



**“QUESTIONS INVOLVING NATIONAL  
PEACE AND HARMONY” OR  
“INJURED PLAINTIFF LITIGATION”?**

**THE ORIGINAL MEANING OF  
“CASES” IN ARTICLE III OF THE  
CONSTITUTION**

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# Agenda

- *Introduction and Paper Origins*
- *“Such other” Research Design & Results*
- *Phrases and Patterns in Linguistic Analysis*
- *Shell Nouns Research Design & Results*
- *Future Law-Linguistic Collaboration*
- *Open Discussion*

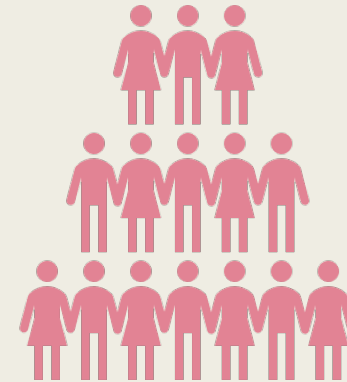
# INTRODUCTION AND PAPER ORIGINS



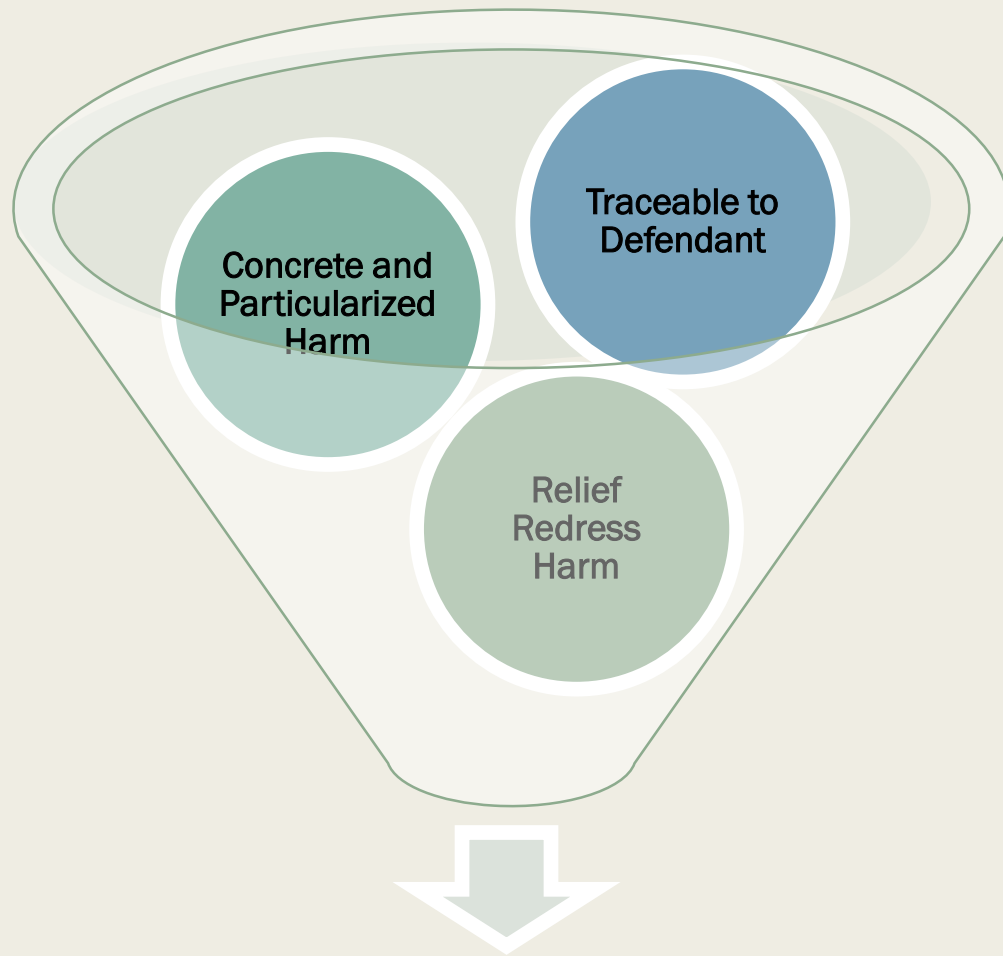
# Original Research Questions: Judicial Power Seminar Spring 2019



What is the original public meaning of “case”?



