>

## 2. Evidence of Generic *Ab Initio*

One source that courts look at is any use of the term in its generic form, including on trademark applications, by either competitors or the trademark owner.<sup>83</sup> Use by competitors is relevant only if the trademark owner has not challenged their use, because it shows that the public is more likely to see the term as generic if multiple companies are using the same term to describe the same product or service.<sup>84</sup> The trademark owner’s use shows that the public is being told by the source of the product that it is nothing more than a generic term.<sup>85</sup> While both forms of evidence can be relevant, they are likely to be rare and require more than a few isolated uses.<sup>86</sup> And more importantly, this evidence

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80. *Colt Def. LLC v. Bushmaster Firearms, Inc.*, 486 F.3d 701, 709 (1st Cir. 2007) (quoting *Nartron Corp. v. STMicroelectronics, Inc.*, 305 F.3d 397, 406 (6th Cir. 2002)) (“The military is, of course, a significant and sophisticated participant in the carbine-purchasing market, and we know of no trademark law principle that renders its understanding of the meaning of M4 inadmissible simply because it was under contract to buy exclusively from Colt.”); *see, e.g., Nartron Corp.*, 305 F.3d at 406 (“Here, the record before us is replete with evidence submitted by ST in support of its claim that ‘smart power,’ as used in connection with its VIPower® line of products, is perceived as a generic term by participants in the semiconductor industry including manufacturers, customers, suppliers, vendors and the trade and technical press.”).

81. *See, e.g., Shire City Herbals, Inc. v. Blue*, 410 F. Supp. 3d 270, 288–89 (D. Mass. 2019) (“The court discounts the relevance of Wallace’s surveys because they sampled the entire adult population in the United States, and that group is much broader than the relevant purchasing public.”).

82. *See Magic Wand, Inc.*, 940 F.2d at 641 (concluding that the relevant public included automobile owners and operators, not “solely operators and manufacturers of car wash equipment”).

83. *See* 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:13 (5th ed. 2021).

84. *See id.* (“Evidence to prove genericness can include . . . [g]eneric use by competitors which has not been contested by plaintiff.”).

85. *See id.*

86. *See id.*

relies on an assumption that the public was exposed to these uses of the term in a generic way. While this is not a far-fetched assumption, it cannot be proven through this evidence alone.

Another source of evidence courts turn to is dictionary definitions. Similar to the courts' approach to understanding the meaning of words in the statutory context,<sup>87</sup> dictionary definitions are used as an expert determination of "the public's perception of a word's meaning and its contemporary usage."<sup>88</sup> Courts do not rely solely on these definitions, which avoids giving dictionary editors the power to determine the genericness of words.<sup>89</sup> But, the larger issue with dictionaries is the assumption that they actually reflect the public's past understanding of a word's meaning when nearly no dictionaries have claimed that they do.<sup>90</sup>

Courts will also turn to a third form of evidence: the testimony of individuals in the same relevant trade claiming familiarity with the marketplace's past use of a term.<sup>91</sup> But, courts often find that this evidence is insufficient on its own or the individuals are not impartial in their testimony.<sup>92</sup>

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87. See, e.g., Stephen C. Mouritsen, Comment, *The Dictionary Is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning*, 2010 BYU L. REV. 1915, 1915.

88. *Harley-Davidson, Inc. v. Grottanelli*, 164 F.3d 806, 810 (2d Cir. 1999).

89. See *In re Minnetonka, Inc.*, 212 U.S.P.Q. 772, 778 (T.T.A.B. 1981) ("[A]pppearance of the name in dictionaries . . . is not conclusive, if for no other reason than that this would endow editors of such works with the power to destroy trademarks, merely by defining them generically.").

90. See Mouritsen, *supra* note 87, at 1924–25; *Door Sys., Inc. v. Pro-Line Door Sys., Inc.*, 83 F.3d 169, 171 (7th Cir. 1996) ("No dictionary is complete or completely up to date, or tracks the language of the marketplace perfectly."); *Bos. Duck Tours, LP v. Super Duck Tours, LLC*, 531 F.3d 1, 23 (1st Cir. 2008) ("[D]ictionary definitions are not conclusive indicators of overall public perception . . .").

91. See 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:13 (5th ed. 2021) ("The understanding of those who are familiar with the marketplace usage of the designation in question can be helpful evidence on the genericness issue.").

92. See *Self-Realization Fellowship Church v. Ananda Church of Self-*



And, this evidence assumes that one individual can know what the public understood a word to mean simply by working in the trade. While these individuals may have had exposure to some of the public's use of the word, they are unlikely to remember each use or to have been exposed to a random assortment of the relevant public.

Finally, one of the developing forms of evidence is the use of the term in the media, including newspapers and trade journals.<sup>93</sup> The assumption again is that these sources will reflect what the public understood the term to mean.<sup>94</sup> This easily accessible and inexpensive evidence has led some to speculate that courts should rely on it more frequently by doing Google searches.<sup>95</sup> As one commentator claimed, a Google search result accurately shows word meaning because it “determines listings . . . based on the frequency with which users click on the top search results and is generally able ‘to predict what online content consumers associate with a search term.’”<sup>96</sup> But, Google's algorithm is a black box such that neither experts nor courts know what

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Realization, 59 F.3d 902, 910 (9th Cir. 1995) (“Trademark law is skeptical of the ability of an associate of a trademark holder . . . to give an impartial account of the value of the holder's mark.”); *Shammas v. Rea*, 978 F. Supp. 2d 599, 610 (E.D. Va. 2013).

93. See 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:13 (5th ed. 2021); see also *San Diego Comic Convention v. Dan Farr Prods.*, No. 14-CV-1865 AJB (JMA), 2017 WL 4227000, at \*6 (S.D. Cal. Sept. 22, 2017) (“Defendants have not produced documents that demonstrate that ‘Comic-Con’ was frequently or ordinarily used pre 1970s to refer to the specific type of event at issue in the present matter, nor that the majority of consumers used the phrase to generally refer to comic book conventions.”), *aff'd*, 807 F. App'x 674 (9th Cir. 2020).

94. See *Murphy Door Bed Co. v. Interior Sleep Sys., Inc.*, 874 F.2d 95, 101 (2d Cir. 1989) (finding that newspaper and magazine evidence was “a strong indication of the general public's perception”).

95. See 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:13 (5th ed. 2021) (“The use of an internet search engine can quickly produce evidence of news and social media generic uses of a designation.”).

96. *Id.* (quoting Lisa Larrimore Ouellette, *The Google Shortcut to Trademark Law*, 102 CALIF. L. REV. 351, 363 (2014)).

happens between the input and output of information.<sup>97</sup> What is known is that companies can use better search-engine optimization techniques to improve ranking on the search results list or pay Google to have their website show up next to relevant websites.<sup>98</sup> As a result, courts cannot rely on evidence that is both manipulable and non-replicable. Nor is it enough to simply rely on examples of media usage from other sources as the parties have incentives to cherry-pick sources helpful to their argument, which may not represent the relevant community as a whole.

## II. CORPUS LINGUISTICS SAVES THE DAY

### A. *How Corpus Linguistics Fixes These Issues*

The fundamental problem with most of the evidentiary tools discussed above is that they rely on how people *think* a particular mark is understood—by themselves or others—rather than demonstrating how the mark is actually used within the relevant community at large. But if judges are serious about trademark determinations turning on the relevant consumer’s usage, their decisions should be based on real-world language use, preferably in a way that is subject to rigorous scientific analysis.

Fortunately, there is a well-established sub-discipline of linguistics—corpus linguistics—that does just that. A *corpus* is a collection of real-world texts drawn from a particular speech community at a particular time. Using electronic search platforms and analytical tools designed by linguists,

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97. Lisa Larrimore Ouellette, *The Google Shortcut to Trademark Law*, 102 CALIF. L. REV. 351, 400 (2014).

98. See *SEO vs. PPC*, GOOGLE, <https://ads.google.com/home/resources/seo-vs-ppc/> (last visited Apr. 28, 2022) (“Improvements to SEO [(search-engine optimization)] can help your website rank higher on Google Search by making it more relevant to users, while PPC [pay-per-click] ads like Google Ads are paid online advertisements which allow businesses and website owners like you to bid on the chance to show an ad next to searches on Google.com.”).

a researcher can generate hundreds of real-world examples of how a particular word or phrase has been used in a particular context. These examples can then be used to generate empirical evidence about language use. Although modern corpus linguistics has existed since the dawn of computers, it has only recently been applied to the law. Over the last decade, an increasing number of judges have turned to corpus linguistics to help resolve difficult questions of *statutory*<sup>99</sup> or *constitutional*<sup>100</sup> interpretation. But it is also gaining increasing relevance in trademark litigation, as parties proffer corpus linguists as expert witnesses.<sup>101</sup>

Corpus data reveals how individuals use language when they are not thinking about it. This is because the texts in the corpus are “naturally occurring,” meaning that they

were not elicited for the purpose of study. That is, generally no one asks the speakers or writers whose words are represented in the corpus to speak or write for the purpose of subjecting their words to

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99. See, e.g., *Muscarello v. United States*, 524 U.S. 125, 129 (1998); *United States v. Scott*, 990 F.3d 94, 129 n.8 (2d Cir. 2021) (en banc) (Menashi, J., concurring in part and concurring in the judgment); *United States v. Woodson*, 960 F.3d 852, 855 (6th Cir. 2020); *Wilson v. Safelite Grp., Inc.*, 930 F.3d 429, 440 (6th Cir. 2019) (Thapar, J., concurring in part and concurring in the judgment); *Caesars Ent. Corp. v. Int’l Union of Operating Eng’rs Loc. 68 Pension Fund*, 932 F.3d 91, 95 (3d Cir. 2019); *Am. Bankers Ass’n v. Nat’l Credit Union Admin.*, 934 F.3d 649, 672 (D.C. Cir. 2019); *Nycal Offshore Dev. Corp. v. United States*, 148 Fed. Cl. 1, 13 n.6 (2020); *Bright v. Sorenson*, 463 P.3d 626, 638–39 (Utah 2020); *Murray v. BEJ Mins., LLC*, 464 P.3d 80, 95–96 (Mont. 2020) (McKinnon, J., concurring); *State v. Lantis*, 447 P.3d 875, 880–81 (Idaho 2019); *Drouillard v. Am. Alt. Ins. Corp.*, 929 N.W.2d 777, 781–82 (Mich. 2019) (Markman, J., dissenting).

100. See, e.g., *Carpenter v. United States*, 138 S. Ct. 2206, 2238 n.4 (2018) (Thomas, J., dissenting); see also *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1769 n.22 (2020) (Alito, J., dissenting) (citing corpus-based scholarship); *Lucia v. SEC*, 138 S. Ct. 2044, 2056–57 (2018) (Thomas, J., concurring) (citing corpus-based scholarship); *In re Trump*, 958 F.3d 274, 286 (4th Cir. 2020) (citing corpus-based amicus brief); *State v. Misch*, 256 A.3d 519, 529–30 (Vt. 2021) (using corpus-based scholarship to interpret the Vermont constitution); *Richards v. Cox*, 450 P.3d 1074, 1079–80 (Utah 2019) (also using corpus-based scholarship to interpret the Utah constitution).

101. See, e.g., *Deckers Outdoor Corp. v. Australian Leather Pty. Ltd.*, 340 F. Supp. 3d 706, 714 (N.D. Ill. 2018); *Leadership Stud. Inc. v. Blanchard Training & Dev., Inc.*, No. 15CV1831-WQH(KSC), 2018 WL 1989554, at \*13 (S.D. Cal. Apr. 27, 2018).

linguistic scrutiny. Instead the architect of the corpus assembles her collection of speech and writing samples after the fact, from [relevant sources].<sup>102</sup>

Thus, unlike dictionaries and industry experts, corpus linguistics avoids the psycholinguistic problems—especially consensus bias<sup>103</sup>—identified above.

Corpus linguistics also sidesteps the false-dichotomy problem. If consumers consistently use a mark as *both* a specific brand name and a generic product term, that will be reflected in the examples generated by the corpus search. Not only that, but the court will be able to see the *rate* at which both senses are used.

Representativeness is still a concern with corpus linguistics. The old computer-programming adage “garbage in, garbage out” applies equally to corpus design. For example, the Corpus of American Soap Operas—which “contains 100 million words of data from 22,000 transcripts from American soap operas from the early 2000s”<sup>104</sup>—is a poor source of data about the use of the word COKE among cola drinkers at large. Likewise, a corpus composed of homework assignments written by high school students on the east side of Detroit will not be helpful in assessing whether Motorola’s FLIP PHONE has gone generic.

But with the aid of the internet, researchers can generate a representative corpus far more reliably (and cheaply) than they can produce representative survey results. For example, with the help of some basic computer programming, a researcher could collect *every single* Tweet that used the word BAND-AID during a specified time period. It is obvious that the authors of these tweets are familiar with the concept of adhesive bandages. A random

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102. Mouritsen, *supra* note 87, at 1954–55.