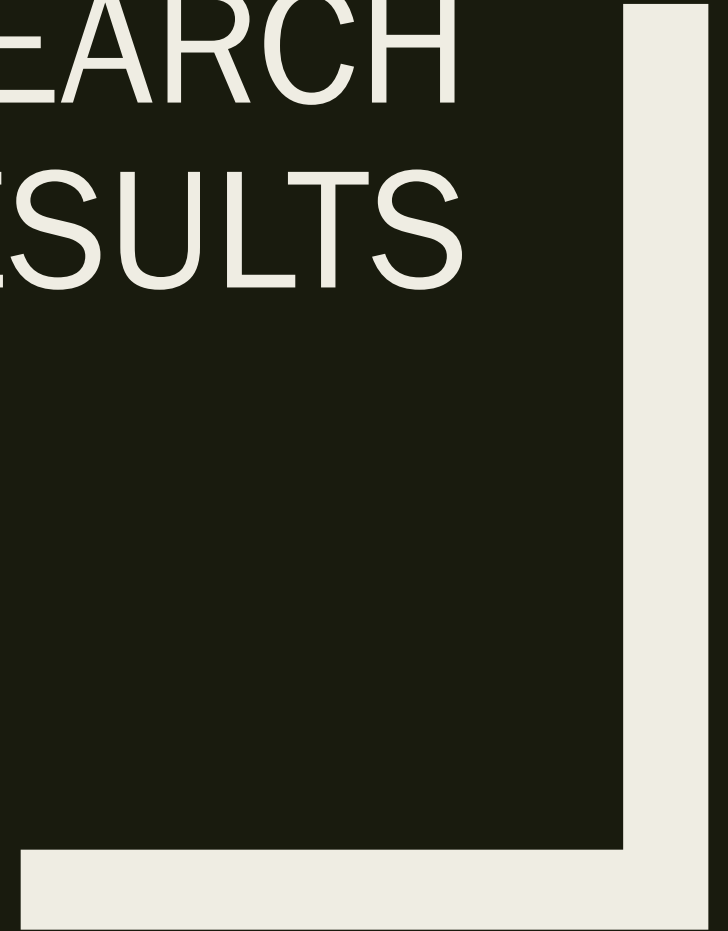
Is there any corpus evidence that injury was part of the definition of ‘case’?



Standing

- Standing Doctrine is back in legal scholarship
- Data breach cases are pushing the limits on what is considered a harm or injury
- Access to Justice issue

# “SUCH OTHER” RESEARCH DESIGN & RESULTS

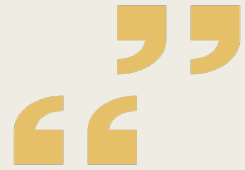


“the jurisdiction of the national Judiciary shall extend to cases arising under laws passed by the general Legislature, and to such other questions as involve the National peace and harmony”

# Motivation

- What does this excerpt suggest about the meaning of “case” as we see it used in relation to “questions”?

# Methodology



## Preliminary analysis

100 lines randomly sampled  
from the Corpus of Founding Era  
English (COFEA)

Search term “such other \*/n”

Findings: a appears to always fall  
under the general, overarching  
category of b



## Primary analysis

Three 100-line samples collected  
from COFEA

Three samples qualitatively  
analyzed, line-by-line

Questionable lines flagged for  
further analysis by legal scholars

Modified search term: “such  
other”



# Findings

1) *a...such other + noun*

“Resolved also, that on the Passage of such Bills as now lie before the Governor, the Naturalization Bill, and such other Bills as may be presented to him.”

2) *a...such other*

+ pre-modifier + noun

“...before any ship or vessel shall have performed the quarantine, and such other cautionary measures.”

3) *a...such other*

+ of the + noun

“...and for the education of youth in the English, Latin and Greek Languages; in Writing, Arithmetick, Musick, and the Art of Speaking, Practical Geometry, Logic and Geography, and such other of the Liberal Arts.”

4) *a...such other + as*

“...Capt. Myles Standish, Capt. John Mason, Capt. John Leverett, Lieut. Robert Seely (or such other as shall have chiefe command.)”

5) *a. Such other...b*

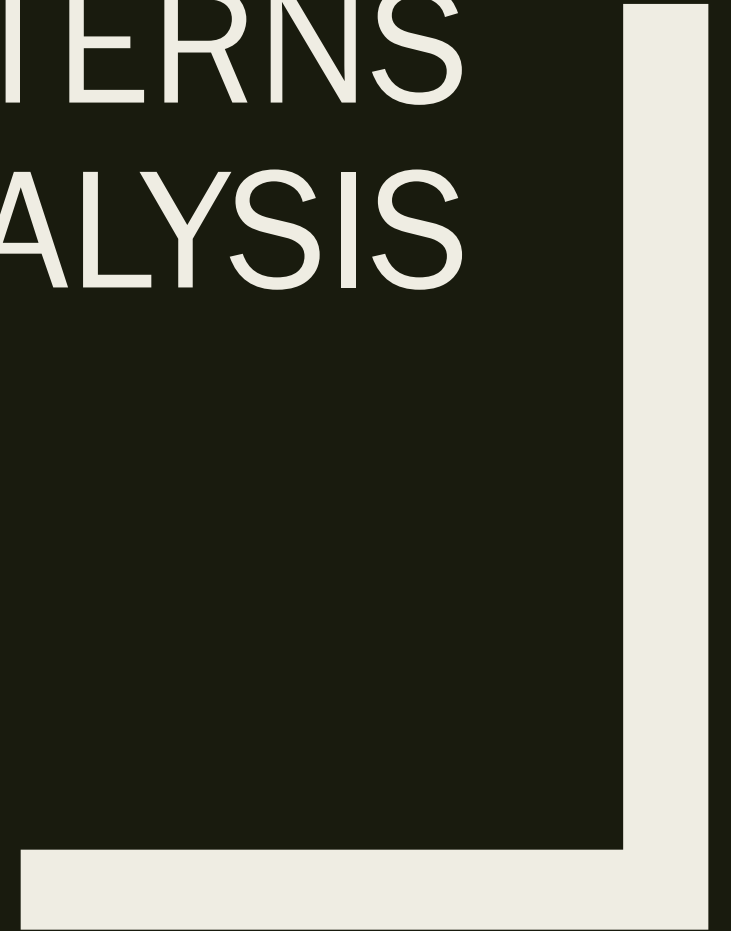
“for encouraging our own manufactures is to ensure a preference and encourage a demand for them by overcharging the prices of foreign by heavy duties. Such other means of encouragement....”

“the jurisdiction of the national Judiciary shall extend to cases arising under laws passed by the general Legislature, and to such other questions as involve the National peace and harmony”

# Implications

- cases (a) was likely considered a type, or example of questions (b)
- “other questions as involve the National peace and harmony” (b) was likely considered a more general category of jurisdiction than “cases arising under laws passed by the general Legislature” (a).