103. Consensus bias is the belief that one’s own choices, actions, qualities, judgments, and beliefs are widespread throughout the general population.

104. CORPUS AM. SOAP OPERAS, <https://www.english-corpora.org/soap/> (last visited Apr. 28, 2022).

sample of these results could show whether the generic or brand-name use is more common.

Corpus linguistics can also add a degree of scientific standardization to evidentiary methods already accepted. Rather than relying on the black box of Google's algorithm or cherry-picked media sources, researchers can analyze the results of corpora such as the News on the Web Corpus (NOW) to assess media usage on a systematic scale.<sup>105</sup> NOW "contains 15.1 billion words of data from web-based newspapers and magazines from 2010 to the present time."<sup>106</sup> Using a simple random sample drawn from this corpus, a researcher can make *generalizable* conclusions about the use of a mark in internet news sources, at least in fights over marks registered in the last ten years. Other corpora, such as the Corpus of Contemporary American English<sup>107</sup> and the Corpus of Historical American English,<sup>108</sup> contain large numbers of newspapers and magazines from past eras. What is more, is that these searches are replicable and transparent.

Finally, so long as a collection of documents attributable to the relevant consumers at the time the mark was registered can be identified and assembled, corpus linguistics provides researchers with the ability to test the genericness of a term *before* a mark was registered, even if many years or decades have transpired.

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105. NOW CORPUS, <https://www.english-corpora.org/now/> (last visited Apr. 28, 2022).

106. *Id.*

107. CORPUS CONTEMP. AM. ENG., <https://www.english-corpora.org/coca/> (last visited Apr. 28, 2022).

108. CORPUS HIST. AM. ENG., <https://www.english-corpora.org/coha/> (last visited Apr. 28, 2022).

### B. *Corpus Linguistics Methodology*

As mentioned, corpus linguistics entails the empirical study of naturally occurring language that has been gathered into a collection or corpus (plural *corpora*) of items of similar format. The purpose of corpus creation is to facilitate the retrieval and examination of language usage. The language in corpora is natural because there is little, if any, influence from the researcher on the type of language that was produced.

Before the modern personal computer became common place during the 1980s and 1990s, corpora were only available to researchers with access to expensive computers, usually at universities or in government-funded research laboratories. Additionally, some early corpora were published in paper format, and consequently, their users were required to visually search through numerous pages of books in order to access naturally occurring language. With the advent of the modern personal computer, and especially the internet, the terms “corpora” and “corpus linguistics” have become virtually synonymous with “electronic corpora” and “electronic corpus linguistics,” respectively. Not only has the speed of information retrieval increased astronomically, so too has the sophistication of the searches, and therefore, the information about language that can be obtained.

The usefulness of a corpus depends largely on the purpose users have for accessing it. Consequently, rather than asking whether a particular corpus is a good one, it is more useful to ask whether the corpus lends itself to answering the question at hand or to fulfilling a specific purpose. That said, all things being equal, the bigger the corpus, the better. Corpora are meant to give a glimpse into the natural language production of speakers and writers. As such, the bigger the sample size (i.e., the size of the corpus), the better the chances are of faithfully representing the population (i.e., the speakers and writers of the language or language variety). However, Jesse Egbert states that

“[w]hile certainly important, corpus size simply cannot compensate for poor design.”<sup>109</sup> In addition to corpus size, other important considerations are the concepts, or ideals, of representativeness and balance. Douglas Biber defines representativeness as “the extent to which a sample includes the full range of variability in a population.”<sup>110</sup> In other words, corpus creators should work to understand the type of language variation that exists in the variety to be collected, and then try their best to collect samples of registers that accurately portray that variability. Corpus balance is related to representativeness of corpora, and it deals with how well the different parts of a corpus reflect the proportions of language production in the various registers present in a particular language or language variety. In the end, representativeness and balance within corpus design are ideals rather than measurable realities. The exact distribution and proportions of registers of a language can only be estimated since it is not possible to gain access to the entirety of a language or language variety. In fact, if we had access to all the production of a language (i.e., all forms of language ever produced by the population), we would have no need for a corpus (i.e., a sample). Researchers do their best to faithfully estimate the proportions of registers within a language to inform their decisions about corpus design.

### 1. Choosing and Developing Correct Corpora

In many ways, applications of corpus linguistics to matters of trademark genericity are well suited for objective, scientific exploration. However, within the adversarial system common in the U.S. legal system, even objectivity can be weakened. Just as Stephen Mouritsen’s comment

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109. Jesse Egbert, *Corpus Design and Representativeness*, in *MULTI-DIMENSIONAL ANALYSIS* 27, 33 (Tony Berber Sardinha & Marcia Veirano Pinto eds., 2019).

110. Douglas Biber, *Representativeness in Corpus Design*, 8 *LITERARY & LINGUISTIC COMPUTING* 243, 243 (1993).

challenges judges to not be “outcome determinative,”<sup>111</sup> those conducting research in corpus linguistics matters need to carefully construct research designs that reach scientific credibility.<sup>112</sup>

The following Section briefly outlines procedures designed to address relevant research questions while maintaining objectivity. One of authors for this Article, William Eggington, has served as a forensic linguistic consultant and expert witness in a number of trademark infringement cases that highlight salient issues. Notably among those cases are *Genesis Attachments, LLC, v. Bacon*<sup>113</sup> and *Icon Health & Fitness, Inc. v. Nautilus, Inc.*<sup>114</sup>

The issue in *Genesis Attachments v. Bacon* involved the semantic relationship between “Genesis” and “Exodus.” A co-founder of Genesis Machines left the company and agreed to a set of non-compete obligations which, in part, stated that he would not use “genesis” “or any variants thereof, or any confusingly similar name, in any business.” He established a rival company and named it “Exodus Machines.” Using the collocate function in COCA, Eggington was able to show that “genesis” is listed as the fifth most frequent word preceding “exodus.” Typical usage examples include the “Genesis, Exodus, Leviticus” listing from the Old Testament, and the co-joined “Genesis and Exodus.” Of note is the Mutual Information (MI) score for each collocate set. Many corpus linguists consider scores above 3.0 as indicative of a “semantic bonding” between the two words. With its MI score of 9.95, the “genesis/exodus” collocate pairing reveals an extraordinarily strong lexical or collocational bond, which

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111. See Mouritsen, *supra* note 87, at 1915.

112. See generally Lawrence M. Solan, *The Forensic Linguist: The Expert Linguist Meets the Adversarial System*, in THE ROUTLEDGE HANDBOOK OF FORENSIC LINGUISTICS 395 (Malcolm Coulthard & Alison Johnson eds., 2010).

113. *Genesis Attachments, LLC v. Bacon*, 27-CV-11-3438 (Minn. Dist. Ct., Hennepin Cnty., 2011).

114. *Icon Health & Fitness, Inc. v. Nautilus, Inc.*, No. 1:17-cv-00164-DAK (D. Utah 2017).



can suggest a semantic bond as well. By comparison, this particular semantic bond is stronger than “tablespoon of butter” (9.59), and “bread and butter” (8.04), but not as strong as “peanut butter” (12.84). This finding enabled Eggington to offer an opinion that there was a strong associative relationship between “Genesis” as a trademark and “Exodus” as a trademark when used within the same commercial market. For people involved in the same industry, who are the potential buyers of the products developed by both companies, this semantic relationship is such that it would be highly improbable to think of “Exodus” without referencing “Genesis.” Such a relationship could easily lead to confusing the two companies.<sup>115</sup>

*Icon Health & Fitness, Inc. v. Nautilus, Inc.* centered around Icon’s trademark of two phrases, “One Touch” and “Quick Speed,” in reference to certain controls on their exercise machines. Other exercise machine companies had complied with requests to avoid using these terms by using substitutes such as “express speed.” Nautilus, on the other hand, claimed that they were using “One Touch” and “Quick Speed” purely as common descriptors on their machines and in their marketing.<sup>116</sup> Eggington determined to conduct a frequency and “Key Word in Context” (KWIC) analysis of the usage of “One Touch” and “Quick Speed” as used in the exercise machine domain by creating a series of specialized corpora using the AntConc Concordance desktop application. Results showed that Nautilus used the contested terms in ways that inferred specialized meaning beyond merely being common descriptors. Eggington left it up to the attorneys in the case to argue for or against trademark infringement. The case was recently settled with non-disclosure restrictions.<sup>117</sup>

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115. See Expert Witness Report submitted by Dr. William G. Eggington ¶¶ 10–20, *Genesis Attachments, LLC v. Bacon*, 27-CV-11-3438 (Minn. Dist. Ct., Hennepin Cnty., 2011) (on file with author, Dr. Eggington).

116. First Amended Complaint ¶¶ 5–6, 17–19, *Icon Health & Fitness, Inc. v. Nautilus, Inc.*, No. 1:17-cv-00164-DAK (D. Utah Jan. 18, 2018), ECF No. 24.

117. See Stipulation of Dismissal, *Icon Health & Fitness, Inc. v. Nautilus, Inc.*,

This overview of cases shows that one size does *not* fit all in research design and procedures. Sometimes a generalized corpus is sufficient; sometimes it is necessary to create a specialized corpus; and sometimes one should look at data such as mutual information sharing scores to address research questions.

### III. APPLYING CORPUS LINGUISTICS TO GENERIC AB INITIO

#### A. *Comic Con*

##### 1. Background of the Case

The San Diego Comic Convention (SDCC) has held an annual “Comic-Con convention” since 1970.<sup>118</sup> This multi-day convention “showcases several hundred events, workshops, educational and academic programs, games, award shows, costume contests, as well as hosts panels of special guests that include science fiction and fantasy authors, film and television actors, directors, producers, and writers.”<sup>119</sup> SDCC was not the first Comic-Con, but it has become the largest with “over 135,000 attendees” in 2016.<sup>120</sup> Beginning in 1997, SDCC began registering four marks related to Comic-Con: (1) Comic-Con; (2) Comic Con International; (3) Anaheim Comic-Con; and (4) San Diego

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No. 1:17-cv-00164-DAK (D. Utah June 26, 2019), ECF No. 164.

118. *San Diego Comic Convention v. Dan Farr Prods.*, 336 F. Supp. 3d 1172, 1177 (S.D. Cal. 2018).

119. *Id.* at 1177–78.

120. *San Diego Comic Convention v. Dan Farr Prods.*, No. 14-CV-1865 AJB (JMA), 2017 WL 4227000, at \*1 (S.D. Cal. Sept. 22, 2017), *aff'd*, 807 F. App'x 674 (9th Cir. 2020).

Comic Con International with the design mark below.<sup>121</sup>



In 2013, Dan Farr Productions (DFP)<sup>122</sup> began its annual Salt Lake Comic Con.<sup>123</sup> DFP advertised its convention with the below logos also using “Comic Con.”<sup>124</sup>



A year after the first Salt Lake Comic Con, SDCC filed federal trademark infringement claims against DFP in San Diego’s federal district court.<sup>125</sup> Three years later, both

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121. *Id.* at \*1 & n.2; *see also San Diego Comic Convention*, 336 F. Supp. 3d at 1178 (“Each of these registered trademarks is incontestable. Additionally, SDCC states that it has used these Comic-Con marks extensively and continuously in interstate commerce and thus the marks have become valuable assets as well as symbols of its goodwill and positive industry reputation.” (citations omitted)).

122. The other defendants in this case are the owners of Dan Farr Productions: Daniel Farr and Bryan Brandenburg. *San Diego Comic Convention*, 2017 WL 4227000, at \*1.

123. *Id.* (“SLCC is a three-day fan event featuring the best in movies, television shows, gaming, sci-fi, fantasy, and comic books. Since 2013, SLCC has held their convention every year. Additionally, beginning in 2014, SLCC also holds the Salt Lake Comic Con FanXperience in March or April of every year.” (citations omitted)).

124. *See id.*

125. *See id.* at \*2.

parties moved for summary judgment.<sup>126</sup> SDCC also moved to exclude DFP's linguist expert, and DFP moved to exclude SDCC's survey expert, both of which were hired to prove genericness.<sup>127</sup> The court denied DFP's motion to exclude but granted SDCC's motion to exclude, as will be discussed further below.<sup>128</sup> The court also denied DFP's motion for summary judgment based on genericness *ab initio* and genericide.<sup>129</sup> The court then granted summary judgment against DFP's defense of abandonment, but it denied the rest of SDCC's motion for summary judgment on its two trademark infringement claims.<sup>130</sup>

The case then went to trial later that same year, and the jury found, in favor of SDCC, that DFP infringed its Comic-Con marks and awarded SDCC damages as well.<sup>131</sup> The court also enjoined DFP from using the marks or "phonetic equivalents" of the marks.<sup>132</sup> DFP moved for, and lost its attempt for, judgment as a matter of law, a new trial, or judgment on its remaining defenses.<sup>133</sup>

The case went on appeal to the Ninth Circuit, which held that the district court was correct to grant summary judgment as DFP had insufficient evidence to support its generic *ab initio* claim.<sup>134</sup> The Court also chose not to address "whether a 'generic ab initio' theory of liability is

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126. *See id.*

127. *See id.*

128. *See id.* at \*3–8.

129. *See id.* at \*9–11.

130. *See id.* at \*12–14.

131. *See San Diego Comic Convention v. Dan Farr Prods.*, 336 F. Supp. 3d 1172, 1178 (S.D. Cal. 2018).

132. *See San Diego Comic Convention v. Dan Farr Prods.*, 336 F. Supp. 3d 1191, 1203 (S.D. Cal. 2018).

133. *See San Diego Comic Convention*, 336 F. Supp. 3d at 1177.

134. *See San Diego Comic Convention v. Dan Farr Prods.*, 807 F. App'x 674, 675 (9th Cir. 2020).

cognizable.”<sup>135</sup> But, the court did cite a case<sup>136</sup> that held “[a] generic mark cannot become a registrable trademark under any circumstances.”<sup>137</sup> The case has since settled.<sup>138</sup>

## 2. Genericness *Ab Initio*

At the district level, DFP argued that “Comic-Con” was generic at the time SDCC started using the term (i.e., *ab initio*).<sup>139</sup> DFP pointed to its evidence of a handful of books and articles from that time period using the term Comic-Con to refer to conventions other than San Diego’s Comic Con, as well as the Oxford English Dictionary definition of “con.”<sup>140</sup>

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135. *See id.*

136. *Id.* (citing *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 718 F.2d 327, 329 (9th Cir. 1983), *rev'd on other grounds*, 469 U.S. 189 (1985)).

137. *Park 'N Fly, Inc.*, 718 F.2d at 329.

[Defendant’s] primary argument that “Park 'N Fly” is generic [was] based on the words themselves. The words “park” and “fly” are both ordinary words, and at least the former, or some derivative, seems essential in describing the business. Further, the word “park” followed by a verb suggesting the activity to follow occurs frequently in commerce (e.g., “park and ride,” “park and shop”). [Defendant] also presented some evidence, though not conclusive, that “park and fly” or some close variant has been used by a number of operators, and the business was referred to by participants at airport car rental agency conventions as the “park and fly” business.

*Id.* at 330. And while the court found that the above arguments “strongly suggest[] that the validity of Park 'N Fly’s mark is questionable. It cannot compensate, however, for [Defendant’s] failure to provide any evidence with respect to consumer perceptions.” *Id.* Ultimately, the court concluded that it had to make a decision the record “before us, not on our own set of assumptions. Without evidence that to the consuming public the primary significance of the term is to denote the service Park 'N Fly offers and not its source, we are without a sufficient evidentiary basis to find Park 'N Fly’s mark generic.” *Id.* This holding illustrates both the lack of evidence in these types of cases but also the need for such evidence to prevent a court from speculating based on logic alone.

138. *See Ben Winslow, FanX Settles Lawsuit over Use of the Words ‘Comic Con,’ FOX13 SALT LAKE CITY* (July 31, 2020, 3:19 PM), <https://www.fox13now.com/news/local-news/fanx-settles-lawsuit-over-use-of-the-words-comic-con>.

139. *See San Diego Comic Convention v. Dan Farr Prods.*, No. 14-CV-1865 AJB (JMA), 2017 WL 4227000, at \*9 (S.D. Cal. Sept. 22, 2017), *aff'd*, 807 F. App’x 674 (9th Cir. 2020).

140. *See id.* at \*9–10; *see also id.* at \*7–8 (excluding DFP’s linguistic expert for

The court determined that the relevant public was defined in SDCC's consumer survey.<sup>141</sup> The survey defined the relevant public as respondents that either had or would "attend[] a convention featuring animation, comic books, or popular arts," in the last year or in the next year.<sup>142</sup>

The district court rejected both DFP's legal theory and supporting evidence.<sup>143</sup> The court first noted that the Ninth Circuit does not recognize genericness *ab initio* as a valid defense theory.<sup>144</sup> And though it granted SDCC's motion for summary judgment for this defense based on this reason alone, the court also explained why DFP's evidence was still insufficient even if the defense was legally acceptable.<sup>145</sup> First, the dictionary definition was (a) new and thus not relevant to the public's 1970s view of the term, (b) based on only part of the term at issue (i.e., "con"), and (c) weak evidence by Ninth Circuit standards.<sup>146</sup> Second, the court

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offering evidence that the term was generic at the time of the lawsuit and currently, but not at the time of first use, and examining documents mostly provided by the defendants' attorneys rather than discovered through independent research).

141. See *San Diego Comic Convention v. Dan Farr Prods.*, 336 F. Supp. 3d 1172, 1180 (S.D. Cal. 2018) ("[T]he *Teflon survey* produced by SDCC . . . established for the jury that 83% of the *relevant public* recognize 'Comic-Con' as a brand name and not a common term." (emphasis added)).

142. Declaration of Daniel R. Barber in Support of Defendants' Motion to Exclude the Report and Testimony of Matthew G. Ezell at 7–8, *San Diego Comic Convention v. Dan Farr Prods.*, No. 14-CV-1865, 2017 WL 4227000 (S.D. Cal. Sept. 22, 2017), ECF No. 106-3.

143. See *San Diego Comic Convention*, 2017 WL 4227000, at \*9–10.

144. See *id.* at \*9 (citing *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 408 F.3d 596, 602 (9th Cir. 2005)). But see *Genesee Brewing Co. v. Stroh Brewing Co.*, 124 F.3d 137, 150 (2d Cir. 1997) ("[R]elief is also available when the misrepresentation of source arises through the use of a phrase (like Swiss Army knife) that is generic *ab initio*."); *Hunt Masters, Inc. v. Landry's Seafood Rest., Inc.*, 240 F.3d 251, 255 (4th Cir. 2001) (holding a mark can be found generic "where the term was commonly used prior to its association with the products at issue"); *Schwan's IP, LLC v. Kraft Pizza Co.*, 460 F.3d 971, 976 (8th Cir. 2006) (acknowledging that a term may be deemed generic "where [it] was commonly used prior to its association with the products at issue").

145. See *San Diego Comic Convention*, 2017 WL 4227000, at \*9–10.

146. See *id.* at \*10 ("First, the Court notes that the OED states that the

found that this evidence of genericness *ab initio* did not show that “the primary significance behind the term ‘Comic-Con,’ before Plaintiff’s first use, was to refer to comic conventions in general, and not to Plaintiff’s comic convention.”<sup>147</sup> In other words, the court seemed to leave open the possibility of generic *ab initio* but concluded that DFP did not have enough evidence from before 1970 to support its theory.

The court’s statement reflects the lack of legal theory for genericness *ab initio*. According to the court’s standard, DFP needed to show that “Comic-Con” did not refer to SDCC’s use of the term before SDCC ever used the term.<sup>148</sup> In the end, any evidence of the public using “Comic-Con” to refer to another comic convention before SDCC’s would show that at least some of the public saw this term as either generic or at least referring to a competitor’s brand of convention. The bigger issue is that the court had no legal standard to determine what and how much evidence was needed to show that “Comic-Con” was generic even before SDCC began its convention. It is in this void where corpus linguistics can provide some direction.

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definition of ‘con’ is a ‘new entry’ from the OED’s third edition from September of 2002. Thus, it has no relevance to establishing an understanding of the term Comic-Con pre-1970. Moreover, courts have held that dictionary definitions are ‘weak evidence that [a plaintiff’s] term [is] generic.’ Furthermore, courts have routinely rejected the breaking down of phrases into their individual and often generic parts.” (citations omitted) (alterations in original); *see also* Comm. for Idaho’s High Desert, Inc. v. Yost, 92 F.3d 814, 821 (9th Cir. 1996); Cal. Cooler, Inc. v. Loretto Winery, Ltd., 774 F.2d 1451, 1455 (9th Cir. 1985).

147. *San Diego Comic Convention*, 2017 WL 4227000, at \*10 (emphasis added) (first citing *Krav Maga Ass’n of Am. v. Yanilov*, 464 F. Supp. 2d 981, 988–89 (C.D. Cal. 2006); and then citing *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 408 F.3d 596, 604 (9th Cir. 2005)); *see also id.* at \*6 (“Defendants have not produced documents that demonstrate that ‘Comic-Con’ was frequently or ordinarily used pre 1970s to refer to the specific type of event at issue in the present matter, nor that the majority of consumers used the phrase to generally refer to comic book conventions.”).

148. *See San Diego Comic Convention*, 2017 WL 4227000, at \*6

### 3. Corpus Results

Below we discuss the results of creating and analyzing a custom-made corpus for more objective evidence of how consumers viewed the term “Comic-Con” at the time of its first use, beginning with Fanzines.

First, we needed to determine the relevant public in this case. Based on the court’s holding, the relevant public was those who had “attend[ed] a convention featuring animation, comic books, or popular arts.”<sup>149</sup> Now, this definition has been narrowed to just past attendees for determining generic *ab initio*, as it is only past consumers that we are concerned with.

Fanzines are non-professionally produced magazines written by fans of a particular subculture or “fandom,” and are intended to provide a forum for fans to interact with each other. The cost of the issues is inexpensive, usually only to defray production and postage costs. Copies can also be obtained by submitting artwork or written contributions, such as letters of comment.<sup>150</sup> For the purposes of this paper, fanzines offer a unique window into the naturally occurring language and jargon of the science fiction fan community in the past. It should be noted that the production of paper fanzines has diminished substantially with the rise of the Internet, as online forums and social media sites have nearly taken the place that paper fanzines of the past occupied.<sup>151</sup>

In an effort to investigate the possible use of COMIC-CON before the start of the Golden State Comic Book Convention in 1970, which officially changed its name to San Diego Comic-Con in 1973,<sup>152</sup> a corpus of science fiction

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149. See *supra* notes 141–142 and accompanying text.

150. See *Fanzine*, OXFORD ENGLISH DICTIONARY (3d ed. 2021); Bruce Southard, *The Language of Science-Fiction Fan Magazines*, 57 AM. SPEECH 19, 20–22 (1982).

151. See, for example, the social media platform Reddit, a site organized around communities or subcultures. REDDIT, <https://www.reddit.com/> (last visited Apr. 30, 2022).

152. See *About Comic-Con International*, COMIC-CON INT’L: SAN DIEGO,



fanzines was created. All issues of fanzines published in 1969 that were available at The Fanac Fan History Project website<sup>153</sup> were retrieved.<sup>154</sup> This website is devoted to the preservation and distribution of information about science fiction and science fiction fandom, and houses thousands of fanzines published between 1930 and 2020.<sup>155</sup> The website makes available each issue of a given fanzine as either a PDF file or a collection of JPEG image files, one image file per page in an issue.

In this study, in order to facilitate later digital searching for COMIC-CON and its variants, the text in the PDF and JPEG was first extracted and saved to TXT files. Some of the PDF files were already indexed, that is, they were already searchable. With these files, the *xPDF* toolkit,<sup>156</sup> and specifically the *pdftotext* command-line tool, was utilized to extract the text. For the PDF files that were not already indexed, Google's open-source optical character recognition (OCR) engine Tesseract<sup>157</sup> was leveraged. This OCR engine was also used to harvest the text from all JPEG image files. Extracting the text from both types of PDF files (those already indexed and those not yet indexed) and all JPEG files yielded 1,781,350 words in the fanzines corpus.

The accuracy of text returned by OCR software depends greatly on the clarity of the images that it analyzes. Unsurprisingly, the text that the OCR software produced for the fanzines corpus contains errors caused by poor image

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<https://www.comic-con.org/about> (last visited Apr. 28, 2022).

153. FANAC FAN HIST. PROJECT, <http://www.fanac.org/> (last visited Apr. 28, 2022).

154. This task was automated by an R script written by Earl Kjar Brown.

155. FANAC FAN HIST. PROJECT, *supra* note 153; see *Site History (2021–2022)*, FANAC FAN HIST. PROJECT, <https://fanac.org/history.html> (Apr. 30, 2022).

156. See *generally* XPDFREADER, <https://www.xpdfreader.com/> (last visited Apr. 28, 2022).

157. Tesseract was originally developed by Hewlett-Packard in the mid-1980s but was developed and maintained by Google from 2006–2018. *Tesseract*, GITHUB, <https://github.com/tesseract-ocr/tesseract> (last visited Apr. 28, 2022).

quality. Accordingly, a regular expression was created to search for COMIC-CON and its variants, both uppercase and lowercase, as well as anticipated possible erroneous characters returned by the OCR engine.<sup>158</sup>

The search for COMIC-CON in the fanzines corpus returned three occurrences. The results suggest that the term was used as a moniker for conventions among science fiction fans, beginning at least in the late 1960s.

The first example, shown below, suggests that the writer of this letter conceptualizes a COMICON as a gathering of fans of science fiction and comic books. Several linguistic features in this example suggest that COMICON was a common term at the time: the use of the indefinite article “a” before COMICON, the lack of quotation marks around COMICON, and the lack of explanation from the writer about what he means with COMICON.