# PHRASES AND PATTERNS IN LINGUISTIC ANALYSIS



# “The word is not enough” (Römer, 2008, p. 121)

- Language has a “phraseological tendency”; **words do not appear in isolation** but “go together and make meanings by their combinations.” (Sinclair, 2004, p. 29; Sinclair, 1991)
- “We have come a long way from the presumption that, mostly, the word is the unit of meaning. [...] **the normal primary carrier of meaning is the phrase and not the word**” (Sinclair, 2008, p. 409)
- “Many words are frequent because they are used in frequent phrases.” (Stubbs, 2009, p. 119) **Why is “thing” the most frequent noun in English?**

Top-20  
“thing”  
clusters  
(spans 3-6) in  
COCA\_acad  
(9,092  
instances of  
“thing” in this  
corpus)

AntConc 3.5.8 (Windows) 2019

File Global Settings Tool Preferences Help

**Corpus Files**

- w\_acad\_1990.txt
- w\_acad\_1991.txt
- w\_acad\_1992.txt
- w\_acad\_1993.txt
- w\_acad\_1994.txt
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- w\_acad\_2008.txt
- w\_acad\_2009.txt
- w\_acad\_2010.txt
- w\_acad\_2011.txt
- w\_acad\_2012.txt

Concordance Concordance Plot File View Clusters/N-Grams Collocates Word List Keyword List

Total No. of Cluster Types 518 Total No. of Cluster Tokens 16932

Rank	Freq	Range	Cluster
1	710	23	the same thing
2	335	23	the only thing
3	334	23	for one thing
4	272	23	thing to do
5	267	23	a good thing
6	259	23	the first thing
7	251	23	no such thing
8	234	23	the right thing
9	217	22	is one thing
10	214	23	such thing as
11	204	23	no such thing as
12	197	23	such a thing
13	159	23	is no such thing
14	154	23	there is no such thing
15	144	22	most important thing
16	143	23	one thing to
17	142	23	is no such thing as
18	141	23	one thing that
19	139	23	there is no such thing as
20	136	23	the whole thing