**EXAMPLE 1:** Hey Frank, that generalization about comic fandom was pretty far-out. If you think they don't care at all about people, watch them at a **Comicon** [sic] with Kirby, Stanley and the rest, and watch them jumping all over the Names. Furthermore, only a certain minority are interested in money money. It is these guys, Rogofsky and Bails, etc., that keep the whole mess at the pitiful level it occupies now, mostly in Rocket's Blast.<sup>159</sup>

Similarly, the second example, published in 1969 and also shown below, clearly gives the impression that the writer considers a COMICON to be a convention, as he was removed from the program of one organized by Phil Seuling, an organizer of comic book conventions in the late 1960s and

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158. The case-insensitive search performed with the regular expression “[co][co]\W\*[mn][ilt][co]\W\*[co]\*\W\*[co][mn]” looked for “Comic-Con,” “Comic Con,” “ComicCon,” “ComiCon,” and their lowercase versions, as well as a few anticipated erroneous characters returned by the OCR engine (e.g., “c” in place of “o” and “l” or “t” in place of “i”). Also, the regular expression takes into account possible hyphenation between the two syllables of “comic,” that is, “co-mic,” across lines of text, as hyphenation is present in some of the fanzines.

159. Letter from Gabe Eisenstein to Editors, *in* BEABOHEMA III, Mar. 1969, at 70, <https://fanac.org/fanzines/Beabohema/Beabohema03.pdf> (detailing the opinions of a fan from Highland Park, Illinois) (reproduced *infra* Appendix A).

1970s.<sup>160</sup> While the writer does not make it clear which convention he is referring to, it very well may be the First International Convention of Comic Art organized by Seuling, in New York City, in 1968.

**EXAMPLE 2:** I told Phil Seuling to his face what I thought of a high school English teacher selling comics at exorbitant prices to kids to [sic] young to work for their money (and got kicked off his **comicon** [sic] program as a result). I think the dealers in comics are, most of them, cynical, sub-literate jerks—and I include Seuling, who threw Mom, Apple Pie and Free Enterprise back at me in response. Seuling can't even write English; it is farcical to think of him teaching it, ferghodsake [sic].<sup>161</sup>

A third example appears in a section of a fanzine that gives reviews about other fanzines.<sup>162</sup> In the context of detailing “things of interest” in a particular fanzine,<sup>163</sup> mention is made of “a short **Comicon** report (1968).” It is unclear which convention may be referred to here, but “Comicon” appears to be used in this instance in a generic sense to refer to a specific convention or perhaps to refer to a particular convention by name.

In summary, the results of the search for COMIC-CON in the fanzines corpus suggest that this term was likely used as a generic term for conventions of comic book and science fiction fans by at least the late 1960s. These few examples are likely the tip of the proverbial iceberg, as it very likely that COMICON as a nickname for comic book fan convention was more common in the vernacular of this community than these few examples make apparent. Appendix A contains screenshots of the three examples from fanzines discussed in

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160. See *Phil Seuling*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Phil\\_Seuling](https://en.wikipedia.org/wiki/Phil_Seuling) (Jan. 29, 2022, 9:41 AM).

161. Letter from Ted White to Editors, in *BEABOHEMA VI*, Oct. 1969, at 86, <https://fanac.org/fanzines/Beabohema/Beabohema06.pdf> (detailing the opinions of a fan from Brooklyn); see *infra* Appendix A.

162. See *Nightmare 1*, CHECKPOINT, Aug. 1969, at 2; *infra* Appendix A.

163. *Nightmare 1*, CHECKPOINT, Aug. 1969, at 2 (reviewing the first issue of the fanzine *Nightmare*).

this Section.

## B. *The Episcopal Church*

### 1. Background of the Case

Our second test case arises out of a church schism in South Carolina.<sup>164</sup> In 2012, certain members and parishes of the “Protestant Episcopal Church in the State of South Carolina,” the historic diocese of Episcopal Church in South Carolina, wanted to separate.<sup>165</sup> The schism was led by Reverend Mark Lawrence, then the duly appointed and ordained bishop of the Episcopal Church in that diocese, although he was removed from his post after he moved for his diocese to disassociate with the broader church.<sup>166</sup> Prior to the schism, Lawrence had registered a series of trademarks on behalf of his diocese, including “Diocese of South Carolina”; “The Episcopal Diocese of South Carolina”; “The Protestant Episcopal Church in the Diocese of South Carolina”; and “The Diocesan Seal.”<sup>167</sup> The broader Episcopal Church also owned five additional trademarks: “The Protestant Episcopal Church in the United States”; “The Episcopal Church”; “The Episcopal Church Welcomes You”; “La Iglesia Episcopal”; and “The Episcopal Shield.”<sup>168</sup>

Following the schism, two different organizations claimed to be the true successor of the historic organization.<sup>169</sup> Lawrence led an organization called the “Diocese of South Carolina.”<sup>170</sup> Although no longer associated with the formal Episcopal hierarchy, they continued to consider themselves part of the Episcopal

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164. *See* vonRosenberg v. Lawrence, 412 F. Supp. 3d 612, 624 (D.S.C. 2019).

165. *Id.* at 624–25.

166. *See id.* at 626.

167. *Id.*

168. *Id.*

169. *See id.*

170. *Id.*

tradition.<sup>171</sup>

By contrast, those parishes that remained within the formal hierarchy, fell under the leadership of Bishop Charles vonRosenburg, adopting the name “The Episcopal Church of South Carolina” (TECSC), the formal diocese within the hierarchy.<sup>172</sup> VonRosenburg sued Lawrence and his organization for continuing to use the disputed trademarks.<sup>173</sup>

## 2. Genericness *Ab Initio*

Among other things, vonRosenburg sued Lawrence’s organization for trademark infringement because of its continued use of Episcopal trademarks.<sup>174</sup> No one disputed that TECSC owned the marks.<sup>175</sup> Nor did they argue that the marks had not yet achieved incontestable status.<sup>176</sup> Instead, Lawrence contended that his organization could not be guilty of trademark infringement, because “The Episcopal Church” was already generic at the time the marks had been registered.<sup>177</sup>

The court disagreed. “Assuming, without deciding, that an incontestable mark can be generic *ab initio*,” the court concluded that Lawrence had “failed to identify any evidence creating a dispute of material fact that ‘The Episcopal Church’ is generic under the relevant standard for assessing

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171. *See id.*

172. *See id.*

173. *See id.* at 627.

174. *See id.*

175. *Id.* at 633.

176. *See id.*

177. *See id.* at 634. While the court called this an issue of generic *ab initio*, it is worth noting that the Episcopal mark was not likely to be generic when it was first used. *See id.* It instead likely experienced what is known as “genericide,” which is when a non-generic term becomes generic over time. However, as the issue was the genericness of the mark at the time of the registration, generic *ab initio* is the applicable issue here.

genericness.”<sup>178</sup> In reaching this conclusion, the court concluded that the relevant consuming public was the public at large:

[W]hile the most-relevant consuming public is potential parishioners, the anecdotal evidence of confusion demonstrates that the potential consuming public includes individuals who may never attend a Parties’ church or have to decide between doctrines and communities. Instead, the uncontroverted evidence shows that *the consuming public includes relatives of local students, students at The Porter-Gaud School and carriage tour-guides in Charleston. . . . [So it includes] the public at large, who can equally take advantage of the Parties’ services . . .*”<sup>179</sup>

### 3. Corpus Results

In an effort to analyze the possible generic meaning of the three-word phrase THE EPISCOPAL CHURCH, a case-insensitive search of those three words in The Corpus of Contemporary American English was performed.<sup>180</sup> The research question was how often does the three-word phrase THE EPISCOPAL CHURCH refer to the church affiliated with the Anglican Communion that looks to the Archbishop of Canterbury for ecclesiastical and theological leadership? The Anglican Communion “comprises more than 80 million members in 44 regional and national member churches in more than 160 countries,” and The Episcopal Church “is part of the Anglican Communion, and is comprised of 109 dioceses in 16 nations.”<sup>181</sup> The Episcopal Church was founded in the

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178. *Id.* at 635.

179. *Id.* at 655 (emphasis added).

180. “The Corpus of Contemporary American English (COCA) is the only large ‘representative’ corpus of American English. COCA is probably the most widely-used corpus of English, and it is related to many other corpora of English that we have created. . . . The corpus contains more than one billion words of text (25+ million words each year 1990–2019) from eight genres: spoken, fiction, popular magazines, newspapers, academic texts, and (with the update in March 2020): TV and Movies subtitles, blogs, and other web pages.” CORPUS CONTEMP. AM. ENG., <https://www.english-corpora.org/coca/> (last visited Apr. 28, 2022).

181. *The Anglican Communion*, EPISCOPAL CHURCH, <https://episcopalchurch.org/anglican-communication> (last visited Apr. 28, 2022).

United States shortly after the American Revolution as a consequence of the refusal by the Anglican clergy in the newly formed country to swear allegiance to the British monarchy, which was required within the Anglican Church.<sup>182</sup>

The Corpus of Contemporary American English (COCA) contains 248 occurrences of the phrase THE EPISCOPAL CHURCH between the years 1990 and 2004. The broader Episcopal Church had filed its application for the mark THE EPISCOPAL CHURCH in December 2004. Therefore, rather than search the entire COCA, the study only gathered occurrences up to 2004 for analysis, as the claim was that the mark was generic at the time it was registered. Once the occurrences were retrieved, the dataset was analyzed in the following manner: First, the four authors independently inspected the first fifty concordance lines and individually made a judgment as to whether THE EPISCOPAL CHURCH in each of those lines clearly referred to The Episcopal Church under the guidance the Archbishop of Canterbury, referred to another church without that affiliation, or whether it was unclear from the available context which church was being referred. In preparation for coding the remaining 198 concordance lines, the authors met to discuss problematic instances of the phrase and come to a consensus about how to interpret surrounding context to make an accurate decision. Next, two of the four authors were responsible for independently inspecting the first half of the tokens and individually making a judgment on each token. The other two authors independently inspected the second half of the dataset. In 162 instances of the 198 remaining concordance lines, the two examiners who inspected those concordance lines had identical interpretations. In the thirty-six cases on which the two examiners disagreed, a third examiner was consulted, and in the vast majority of cases, a consensus was reached among the three examiners.

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182. *See id.*

Examples four and five below are two random samples of the 248 occurrences of THE EPISCOPAL CHURCH in the Corpus of Contemporary American English that were examined according to the procedure described above.

**EXAMPLE 4:** of unity. Typically vague, doctrinal formulations often succumb to arguments about their binding power. Worship becomes the way to envision a peace which passes understanding. Of course, Episcopal worship and ministry can themselves become sources of controversy. How can the church realize a comprehensive form of religious life when the nature of its central forms becomes uncertain? In recent decades that has been the church's quagmire. Liturgical revision and admission of women to ordained ministry created new understandings of the offices which the church utilizes to embody unity. Though these changes were approved by the Episcopal Church's deliberative bodies, such actions revealed that new understandings of historic doctrines had already emerged. Ecclesiastical procedures alone did not render conclusive solutions to doctrinal questions. Similarly, neither judicial nor legislative action on the ordination of openly gay persons would be definitive for Episcopalians. At best the procedural approach may create venues for conversation. Common prayer is a historic commitment to pursue mutual intent while tolerating divergent forms. It has allowed Episcopalians to live with procedural uncertainty while exploring the local, consensual sources of unity.<sup>183</sup>

**EXAMPLE 5:** as when I was a kid. I look at the houses, and I think: She was in my fifth-grade class, and one winter day I was walking home without any gloves on and she saw me, put on gloves, came out her side door, knocked me down, and washed my face with snow. She grew up to be smart and shy. He moved to Washington, D.C., and got a job at the Pentagon doing research for a colonel who holds the world's record for sit-ups. I danced with her at the Episcopal church square dance one night and liked her a lot. Her mother liked me but she didn't. She later became a hippie and went with older guys and got pregnant or something. She and I and some other kids ran in the smoke and flames when the farmers were burning off their pastures along Middleton Road in early spring, and later we roughhoused and I pinned her to her front lawn under my sooty knees. She inherited a restaurant in Spain. She was the prettiest girl in town<sup>184</sup>

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183. See Appendix B, token 145; William L. Sachs, *Procedural Abyss*, CHRISTIAN CENTURY, June 1996, at 645–46.

184. See Appendix B, token 181; Ian Frazier, *Home Town*, ATL. MONTHLY, Oct. 1994, at 96, 102.



The results of the analysis of the 248 concordance lines with the case-insensitive, three-word phrase THE EPISCOPAL CHURCH reveal that in 218 cases (or 88%), this phrase was judged to refer to The Episcopal Church aligned with the Anglican Communion that follows the leadership of the Archbishop of Canterbury. The third example, from the magazine *Christian Century*,<sup>185</sup> is an example that was marked as clearly referring to The Episcopal Church. In thirty cases (or 12%), the exact church to which this phrase referred was unclear, whether The Episcopal Church or a splinter group that still uses the adjective EPISCOPAL. The fourth example, from the magazine *Atlantic Monthly*,<sup>186</sup> was marked as unclear. Surprisingly, in no instances did the authors feel that THE EPISCOPAL CHURCH clearly referred to a break-off church that maintains the adjective EPISCOPAL in its name.

In summary, in the vast majority (88%) of the 248 instances of the case-insensitive, three-word phrase THE EPISCOPAL CHURCH in the Corpus of Contemporary American English, the phrase clearly refers to The Episcopal Church rather than a splinter group or any church with the same belief system as the main Episcopal Church.<sup>187</sup> Appendix A contains all 248 instances.

#### IV. CONCLUSION, ISSUES & APPLICATION

In conclusion, courts should recognize genericness *ab initio* as a valid defense in trademark infringement cases, including those arising from incontestable marks. However, the traditional tools used to assess genericness in the context of genericide are not practicalable for assessing whether a mark was generic *in the past*. Corpus linguistics provides a robust alternative, a rigorous methodology for testing

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185. William L. Sachs, *Procedural Abyss*, CHRISTIAN CENTURY, June 1996, at 645–46.

186. Ian Frazier, *Home Town*, ATL. MONTHLY, Oct. 1994, at 96, 102.

187. See *infra* Appendix B.

language usage. And while there is a need for a greater study of this tool, this Article has shown how this empirical tool can provide concrete answers to the plaguing question of how to determine whether a term is generic at the time a party adopts it. With countless cases that have dealt with this issue, the field is ripe with the need for further research.

## APPENDIX A

Screenshots of Occurrences  
of "Comicon" in Fanzines

**EXAMPLE 1.** Letter from Gabe Eisenstein to Editors, *in* BEABOHEMA III, Mar. 1969, at 70, <https://fanac.org/fanzines/Beabohema/Beabohema03.pdf>

regard good chunks of it as illiterate and full of profiteering swine. I told Phil Seuling to his face what I thought of a high school English teacher selling comics at exorbitant prices to kids to young to work for their money (and got kicked off his **comicon** program as a result). I think the dealers in comics are, most of them, cynical, sub-literate jerks--and I include Seuling, who threw Mom, Apple Pie and Free Enterprise back at me in response. Seuling can't even write English; it is farcical to think of him teaching it, ferghodsake.

**EXAMPLE 2.** Letter from Ted White to Editors, *in* BEABOHEMA VI, Oct. 1969, at 86, <https://fanac.org/fanzines/Beabohema/Beabohema06.pdf>

Hey Frank, that generalization about comic fandom was pretty far-out. If you think they don't care at all about people, watch them at a **acomicon** with Kirby, Stanley and the rest, and watch them jumping all over the Names. Furthermore, only a certain minority are interested in money money money. It is these guys, Rogofsky and Bails, etc., that keep the whole mess at the pitiful level it occupies now, mostly in Rocket's Blast. But anyway, therer are an awful lot of comics fans who

**EXAMPLE 3.** *Nightmare 1*, CHECKPOINT, Aug. 1969, at 2

NIGHTMARE 1 (Duplicated - 33pp; UK.Quarto).  
Editor: John Muir, 50 Holker St., Manchester, M13 0DE.  
Available for: Trade, contribution, LoC, 2/6.

John Muir has been promising a fanzine for some time now and for a first issue Nightmare is extremely good - worth the wait in fact. Mind you, it's directed towards the film fan (and to a lesser extent, the comic maniac) - neither field being exactly my particular scene. Nevertheless, things of interest include a massive and near complete listing of fantasy and sf films of the fifties with comments by Charlie Winstone, film reviews by Alan Dodd, yet another article on the 'neglected' Arthur Machen by Tim Stout, and a short **Comicon** report (1968). Tim Stout's column reviews horror film deaths (assorted), J.R.Campbell has yet another attempted entry for 'Pseud's Corner' ('emotional hermaphrodites" indeed..), and

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## APPENDIX B

**Truncated THE EPISCOPAL CHURCH  
Concordance Lines from Corpus of Contemporary  
American English**

<b>Token</b>	<b>Year</b>	<b>Genre</b>	<b>Source</b>	<b>Pre</b>	<b>Node</b>	<b>Post</b>
1	2004	SPOK	NPR_D aybrea k	Senior Warden Jerry DeLemus says his parish no longer recognizes the local diocese or	the Episcopal Church	USA. Mr- JERRY- DeLEMUS-: When they take an unbiblical stance, we can't recognize
2	2004	SPOK	NPR_D aybrea k	issues like women priests and the Book of Common Prayer mirrored larger differences in	the Episcopal Church	nationwide. Parishioner Kevin Gorham(ph). Mr-KEVIN- GORHAM-1: This parish has gone through some struggle
3	2004	FIC	Bk:Wed ding	unused, attended dozens of parent- teacher conferences, voted regularly, and contributed to	the Episcopal church	each and every Sunday. At fifty-six, I'm three years older than
4	2004	NEWS	AssocP ress	his diocese will continue to allow same-sex blessings. # Meanwhile, conservatives in	the Episcopal Church	, the U.S. branch of Anglicanism, lamented that Bishops J. Jon Bruno of
5	2004	NEWS	AssocP ress	urged the 38 world primates to demand a halt to same-sex blessings, censure	the Episcopal Church	and recognize conservatives' Network of Anglican Dioceses and Parishes as the " true
6	2004	NEWS	SanFra nChron	we could actually get the Supreme Court to do one thing one month and	the Episcopal Church	to do another thing another month and Bravo to do something else another month

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
7	2003	SPOK	Fox_O Reilly	a series of personal attacks on Gibson over his movie about Jesus. Will	the Episcopal church	be torn apart over a new gay bishop? Secret testimony about weapons of
8	2003	SPOK	Fox_O Reilly	Appreciate it very much, doctor. When we come right back, will	the Episcopal church	be split apart by the controversy over a gay bishop? And new revelations
9	2003	SPOK	NPR_A TC	News, this is ALL THINGS CONSIDERED. I'm Melissa Block. At	the Episcopal Church	USA's convention in Minneapolis today, some conservative delegates walked off the floor
10	2003	SPOK	NPR_A TC	. And actually, you know, it was a very good day for	the Episcopal Church	, because we have policies and procedures for dealing with these accusations. And
11	2003	SPOK	NPR_A TC	felt grief too deep for words. He called this a pastoral emergency for	the Episcopal Church	. Does the depth of feeling around this issue surprise you, and what
12	2003	SPOK	NPR_A TC	serious issue that we're dealing with here. But, you know,	the Episcopal Church	has dealt with these issues before, and we've dealt with divisive issues
13	2003	SPOK	NPR_A TC	talking about you now sort of being the focus for a possible schism in	the Episcopal Church	and in the worldwide Anglican Communion. I imagine that's a very strange
14	2003	SPOK	NPR_A TC	shoulders. I want these folks, these very conservative folks, both in	the Episcopal Church	here in this country and overseas in the Anglican Communion—I want them

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
15	2003	SPOK	NPR_T alkNati on	have ulterior motives for levying that charge.' Our program on division in	the Episcopal Church	calls for several corrections. The first is grammatical. Ruth Counsel(ph) says she
16	2003	SPOK	NPR_S unday	Reverend Sinkford enthusiastically welcomes the court's ruling. Rev- SINKFORD; - The-# AUBREY:	The Episcopal Church	, which is dealing with its own internal divisions over the election of a
17	2003	SPOK	NPR_S unday	1:00-2:00 PM, After months of acrimonious public and private debate, this afternoon	the Episcopal Church	installs the Reverend V. Gene Robinson as bishop of New Hampshire. Robinson becomes
18	2003	SPOK	NPR_S unday	split from the Anglican Church, which could trigger a schism that would remake	the Episcopal Church	in the United States and abroad. Schisms between Christians date as far back
19	2003	SPOK	NPR_S aturday	has been a tortured electoral process. What do you think this means for	the Episcopal Church	? SCHORR: Well, it clearly means that there's trouble in the
20	2003	SPOK	NPR_S aturday	meanwhile, they wait for the consecration of Bishop Gene Robinson, and in	the Episcopal Church	, as in the Catholic Church, believers wonder what they should believe.
21	2003	SPOK	NPR_D aybrea k	NPR News, this is DAY TO DAY. I'm Alex Chadwick.	The Episcopal Church	s House of Bishops is voting today on whether to confirm Gene Robinson as

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
22	2003	SPOK	NPR_D aybrea k	quite stunned by them. Thankfully, we have a process set up in	the Episcopal Church	. When allegations like this are made, they're always taken seriously.
23	2003	SPOK	NPR_A TCW	march and didn't understand what it would accomplish. Wooten says he supported	the Episcopal Church	s decision in the 1970s to fund educational, health and other social needs
24	2003	SPOK	NPR_A TCW	, for the consecration of the first openly gay bishop in the history of	the Episcopal Church	. Unidentified Man: Be it known by all the people of God that
25	2003	FIC	Esquire	dog Tweeter Deux brought down a deer in the woods between the TwelvePlex and	the Episcopal Church	, and that Tweeter Deux was not a big dog, just, you
26	2003	MAG	Antiqu es	square where the market house stood: the chapel will be in line with	the Episcopal Church	Emmanuel Church; its size, forty by forty-eight. <sup>66</sup> At the close of the
27	2003	MAG	Souther nLiv	Twickenham has more than 65 antebellum homes, businesses, and churches (including	the Episcopal Church	of the Nativity, circa 1859). While you're in the area
28	2003	MAG	AmSpe ct	Anglican Communion in the Third World. The sharp Third World Anglican criticism of	the Episcopal Church	in the U.S., after it approved the election of an active homosexual as
29	2003	MAG	NatlRe view	in the South. Dean, as secular as presidential aspirants come, left	the Episcopal Church	in a dispute over a bike path in Burlington. He signed the first

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
30	2003	MAG	NatlRe view	in the future he will be called John Paul the Great. # #	The Episcopal Church	, U.S.A., continues to struggle with the issue of openly homosexual clergy.
31	2003	MAG	ChristC entury	are indeed facing a crisis. In the denominations often designated as liberal —	the Episcopal Church	, the United Church of Christ and the Presbyterian Church (U.S.A.) —
32	2003	MAG	USCat holic	midst of a feminist awakening. # That spiritual journey led her to join	the Episcopal Church	and affected nearly every aspect of her life, including her writing. But
33	2003	NEWS	NYTim es	join conservative leaders in Africa, Asia and South America and break ties with	the Episcopal Church	USA if it votes to confirm New Hampshire's chosen bishop, V. Gene
34	2003	NEWS	NYTim es	and competes for members, resources and property. # Church liberals insist that	the Episcopal Church	will eventually come to accept gay bishops just as it came to accept women
35	2003	NEWS	CSMon itor	how to respond to global warming - began in the late' 90s in	the Episcopal church	. After gaining backing from the state's bishops, MacAusland and Sally Bingham
36	2003	NEWS	AssocP ress	a rebel uprising in Juba. # Then an accountant and an activist in	the Episcopal church	, Lodu insisted he had nothing to do with the rebellion. His interrogators
37	2003	NEWS	SanFra nChron	s Thanksgiving Balloon Parade for free rides at Playland-at-the- Beach. # Dec. 20:	The Episcopal Church	called upon the San Francisco Housing Authority to abandon its policy of racial segregation



<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
38	2003	ACAD	Humanist	States is the work of the Regeneration Project in California, an initiative of	the Episcopal Church	. It includes Episcopal Power and Light (EP &L); a ministry that promotes
39	2003	ACAD	Physics Today	Rudolf on the 25th of myocardial infarction. They had both been residents at	the Episcopal Church	Home in Rochester, New York, for a number of years. #
40	2002	SPOK	CBS_Sixty	San Antonio, Texas, for nearly 20 years, ever since he left	the Episcopal church	and converted to Catholicism. He says mass, he gives communion.
41	2002	SPOK	CBS_Sixty	Father Phillips, once an Episcopal priest, became a Catholic because he thought	the Episcopal Church	was becoming too liberal. ! PHILLIPS: The big thing that
42	2002	SPOK	CBS_Sixty	! PHILLIPS: The big thing that really got me out of	the Episcopal Church	into the Catholic Church was the Catholic churchs teaching on abortion, artificial contraception
43	2002	FIC	Atlantic	a member continued to meet. As tended to be true in Cincinnati,	the Episcopal church	was conservative, presenting a stream of Cranmer's words in which the mind
44	2002	FIC	FantasySciFi	and that Alcier was a priest, though much different from the ones in	the Episcopal church	. On the second visit she noticed Alcier's slight limp. # Her
45	2002	MAG	Atlantic	of the Anglican Mission in America, which is intended officially to "lead	the Episcopal Church	back to its biblical foundations. " The mission aims to restore traditional teachings