Search Term  Words  Case  Regex  N-Grams Cluster Size Min. 3 Max. 6

thing Advanced

Start Stop Sort

Sort by  Invert Order Search Term Position Min. Freq. 10 Min. Range 3

Sort by Freq  On Left  On Right

Total No. 23

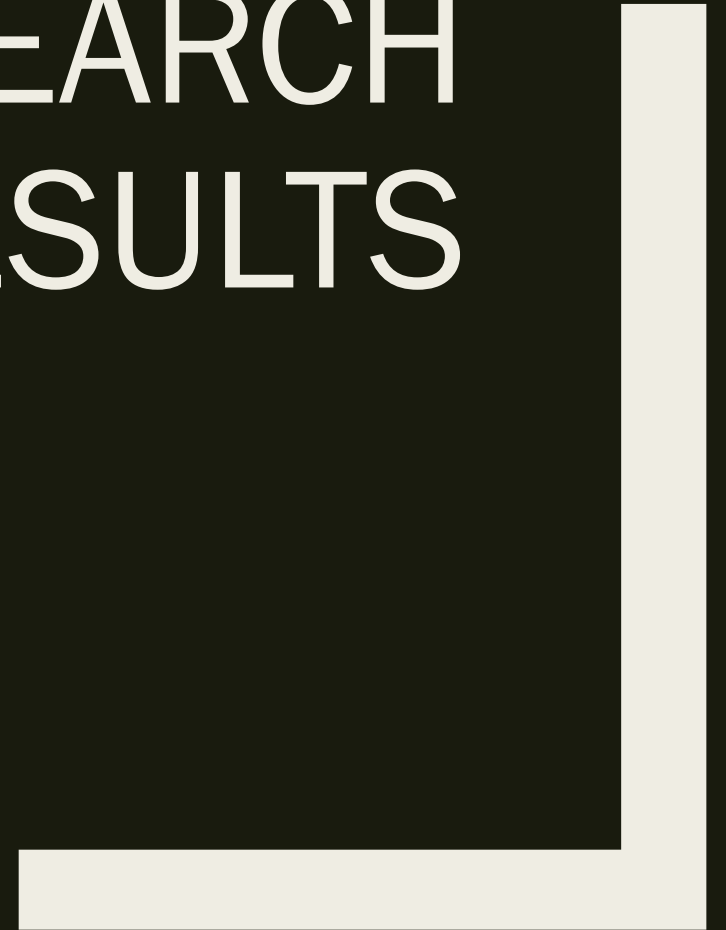
Files Processed

Clone Results

# Different patterns, different meanings!

- Linguistic usage patterns and meanings are “mutually dependent” (Hunston & Francis, 2000, p. 3)
- An example (Hunston and Francis, 1998, p. 51):
  - recover + from + noun or noun phrase = **get better***  
(e.g. *she recovered from the flu*)
  - recover + noun or noun phrase = **get back***  
(e.g. *he recovered the corrupted files*)

# SHELL NOUNS RESEARCH DESIGN & RESULTS



Corpus of Founding Era American English (COFEA) case\* 

Add query term

+ Mod 

Add collocate

[+ Add Filters](#)[Concordances](#)[Frequencies](#)[Sections](#)[Collocates](#)

MATCHES

FREQ

 $\Sigma$  106

125,684

1 case

93,255

2 cases

31,840





# Corpus of Founding Era American English (COFEA) ▼

TYPE	VALUE(S)
Source <span>×</span> <span>▼</span>	Select Values(s) <span>▲</span>
	Caselaw Access Project
	Elliotts
	Evans Early American Imprints
	Farrands
	Founders Online
	HeinOnline
	United States Statutes at Large

## The offline sub-corpus:

- All documented writings by James Madison between 1751 to 1836
- 27416 files
- 10,729,712 words (tokens)
- 90700 types



## Grounded Theory

- Founders Online – *Madison offline*
- AntConc

Highly patterned



## Shell Noun

- Schmid (2000)
- Founders Online – *Madison offline*

Case & cases are frequently used as shell noun



# Shell noun

*Schmid (2000)*

... telehealth can enable regular access to an SLP at another school or center. Even in **cases** where

**there is an Speech-Language Pathology (SLP) service at a school,**

telehealth can enable access to support from an SLP who specializes in stuttering treatment.

Carey, B., O'Brian, S., Lowe, R., & Onslow, M. (2014). Webcam delivery of the Camperdown Program for adolescents who stutter: A Phase II trial. *Language, Speech, and Hearing Services in Schools, 45*(4), 314-324.