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
46	2002	MAG	AmHeritage	affiliated with the United Methodist Church, the Presbyterian Church (U.S.A.),	the Episcopal Church	, the Evangelical Lutheran Church in America, and the United Church of Christ-have
47	2002	MAG	ChristCentury	So I simply went once in a while until I found my way to	the Episcopal church	I just described to you, where I've been given this precious thing
48	2002	NEWS	Atlanta	is at 1307 Webb Gin House Road in Lawrenceville. # Episcopal Eucharist #	The Episcopal Church	of St. Mary &; St. Martha of Bethany will have a proper liturgy and
49	2002	NEWS	Atlanta	Good Friday. # The church is at 737 Moon Road in Lawrenceville.	The Episcopal Church	of St. Mary &; St. Martha of Bethany will have a potluck supper at
50	2002	NEWS	Atlanta	Oct. 30. Games, food and prizes will be featured. # *	The Episcopal Church	of St. Mary and St. Martha of Bethany, 3805 Braselton Highway, Buford
51	2002	NEWS	Atlanta	to attend the lunch. The church is at 182 Hunter St. # *	The Episcopal Church	of St. Mary &; St. Martha of Bethany in Buford will have its Thanksgiving
52	2002	NEWS	Atlanta	at 5, 7 and 11 p.m. Information: 770-469-4881. # *	The Episcopal Church	of St. Mary &; St. Martha of Bethany, 3805 Braselton Highway, Buford
53	2002	NEWS	Denver	indiscriminately. # As I write this, a school in Ramallah affiliated with	the Episcopal Church	is under siege. Israeli soldiers forced their way in, threatened the children

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
54	2002	ACAD	Church History	do so, the Evangelical Lutheran Church in America (hereafter ELCA) and	the Episcopal Church	USA (Hereafter ECUSA) devoted nearly the final quarter of the twentieth century
55	2002	ACAD	Church History	much remains the reading of Article 7 for those who favor closer relationships with	the Episcopal Church	USA. # The opposition countered with two points on which it, too
56	2001	SPOK	CBS_Morning	The day he died, August 20th, is now dedicated to him in	the Episcopal Church	. (Footage-of-cadets; JONES: (Voiceover) Back at VMI in 1968
57	2001	FIC	ArkansasRev	scientific method. He had abandoned even the unemotional brand of religion practiced in	the Episcopal church	. The hill people favored extremes. Snake handling was practiced in some of
58	2001	MAG	America	taken on that extra work, since she is not herself a member of	the Episcopal Church	. " Because, " she said with considerable warmth, " Florence deserves
59	2001	MAG	ChristCentury	in Durham, North Carolina, and is now director of analytical research at	the Episcopal Church	Pension Group in New York City. His article is based on reports from
60	2001	MAG	ChristCentury	Pension Group in New York City. His article is based on reports from	the Episcopal Church	Foundation, the Church of the Nazarene, the Home Mission Board of the
61	2001	MAG	ChristCentury	Roman Catholics. " When I retired from 23 years of service and entered	the Episcopal Church	ordination process, the subject of the morality of my military service never came

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
62	2001	MAG	ChristC entury	the business world if it wants to grow. That's one reason why	the Episcopal Church	established a full-time missioner to CEOs and business “ strivers “ here two years
63	2001	MAG	ChristC entury	in America has placed in jeopardy its relationship of “ full communion “ with	the Episcopal Church	. At its August biennial session in Indianapolis, the Lutheran body's churchwide
64	2001	MAG	ChristC entury	rural situations where neither denomination can support a full-time priest or pastor. But	the Episcopal Church	will not accept a Lutheran pastor ordained by anyone other than a bishop “
65	2001	MAG	ChristC entury	part in the laying-on-of- hands.) Clearly, many Lutherans see full communion with	the Episcopal Church	as a costly decision that threatens Lutheran identity. Full— communion agreements with
66	2001	NEWS	AssocP ress	Evangelical Lutherans' recent agreements for sharing ministers, sacraments and mission work with	the Episcopal Church	and four other denominations . # Despite its name, the Missouri Synod is
67	2001	NEWS	AssocP ress	effort involves three denominations with which the Evangelical Lutherans have established unity agreements,	the Episcopal Church	, Presbyterian Church (U.S.A.) and United Church of Christ. # On
68	2001	NEWS	Atlanta	770-623-8109. In case of rain, performances will be April 21- 22. #	The Episcopal Church	of St. Mary &; St. Martha of Bethany will have a proper liturgy at

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
69	2001	NEWS	Atlanta	, call 770-717-9834. # An Easter egg hunt and picnic is planned at	the Episcopal Church	of St. Mary & St. Martha in Buford at 11 a.m. today. Children
70	2001	NEWS	Atlanta	shore of Norris Lake near Snellville. # In Buford, a priest at	the Episcopal Church	of St. Mary & St. Martha of Bethany will work with flint to ignite
71	2001	NEWS	Atlanta	the estimated 300 expected to attend the function. # The Altar Guild at	the Episcopal Church	of St. Mary & St. Martha of Bethany meets today for a service,
72	2001	NEWS	Atlanta	children's activities) and 6 p.m. (chili cook-off) Oct. 27 at	the Episcopal Church	of St. Mary & St. Martha of Bethany, 3805 Braselton Highway, Buford.
73	2001	NEWS	Atlanta	7:30 p.m. The church is at 1982 Old Norcross Road in Lawrenceville.	The Episcopal Church	of St. Mary & St. Martha will have a Family Eucharist at 5 p.m.
74	2001	NEWS	Denver	problems. # Morel and his colleagues aren't doing much cosmetic work on	the Episcopal church	organ. Their job is to restore the playability by repairing the instrument's
75	2001	NEWS	Denver	# I was honored to be part of the first Hispanic mission church in	the Episcopal Church	. Although my husband and I barely speak Spanish, we were delighted to
76	2001	MOV	Walt: The Man Behind the Myth	9, 1954, DIANE AND RON WERE MARRIED IN A SMALL CEREMONY AT	THE EPISCOPAL CHURCH	IN SANTA BARBARA. #AT THE EPISCOPAL CHURCH IN SANTA BARBARA. WHEN WE
77	2001	MOV	Walt: The Man Behind the Myth	MARRIED IN A SMALL CEREMONY AT THE EPISCOPAL CHURCH IN SANTA BARBARA. #AT	THE EPISCOPAL CHURCH	IN SANTA BARBARA. WHEN WE WERE GOING DOWN THE AISLE TOGETHER. . IT

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
78	2000	SPOK	NPR_A TCW	161286 8:00-9:00 PM, An historic agreement for two American churches. Leaders of	the Episcopal Church	meeting in Denver this weekend agreed to an alliance with the Evangelical Lutheran Church
79	2000	SPOK	NPR_A TCW	to end theological feuds and share resources. NPR's Mark Roberts reports from	the Episcopal Church	s 73rd Convention in Denver. (Soundbite-of-music) MARK-ROBERTS-repor: For 10,000 Episcopalians, this
80	2000	SPOK	NPR_A TCW	issue of ordination, the way the authority to minister is conferred. In	the Episcopal church	, only bishops can ordain clergy. Lutheran bishops, on the other hand
81	2000	SPOK	NPR_A TCW	Dakota, described how Lutherans dominate his community. He says they fear that	the Episcopal church	will impose Episcopal beliefs on Lutherans. Bishop ANDY FAIRFIELD (Episcopalian):
82	2000	SPOK	NPR_A TCW	ties, most misgivings will eventually fade. This coming week, delegates to	the Episcopal church	Convention will debate even more contentious issues: whether to bless same-sex marriages and
83	2000	FIC	Bk:SullivansIsl and	the Gullah culture, as opposed to a Charlestonian reared in the strictures of	the Episcopal Church	. Big difference. Gullah culture? Ah, Gullah. It's Lowcountry
84	2000	MAG	SportsIll	then a teacher at her father's school, were united in marriage at	the Episcopal church	in Freehold on the Wednesday after Labor Day in 1939. In marriage Kelley

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85	2000	MAG	ChristC entury	took note of related research in eight denominations, Those national groups range from	the Episcopal Church	and the United Church of Christ to Assemblies of God and Vineyard churches.
86	2000	MAG	ChristC entury	like that. Even Episcopal members we surveyed who did not grow up in	the Episcopal Church	said that the parish's denominational identity was important to them in choosing to
87	2000	NEWS	AssocP ress	pastoral letter acknowledging “ deep concern and opposition “ regarding a unity pact with	the Episcopal Church	but urging Lutherans to accept it. # The “ full communion “ pact
88	2000	NEWS	AssocP ress	overwhelmingly at the Lutherans' convention last year and comes up for approval at	the Episcopal Church	convention in July. # The Word Alone Network, a group of Lutherans
89	2000	NEWS	AssocP ress	Lutheran Church in America have decided to press ahead on a unity pact with	the Episcopal Church	, despite some opposition. # The Church Council, which sets policy between
90	2000	NEWS	AssocP ress	pact approved by last year's assembly go into effect next Jan. 1 if	the Episcopal Church	gives its assent at a July convention. Lutheran opponents of the pact had
91	2000	NEWS	Atlanta	Federal gunboat bombardment in 1863 but was damaged during a storm in 1893.	The Episcopal church	is on the National Register of Historic Places and is the most photographed building
92	2000	NEWS	Atlanta	Atlanta and 34th president of the House of Deputies of the General Convention of	the Episcopal Church	, will be featured speaker at a healing mission Oct. 21-22 at St. Matthew

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93	2000	NEWS	SanFra nChron	, have not done. “ # Not true. # For years,	the Episcopal Church	has officially set aside April 4—the day the civil rights leader was
94	1999	MAG	AmSpe ct	, then up 32nd street to Wisconsin. We ducked into the churchyard of	the Episcopal Church	of Georgetown, visited with two men with two dogs, and then went
95	1999	MAG	ChristC entury	Christ. Meanwhile, the ELCA prepared a revised version of a concordat with	the Episcopal Church	. The pact failed to win approval from the ELCA in 1997 because of
96	1999	NEWS	CSMon itor	ordination in 1976. A similar step was followed by the General Convention of	the Episcopal Church	in 1976. In 1980, the United Methodists (created in 1968 by
97	1999	NEWS	Atlanta	CA 92807. # Oliver Kent Ames, a member of Troop 797 at	the Episcopal Church	of Saint Peter and Saint Paul, has attained the rank of Eagle Scout
98	1995	MOV	Jumanj i	once. - Where’s Sir Sav-a-lot? - Monroe and Elm. -	The Episcopal church	. - No, it’s not a church anymore. Now it’s
99	1991	MOV	Samura i Cop	birthday. - Thank you. What church do you go to? -	The Episcopal Church	in Beverly Hills. Ah, the Episcopal Church. That’s very nice
100	1991	MOV	Samura i Cop	you go to? - The Episcopal Church in Beverly Hills. Ah,	the Episcopal Church	. That’s very nice. Well. . . it was nice meeting you,
101	1999	SPOK	NBC_D ateline	Jack Swerling: (Bishop- William-Bec) Mr-JACK- SWERLING: We had—we had the bishop of	the Episcopal Church	, so he was the dream witness. Bishop BECKHAM: (In court



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102	1999	FIC	Columbia Journal Review	2840 Theodore Ursus was relieved to find that	the Episcopal church	adhered physically to ancient traditions, evidenced by the choir. He was in
103	1999	FIC	Plough shares	“ In fact, I’m in town to direct a fundraising film for	the Episcopal Church	. You know, tasteful, with a little MTV. “ # “
104	1999	FIC	Bk:New Song	complete restoration of our organ. The only thing I haven’t done in	the Episcopal Church	is attend my own funeral. My point is that I know what I
105	1999	MAG	ChristC entury	Christian Church (Disciples of Christ), the Christian Methodist Episcopal Church,	the Episcopal Church	, the International Council of Community Churches, the Presbyterian Church (U.S.A.)
106	1999	MAG	ChristC entury	convention of his diocese, Spong, who has spent decades seeking to push	the Episcopal Church	, and all Christianity, to change many of its traditional beliefs and practices
107	1999	MAG	ChristC entury	of Christian Initiation of Adults-now the way one becomes Catholic as an adult.	The Episcopal Church	soon followed with a process of its own. Many mainline Protestant churches,
108	1998	MAG	Futuris t	Church USA, and other similar mainline bodies. In the United States,	the Episcopal Church	, the Evangelical Lutheran Church in America, and other mainline bodies are moving
109	1998	MAG	AmSpe ct	, even as mainline Protestantism increasingly resembles the Heaven’s Gate cult. While	the Episcopal Church	, for example, has lost over a third of its members in the

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110	1998	NEWS	NYTimes	among some Methodist groups. # Last July, priests and lay people at	the Episcopal Church	s General Convention barely defeated a proposal that the church develop liturgies for same-sex
111	1998	NEWS	AssocPress	. # In his first three meetings, Sullivan was the lone vote supporting	the Episcopal Church	s request that GM leave South Africa, where the majority black population was
112	1998	NEWS	Atlanta	by the Christian community? CHARLES ROUNTREE Decatur (Rountree is junior warden at	the Episcopal Church	of the Epiphany) Justifying sins # Homosexuals argue we should interpret the Bible
113	1998	ACAD	Church & State	on the front burner of every province in the world. Lambeth is where	the Episcopal Church	was twenty years ago. “ # Baptists Convene Annual Meeting in Utah:
114	1998	ACAD	AmericanQ	clearly did not, even when she saw the suffering of the survivors at	the Episcopal church	in Pine Ridge that served as a hospital for the victims. The church
115	1998	ACAD	AnthropolQ	ideas of the times grounding economic activities in nature. His life-long participation in	the Episcopal Church	did not extend to bonding with a moral community beyond the Church, as
116	1997	SPOK	CNN_Talkback	You're Christian, What are the Kids? “ She was raised in	the Episcopal church	. Her husband of 25 years is Jewish. You've raised your son
117	1997	FIC	Antioch Rev	brother of a girl she'd met in Glacier Park, a fundraiser for	the Episcopal Church	, the second with the uncle of Shari Morgan. The uncle owned an

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118	1997	FIC	SouthernRev	Miss Lavinia Doolittle knelt but never rose from taking communion at the altar in	the Episcopal church	on Palm Sunday. She died with her wafer in her mouth. I
119	1997	FIC	FantasySciFi	Meeting House, the statue of One-Legged Peter Stuyvesant, the flowers planted by	the Episcopal Church	ladies, it looks like something from a more quaint and quiet town.
120	1997	MAG	ChristCentury	of both the Formula of Agreement with Reformed communities and the proposed Concordat with	the Episcopal Church	; but this, I think, would be a serious misapplication of Lutheran
121	1997	MAG	ChristCentury	Evangelical Lutheran Church in America which call for establishing “ full communion “ with	the Episcopal Church	and with three Reformed churches -the Presbyterian Church (U.S.A.), the Reformed
122	1997	MAG	ChristCentury	Reformed Church in America and the United Church of Christ-and between the ELCA and	the Episcopal Church	. In addition, the assembly had before it the draft of the Joint
123	1997	MAG	ChristCentury	Order, who spoke against. Speaking for the Concordat of Agreement (with	the Episcopal Church	) was Walter Bouman of Trinity Lutheran Seminary in Columbus, Ohio; speaking
124	1997	MAG	ChristCentury	earlier polls had shown congregations and pastors decidedly in favor of full communion with	the Episcopal Church	while hesitant, if not directly opposed, to full communion with the Reformed

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125	1997	MAG	ChristC entury	terms of the Concordat could needlessly jeopardize a treasured friendship between the ELCA and	the Episcopal Church	as well as endanger the collaboration in the gospel and table fellowship we now
126	1997	MAG	ChristC entury	United Church of Christ, was decisive in this respect, those speaking for	the Episcopal Church	were less effective. They never found the language or the themes to connect
127	1997	MAG	ChristC entury	churches with a view to “ ratification of an agreement for full communion with	the Episcopal Church	at the 1999 Churchwide Assembly of the ELCA. “ The second resolution was
128	1997	MAG	ChristC entury	1999 Churchwide Assembly of the ELCA. “ The second resolution was directed to	the Episcopal Church	and declared that the ELCA was committed to finding a way to full communion
129	1997	MAG	ChristC entury	action at Philadelphia, Frank T. Griswold, the newly elected presiding bishop of	the Episcopal Church	, was quoted as saying that “ maybe the Evangelical Lutheran Church in America
130	1997	NEWS	NYTim es	close cooperation with three other denominations, but narrowly rejected establishing similar ties with	the Episcopal Church	. AI New Views on Gulf War Panel Nearly half the members of a
131	1997	NEWS	CSMon itor	UCC in Cleveland, who was raised a Roman Catholic but now belongs to	the Episcopal Church	. “ People go where they feel comfortable. “ Moreover, the erosion

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132	1997	NEWS	CSMonitor	with three major US reformed churches. A similar proposal to share clergy with	the Episcopal Church	, an American church affiliated with the Church of England, was narrowly defeated
133	1997	NEWS	USAToday	years from 1976 to 1980 in Africa, where he was a consultant for	the Episcopal church	, as having the most impact on him. # " I went over
134	1997	NEWS	SanFranChron	separate the ELCA from the more conservative 2.5-million-member Lutheran Church-Missouri Synod. # Unlike	the Episcopal Church	and the ELCA, the Lutheran Church-Missouri Synod does not ordain women. It
135	1997	NEWS	SanFranChron	America (1789) # . # . # 20th Century Ecumenical Movement #	The EPISCOPAL CHURCH	(1967) # 7,388 congregations # 2.5 million members # Policies awaiting final
136	1997	NEWS	SanFranChron	Protestant churches. Of course, over the years, many Protestant denominations and	the Episcopal Church	have been ordaining women as priests and pastors. Do you think women should
137	1997	ACAD	Church & State	Irish Church Act of 1869 was validly passed even though it disestablished and disendowed	the Episcopal Church	in Ireland contrary to the 1800 Treaty of Union with Ireland. These examples
138	1996	SPOK	CBS_SunMorn	trees to be sacrosanct. He thought he could rely on his trustee,	the Episcopal Church	, to carry out his wishes to the letter. It turned out he
139	1996	FIC	SouthernRev	" Friend, come up higher, " she joked with her friends from	the Episcopal church	when they asked if she'd thought through what she was doing. Others

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140	1996	MAG	USAToday	Christian organizations that have passed resolutions officially endorsing evolution and deploring creation science include	the Episcopal Church	, Lexington (Ky.) Alliance of Religious Leaders, Lutheran Church,
141	1996	MAG	ChristCentury	“ Christian doctrines give rise to coherent positions on sexuality and ministry. Thus	the Episcopal Church	stands before a procedural abyss. How do Episcopalians delineate and articulate belief?
142	1996	MAG	ChristCentury	s Discontent, by political philosopher Michael J. Sandel, captures the nature of	the Episcopal Church	s dilemma. Sandel argues that public philosophy now relies upon procedures which promise
143	1996	MAG	ChristCentury	beyond allegiance to the left or right. The “ republican sensibility “ of	the Episcopal Church	lies beneath its procedural channels. The center of Episcopal life lies in worship
144	1996	MAG	ChristCentury	. Resisting firm doctrinal distinctions in order to embrace diverse forms and beliefs,	the Episcopal Church	has relied upon worship to advance its hope of unity. Typically vague,
145	1996	MAG	ChristCentury	which the church utilizes to embody unity. Though these changes were approved by	the Episcopal Church	s deliberative bodies, such actions revealed that new understandings of historic doctrines had
146	1996	MAG	ChristCentury	, lie in the localism inherent in Episcopal life. Since colonial days,	the Episcopal Church	has managed to encompass different forms, notably the High Church-Low Church division over

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147	1996	MAG	ChristC entury	to define Episcopal life, and frustrations that there is no clear definition.	The Episcopal Church	is at a procedural abyss, but it is not bereft of hope.
148	1996	MAG	ChristC entury	, Danforth received a degree from Yale Divinity School and is a priest in	the Episcopal Church	. We recently spoke with him in St. Louis where he is a partner
149	1996	MAG	USCat holic	Stringfellow, when he was defending priests and bishops who had ordained women in	the Episcopal Church	and were brought to trial. I've been very concerned about it ever
150	1996	MAG	NatlRe view	do with politicians too, which is why we have a term- limits movement.	The Episcopal Church	, for the last twenty years a veritable Petri dish for experimentatio n by mad
151	1996	MAG	ChristC entury	1926), William Sachs's argument that the decision of the court leaves	the Episcopal Church	with no enforceable established doctrine seems to create a false crisis while talking around
152	1996	MAG	ChristC entury	that worship is a consolidating force in the entire Anglican Communion as well as	the Episcopal Church	, it is untrue to suggest that worship is the only common element.
153	1996	MAG	ChristC entury	to the ordination of women, demonstrates that there is a small minority within	the Episcopal Church	that do not accept the concept of inclusiveness. However, it is that
154	1996	NEWS	NYTim es	, Mrs. Williams said. So has their faith. They have returned to	the Episcopal Church	. And Mr. Williams works full time at his volunteer job: president of

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155	1996	NEWS	NYTimes	Lutheran Church. “ # The people of Peace did not know much about	the Episcopal Church	, either. # “ We just hadn’t had any of them around
156	1996	NEWS	NYTimes	of the Episcopal priesthood and to hire a Lutheran pastor the next time.	The Episcopal Church	hierarchy in Missouri began a national search. Usually, said the Rev. Richard
157	1996	NEWS	CSMonitor	for full ownership on the passing of owner and founder Gene Autry. #	The Episcopal church	averted the first heresy trial of an Episcopal bishop since the 1920s by ruling
158	1996	NEWS	Atlanta	of the divine. # Her spiritual quest took her first to membership in	the Episcopal church	. She said she sees leaving the Baptist denomination as the first step in
159	1996	ACAD	Church & State	ultimate governing body of the American Episcopal Church. But that polity lay in	the Episcopal Church	s future, after disestablishment. How would the still-official Church of England in
160	1996	ACAD	Church & State	, as the churches are independent and do not keep membership records. #	The Episcopal Church	is investigating the possible misuse of funds following the resignation of its national treasurer
161	1996	ACAD	Church & State	coffers, largely for her own personal use. Bishop Edmond L. Browning,	the Episcopal Church	s top official in the United States, said in a statement that Ellen
162	1995	MAG	America	, since the Roman Catholic Church had declared Anglican orders invalid in 1896 and	the Episcopal Church	was hardly committed to such reunion; and in 1909 the Society became Catholic



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163	1995	MAG	America	, laity—voted on women's ordination. So also did two in	the Episcopal Church	U.S.A., after "irregular" ordinations by retired bishops forced the issue (
164	1995	MAG	Ebony	Raisin In The Sun). BARBARA HARRIS, the first woman bishop in	the Episcopal Church	, was consecrated in the Massachusetts diocese in 1989 and became an international symbol
165	1995	MAG	Ebony	estimated U.S. membership of 60 million. Diane M. Porter Senior Executive for Program	The Episcopal Church	Black membership: 125,000 Diane Porter oversees domestic and foreign staffs and manages all
166	1995	MAG	Ebony	. She later retired in 1989. The Most Rev. Barbara Harris Suffragan Bishop	The Episcopal Church	The Most Rev. Harris made history in 1989 when she became the Episcopal Church
167	1995	MAG	Ebony	The Episcopal Church The Most Rev. Harris made history in 1989 when she became	the Episcopal Church	s first female bishop. The Rev. Vashti McKenzie Pastor Payne Memorial AME Church
168	1995	MAG	Christ Century	institutions suffered financial scandals of major proportions. Presiding Bishop Edmond L. Browning of	the Episcopal Church	disclosed that Ellen Cooke, while serving as the denomination's national treasurer,
169	1995	MAG	Christ Century	Methodists and Moravians united to form the Dominican Evangelical Church; this church and	the Episcopal Church	were the dominant non-Catholic denominations in the country until a variety of Pentecostal and

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170	1995	MAG	ChristC entury	for a Generous Orthodoxy, “ in Reclaiming Faith: Essays on Orthodoxy in	the Episcopal Church	and the Baltimore Declaration, edited by Ephraim Radner and George R. Sumner)
171	1995	MAG	People	earned her vixen stripes. After 45 minutes, Locklear and Sambora emerged from	the Episcopal church	and drove in a single black limo to the nearby Ritz hotel for a
172	1995	NEWS	USATo day	. “ # Some of those same sentiments are echoed in other denominations.	The Episcopal Church	has a project called Treasure Kids, in which churches across the country,
173	1995	NEWS	USATo day	well, “ says Robb Bruce, assistant coordinator of Children’s Ministries for	the Episcopal Church	. # Kids have a different way of experiencing the Gospel, he says
174	1995	NEWS	Atlanta	the alleged embezzlement of \$ 2.2 million by Ellen Cooke, the treasurer at	the Episcopal Church	s national offices. # Many Episcopalians, especially those of us who are
175	1994	SPOK	NPR_A TC	did a lot of experimenting with- I left the Baptist church and went into	the Episcopal church	, and then I went and began doing Eastern meditation and yoga and that
176	1994	SPOK	NPR_A TC	New York in the late 19th century. The Episcopal church- Trinity parish of	the Episcopal church	was the largest slumlord in the city, owned more sections of slum projects
177	1994	FIC	ChristC entury	had to up and move into town, start voting Republican, and join	the Episcopal Church	. # Well some people might say that, among my father’s prime