## Grounded Theory

- Founders Online – *Madison offline*
- AntConc

Highly patterned



## Shell Noun

- Schmid (2000)
- Founders Online – *Madison offline*

Case & cases are frequently used as shell nouns

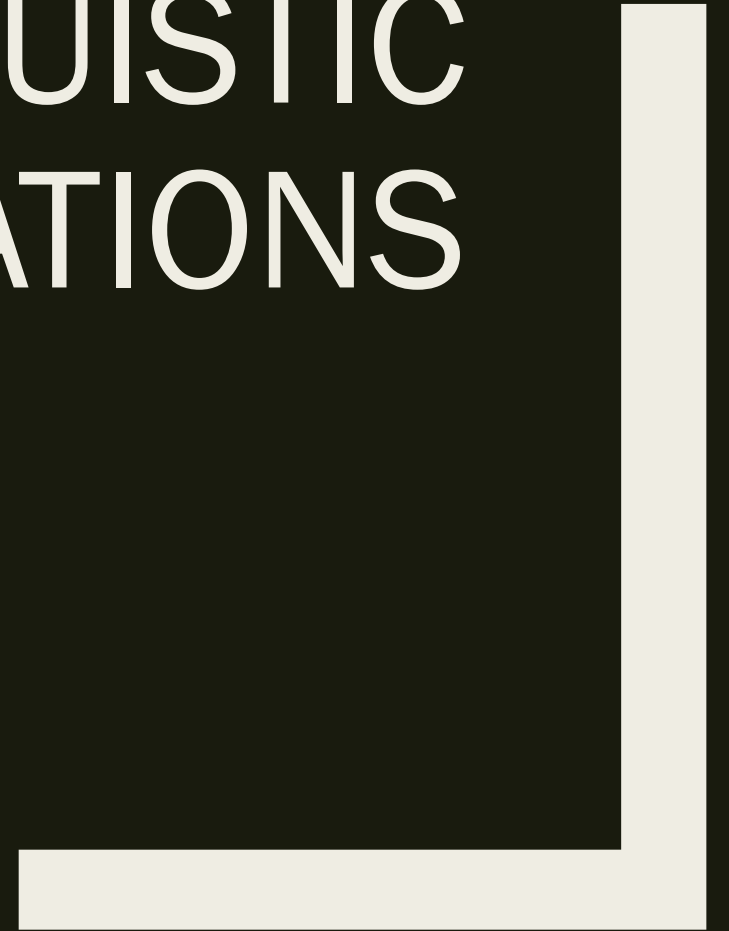


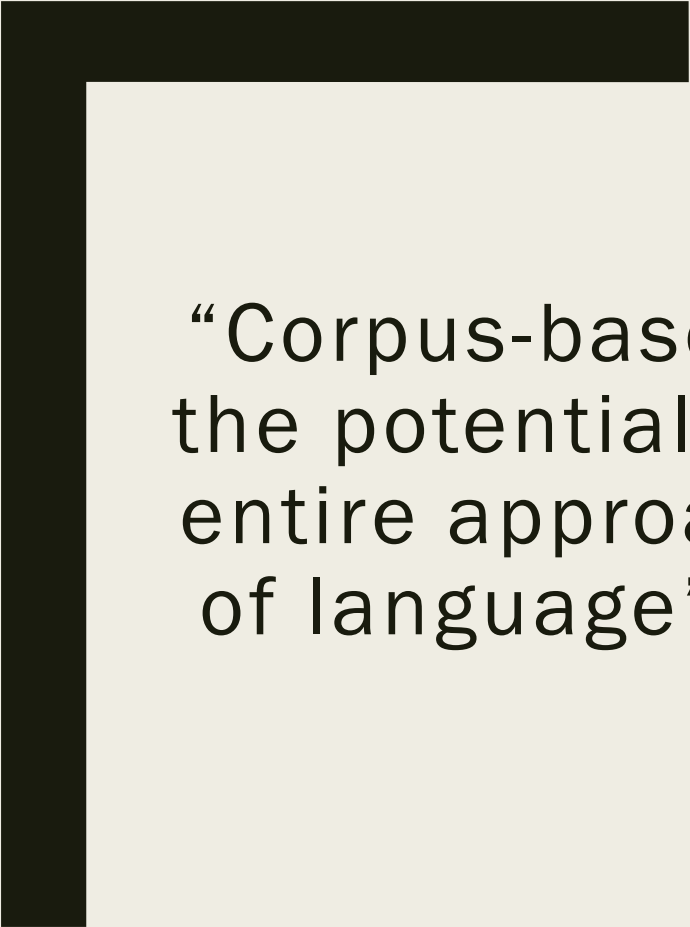
## Article II patterns

- 3 target patterns
- COFEA


- all cases affecting
- all cases arising
- all cases of

# FUTURE LAW-LINGUISTIC COLLABORATIONS





“Corpus-based research has the potential to re-orient our entire approach to the study of language” – McEnery and Hardie (2012)



# What do collocational frequencies reveal?



Lexical word combinations



Statistical/  
quantitative  
results



MI (Mutual  
Information)

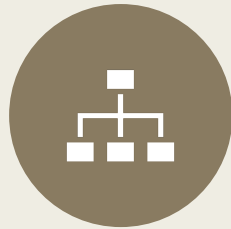


Semantic  
association

# What they do not reveal



**GRAMMATICAL  
WORDS**



**STRUCTURE**



**PHRASEOLOGY:  
CONSTRUCTIONS,  
N-GRAMS, LEXICO-  
GRAMMATICAL  
PATTERNS**



**ACCESS TO  
CONTEXT FAR  
FROM CORE  
SEARCH ITEM.**



Preserving  
research  
methods is  
our goal

“there should be no motivated selection of examples to favour those examples that fit the hypothesis, and no screening out of inconvenient examples.” - McEneaney and Hardie (2012)

True  
collaboration  
- an  
obligation,  
not just an  
opportunity

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To ensure methodological rigor, accurate results, a specialized linguistic researcher must be a partner; both in research and in assessment processes.