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178	1994	FIC	ChristC entury	cases my father mellowed with the years, as he did about my joining	the Episcopal Church	. He thought, as I did, that the Methodists were forsaking their
179	1994	FIC	ChristC entury	Good News as much as they did the social gospel. (Ironically,	the Episcopal Church	has seemed to be going in something of the same direction— jazzing up
180	1994	FIC	Atlanti c	he lived in Narnia. He liked to get down on his knees at	the Episcopal church	and ask God not to let his momma divorce Eric. If God did
181	1994	MAG	Atlanti c	who holds the world's record for sit-ups. I danced with her at	the Episcopal church	square dance one night and liked her a lot. Her mother liked me
182	1994	MAG	Fortun e	, “ says Alan Blanchard, who runs the \$2.7 billion pension fund for	the Episcopal Church	. “ But it's heady stuff to have a bunch of well- educated guys
183	1994	MAG	ChristC entury	Fellowship of North America disbanded in order to form a new multiracial group.	The Episcopal Church	s General Theological Seminary in New York decided to allow same-sex couples in seminary
184	1994	MAG	NatlRe view	generally quit making it hard to practice the faith at the local level.	The Episcopal Church	, top-heavy with well- educated, financially successful members, has over the years exercised
185	1994	MAG	Ebony	400 churches and 100,000 members. She retired in 1988. Barbara Harris became	the Episcopal Church	s first female bishop when she was elected on Feb. 12, 1989.
186	1994	NEWS	AssocP ress	anyone I know, “ said the Rev. Canon Frederick Williams, rector at	the Episcopal Church	of the Intercession in Harlem. # Many blacks live “ on the very

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187	1994	NEWS	Denver	Rwanda Relief # PO Box 500 # Akron, PA 17501 # 717- 859-1151 #	The Episcopal Church	Presiding Bishops Fund # 815 Second Avenue # New York, NY 10017 #
188	1993	FIC	Bk:Cer ealMur ders	agreed to prepare the refreshments to follow that morning's ten o'clock service at	the Episcopal church	. This would be followed by a more profitable half- time meal of choucroute garnie
189	1993	FIC	Bk:Cer ealMur ders	for stomach medication when the playoff season began. Talking shop with Hank after	the Episcopal church	service was like finding your kinsman who speaks Zulu in the middle of North
190	1993	MAG	Smiths onian	a man born into slavery who eventually became the first elected African- American bishop of	the Episcopal Church	in America, they are themselves accomplished career women in their own right.
191	1993	MAG	Ebony	A Raisin in the Sun). BARBARA HARRIS The first woman bishop of	the Episcopal Church	, she was consecrated in the Massachusetts diocese in 1989. MYRLIE EVERS An
192	1993	NEWS	USATo day	- The appointment of the state's first black bishop will be suspended while	the Episcopal Church	conducts a probe into allegations of sexual misconduct, officials said. The Rev.
193	1993	NEWS	WashP ost	brother, George Luthy, was a commercial bank president there. Luthy persuaded	the Episcopal Church	to serve as the family's " corporate sponsor," allowing them to
194	1993	NEWS	Atlanta	St. Philip. # Bekah and her mother converted to Catholicism because they felt	the Episcopal Church	was unwilling to adopt a strong position on some important social issues. "

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195	1993	NEWS	Atlanta	the solid core of predominantly white mainline Protestantism. It is a collaboration of	the Episcopal Church	, the Evangelical Lutheran Church in America, the Presbyterian Church (U.S.A.)
196	1993	NEWS	Houston	denomination is composed of conservative, traditionalist Anglican congregations that have severed relations with	the Episcopal Church	, U.S.A. # Catholic Charities of the Diocese of Galveston-Houston will hold a 50th
197	1992	MAG	Smithsonian	the room seem more appropriate for a medieval banquet-or the 1913 General Convention of	the Episcopal Church	, for which the building was originally constructed-than for tightrope practice. # “
198	1992	NEWS	WashPost	Union Theological Seminary. # In 1925, he was ordained a deacon in	the Episcopal Church	. From 1926 to 1954, he was a rector at churches in Bronxville
199	1992	NEWS	Houston	) as a “ spiritual and women’s rights “ ritual. #	The Episcopal Church	has elected its first female bishop. # There are even some cracks at
200	1992	ACAD	PublicInterest	camp, sometimes under contract to government, sometimes not. Loosely affiliated with	the Episcopal Church	, Grace Hill Neighborhood Services—most often called simply “ Grace Hill “
201	1992	SPOK	NPR_Morning	organized members of other churches to help feed the 50 extra mouths staying at	the Episcopal church	. Faulton Hodge became close friends with the woman, who died prematurely of
202	1992	FIC	Iris	times in her life, was a member of the American Chemical Society and	the Episcopal Church	, and was included in Who’s Who in Nebraska. By 1916,

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203	1992	MAG	USNWR	of Protestant denominations. Centerpoint, a network of study groups once affiliated with	the Episcopal Church	but now free-standing, has an estimated 15,000 members worldwide. Jung's theories
204	1992	MAG	USNWR	to deal firmly with sexual abusers. The Evangelical Lutheran Church in America,	the Episcopal Church	, the Presbyterian Church (U.S.A.), the United Methodist Church and the
205	1991	SPOK	CNN_King	on the Bible by the most controversial member of the House of Bishops in	the Episcopal Church	. Claiming Bible-thumping fundamentalists like Jimmy Swaggart and Jerry Falwell are distorting the holy
206	1991	SPOK	CNN_King	is such a thing as support of slavery in the Bible; nor does	the Episcopal Church	teach that? Bishop FREY: Of course, we don't teach support
207	1991	SPOK	CNN_King	divinely written by God, I would long ago have left Christianity KING Does	the Episcopal Church	say that? Bishop FREY: What? That every word is literally true
208	1991	SPOK	CNN_King	word is literally true? KING: Yes. Bishop FREY: No,	the Episcopal Church	is not literalist; nor is it fundamentalist. My problem with- KING:
209	1991	FIC	Kenyon Rev	stop, please. "# Our house had been the Bishop's until	the Episcopal Church	, low on funds, began renting it to diplomats. One wall of
210	1991	FIC	BkSF:Addept	Kintoul to attend Lady Laura's funeral. p95 The service was held in	the Episcopal church	in the village. Though Humphrey got them there early, Adam and Peregrine

<u>Token</u>	<u>Year</u>	<u>Genre</u>	<u>Source</u>	<u>Pre</u>	<u>Node</u>	<u>Post</u>
211	1991	MAG	NatlRe view	Cover Religion in the Nineties # What in Heaven's name is happening to	the Episcopal Church	? Listening to Bishop Spong, and looking through the new Prayer Book,
212	1991	MAG	NatlRe view	and white metal signs with the cross of St. George and the message,	The Episcopal Church	Welcomes You,' this, in most cases, is the kind of
213	1991	MAG	NatlRe view	had to be following the thread carefully to notice where it unraveled. #	The Episcopal Church	has been less able to hide its unravelment. In 1960, it had
214	1991	MAG	NatlRe view	issue facing the Church of England—the ordination of women, a step	the Episcopal Church	endorsed in 1976—must be decided in favor of ordination. In a
215	1991	MAG	NatlRe view	throughout the industrial Western world. That fact can not explain the state of	the Episcopal Church	, however, for, as survey after survey shows, the United States
216	1991	MAG	NatlRe view	languish, even as others hold their own, or thrive. Why is	the Episcopal Church	among the basket cases? # Champagne Reputation # OVER THE YEARS, the
217	1991	MAG	NatlRe view	Church among the basket cases? # Champagne Reputation # OVER THE YEARS,	the Episcopal Church	has benefited from its champagne reputation, however many beer-bottle parishes it included.
218	1991	MAG	NatlRe view	black-power groups. If the greening of America had been the only problem,	the Episcopal Church	might have weathered it. But in the late Seventies, the church showed
219	1991	MAG	NatlRe view	a Synod in Fort Worth to consider how we shall be the Church within	the Episcopal Church	.' # This is a triennial year, and the General Convention meets

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220	1991	MAG	NatlRe view	He has offered a proposal of his own: that all clergy ordained in	the Episcopal Church	abstain from all sexual relations outside holy matrimony.' William C. Wantland,
221	1991	MAG	NatlRe view	sees the homosexuality issue as a last straw. If the recommendatio ns pass,	the Episcopal Church	as we know it would cease to exist. . . . There will
222	1991	MAG	NatlRe view	. . . There will always be an Anglican presence in America, but	the Episcopal Church	as presently constituted may not be it.' # The second great issue
223	1991	MAG	NatlRe view	was not our projection onto Him.' # Father Kimel does not say	the Episcopal Church	might cease to exist. His foreboding is more gruesome. I fear it
224	1991	MAG	NatlRe view	# ON THE EDGE of every brawl stands some philosopher. The revolution in	the Episcopal Church	has been animated by a theology that has been afoot for half a century
225	1991	MAG	NatlRe view	with first principles, while Americans want to get the job done. So	the Episcopal Church	was doubly vulnerable. # To the extent the church prized its comfortable social
226	1991	MAG	NatlRe view	have no content, only traffic.' When the post- Christians came along,	the Episcopal Church	was unwilling to deny them passage. # Soon,' one ex- Episcopal priest
227	1991	MAG	NatlRe view	been rallied by a Pole. # Or perhaps, having hit bottom,	the Episcopal Church	will bring itself back. That would be a resurrection scarcely less astonishing than



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228	1991	MAG	TIME	the National Council of Churches, including Edmond Browning, the Presiding Bishop of	the Episcopal Church	, Bush's denomination. Christianity, with its emphasis on universal love,
229	1991	NEWS	CSMonitor	the president's pastor, the Most Rev. Edmond Browning, presiding bishop of	the Episcopal Church	in the USA, opposed the Gulf war long before the bombs flew.
230	1991	NEWS	CSMonitor	his own pastor. # The Most Rev. Edmond Browning, presiding bishop of	the Episcopal Church	in the United States of America, tried unsuccessfully to dissuade Mr. Bush from
231	1991	NEWS	AssocPress	the United Church of Christ, allows ordination of active homosexuals. # In	the Episcopal Church	, the Standing Commission on Human Affairs is recommending that local dioceses be allowed
232	1991	NEWS	AssocPress	of " A Compendious Lexicon of the Hebrew Language " and pious patron of	the Episcopal Church	. Or perhaps he thought it a private communion with his children, his
233	1991	NEWS	WashPost	1991. # Mr. Whittier was a member of the vestry and choir at	the Episcopal Church	of the Ascension and St. Agnes in Washington. # He leaves no immediate
234	1991	NEWS	WashPost	, she attended Marionville Junior College. # Mrs. Pauly was a member of	the Episcopal Church	of the Epiphany in Washington and the Order of the Eastern Star. #
235	1991	NEWS	Atlanta	, " says Cary Patrick, director of communication for the Atlanta diocese of	the Episcopal church	, " and he thinks everybody ought to be able to participate in that

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236	1991	NEWS	Atlanta	Sewanee trustees voted to bar black students from the school, sending convulsions through	the Episcopal church	. Half the Sewanee students transferred in protest; nine faculty members resigned.
237	1991	NEWS	Atlanta	# Yet his picketing of the then-segregated Lovett School (which has ties to	the Episcopal church	), his sponsorship of Student Non-Violent Coordinating Committee meetings, and his anti-Vietnam
238	1991	NEWS	Atlanta	s rounds, taking a break on Sundays to hand out anti-integrationist literature outside	the Episcopal Church	, bustling into pool halls and cafes walking his funny wide-gait walk. Sometimes
239	1991	NEWS	Atlanta	denomination clearly on a roll - nearing 4 million in membership, ahead of	the Episcopal Church	, the Presbyterian Church (U.S.A.) and the Assemblies of God Among predominately
240	1990	SPOK	CNN_King	. My question is this: I was a Catholic and then moved to	the Episcopal Church	, based on the fact - of course, my belief - that there
241	1990	FIC	Bk:NightsSummer	the fund-raising exhibition we're doing for St. Albans. " St. Albans was	the Episcopal church	on the cathedral grounds that served a local congregation. Annabel had recently taken
242	1990	MAG	Smithsonian	Christie (SMITHSONIAN, September 1990) would write about the English countryside or	the Episcopal Church	— as a natural part of the environment. The reader lives not as
243	1990	MAG	USNWR	spiritual man himself, though in an unconventional way. He was raised in	the Episcopal Church	by his mother; his father was a nonpracticing Jew. Today, he

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244	1990	MAG	TIME	reason: the U.S. converts are mostly theological conservatives who left the clergy of	the Episcopal Church	because of that denomination's leftward drift on liturgy, doctrine and discipline —
245	1990	MAG	TIME	: What? Married Catholic priests? Forty-three Catholic fathers, mostly converts from	the Episcopal Church	, are also husbands. Oddly, some liberal priests and nuns are not
246	1990	NEWS	NYTimes	of U.S. military aid to El Salvador. " # The Presiding Bishop of	the Episcopal Church	, Edmond L. Browning, led a high-level delegation of Roman Catholic, Lutheran
247	1990	NEWS	CSMonitor	house of worship for a pluralistic society. # Though it is run by	the Episcopal church	and is the seat of the bishop of the diocese, as well as
248	1990	NEWS	WashPost	retired Prince George's County school official, died of cancer July 18 at	the Episcopal Church	Home in Hockessin, Del. # Mr. Robinson was born in Philadelphia.