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Using CL for legal interpretation is yet another application for linguistics.

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It is an obligation for linguists to claim their field of study.




Interdisciplinary research: linguists and lawyers both as researchers and as judges. GSU COL, April/May 2019



# COMMENTS ON “QUESTIONS INVOLVING NATIONAL PEACE AND HARMONY” OR “INJURED PLAINTIFF LITIGATION?”

Georgia State University Workshop on Law & Linguistics  
Susan Navarro Smelcer

October 18, 2019



# Roadmap

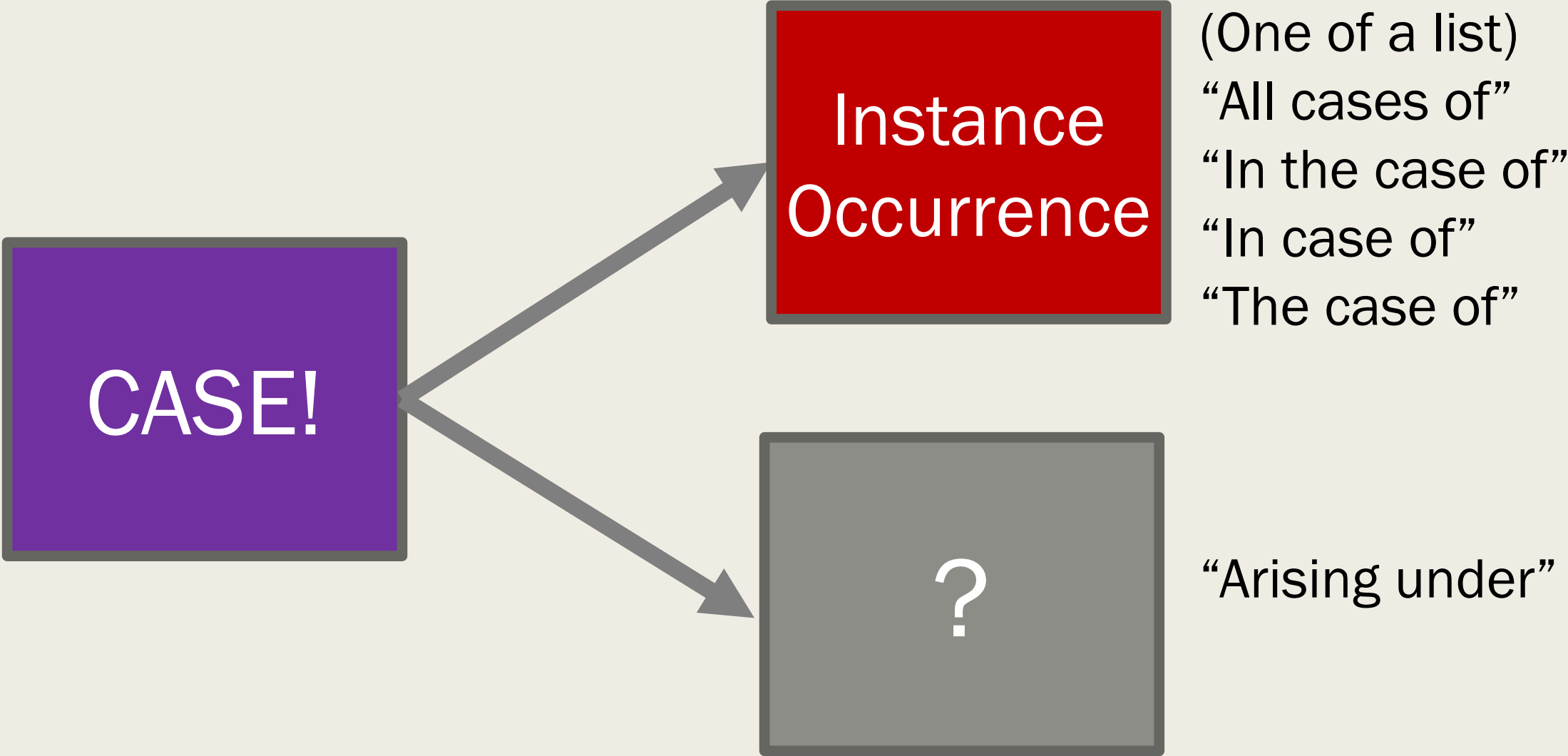
- Some thoughts on validity (or, legal writing is not English)
- Yes, “case” is a shell word, but tell me more about “arising under”
- “Case” + “arising under” = stable meaning?

# Legal writing is not English . . .

. . . and this could have implications for using COFEA to draw conclusions about the meaning of the word “case”

Letters and books written by ordinary people . . .	18 <sup>th</sup> judges' opinions . . .
Display a wide range of language and experiences	Resemble reading a very bad Jane Austen book but without any of emotional drama or angst
Express positive and negative emotions	Use otherwise innocuous words in weird ways
Are generally comprehensible to an average reader	Employ strange or difficult terms for otherwise straightforward concepts

Yes, “case” is a shell word, but tell me more about “arising under”



Instance  
Occurrence

(One of a list)  
“All cases of”  
“In the case of”  
“In case of”  
“The case of”

?

“Arising under”



# “Case” + “arising under” = stable meaning

- “Arising under” as a specialized legal term that gives “case” a stable adversarial meaning within notions of traditional judicial power or activities (maybe?)
- Based on the description in the paper and related data, “arising under” **ONLY** occurs in connection with legal analysis, even when not directly related to interpretation of Article III:

**1 U.S. 229:** "He then contended, that from general principles, from positive authorities, **arising under the bankrupt laws of different countries**, from the reason of the thing, and from the mischievous consequences of a contrary position, the discharge of the Defendant in one state, ought to be sufficient to discharge him in every state . . ."

**4 U.S. 47:** The act of assembly, when it provides a further remedy for the indorsee, implies and recognises the law to be so. **At common law, a promissory note could not be declared on; all the declarations on record upon promissory notes, state the liability as arising under the statute of Anne; and the distinction in this particular has been repeatedly recognised by our Courts. . . .** The act of assembly, indeed, cannot refer to notes delivered and put in circulation out of Pennsylvania; and surely, **the objection arising under our local law**, ought not to proceed from the plaintiff in the attachment . . .



# What just happened?

18<sup>th</sup> century legal writing detached from ordinary language

Case may be a shell term but one that is modified by “arising under” only in legal texts

“case” + “arising under” = stable term denoting narrow understanding of a case?

# In re Trump, 928 F.3d 360 (4<sup>th</sup> Cir. 2019)

- Emoluments lawsuit brought by State of Maryland and District of Columbia against President Trump in his official capacity
- Plaintiffs failed to show “concrete and particularized injury” that was different than the alleged harm suffered by all citizens if the President is corrupted by receipt of foreign payments
- “the District and Maryland’s interest in constitutional governance is no more than a generalized grievance, insufficient to amount to a case or controversy within the meaning of Article III”
- Responding to the argument that if the District of Columbia and Maryland “could not obtain judicial review of [the President’s] action, then as a practical matter no one can,”
- the Fourth Circuit cited the answer provided in a 1974 Supreme Court decision:
- “The assumption that if [plaintiffs] have no standing to sue, no one would have standing, is not a reason to find standing”

# OPEN DISCUSSION & QUESTIONS

