>> ALL RISE.
THE SUPREME COURT OF FLORIDA
IS NOW IN SESSION.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA, PLEASE BE
SEATED.
>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
BEFORE WE BEGIN TODAY, TWO
GROUPS I WOULD LIKE TO
RECOGNIZE.
FIRST, STUDENTS FROM THE TRINITY
SCHOOL OF CHILDREN FROM TAMPA,
FLORIDA, STAND, PLEASE.
THANK YOU.
WELCOME TO THE COURT.
TEACHERS WHO ARE TEACHERS, THERE
IS ONE.
AND ONE GRADE LEVEL WE HAVE
HERE.
SEVENTH-GRADE.
TERRIFIC.
WELCOME.
THE SECOND GROUP WE HAVE IS THE
FLORIDA HOUSE MESSENGER PROGRAM,
MEMBERS OF THE PROGRAM STAND
PLEASE.
YOU ARE STANDING.
YOU DO THAT ACROSS THE STREET.
WELCOME TO THE FLORIDA SUPREME
COURT.
HOPE YOU ENJOY THE PROGRAM
TODAY.
THE ONLY CASE ON THE DOCKET
TODAY IS RICHARD DELISLE V.
CRANE CO., ET AL..
YOU READY?
>> YES, YOUR HONOR.
MAY IT PLEASE THE COURT.
I AM HERE ON BEHALF OF THE
PETITIONER.
THREE QUICK DECKS, TWO OF
AGREEMENT, THIS IS NOT IN EVERY
EXPOSURE CASE WHEN WE GET TO THE
FACTS.
>> WHEN YOU GET TO YOUR
PRESENTATION ON YOUR CASE COULD

YOU TELL ME THE BASIS FOR WHAT
YOUR THEORY IS HOW THE COURT HAS
JURISDICTION IN THIS CASE?
>> IT WOULD PRESERVE THE TRIAL
COURT LEVEL AT THE RECORD AT
9702.
>> THE TRIAL COURT, WHAT IS YOUR
THEORY OF JURISDICTION ON THE
CONSTITUTIONAL BASIS.
>> VIOLATION OF SEPARATION OF
POWERS BECAUSE THIS COURT HAS
THE EXCLUSIVE.
>> ARE YOU FAMILIAR WITH
CONSTITUTIONAL PROVISIONS SET
FORTH OUR JURISDICTIONAL
AUTHORITY?
>> ARTICLE 5 SECTION 2 A.
IN ARTICLE 5 SECTION 2 THIS
COURT HAS EXCLUSIVE AUTHORITY TO
ADOPT THE RULES OF PROCEDURE
JUST LIKE LEGISLATURE HAS
EXCLUSIVE AUTHORITY.
>> THE QUESTION IS ON ARTICLE 5
SECTION 3B WHICH DEALS WITH
JURISDICTION, TO DECIDE A CASE
WE HAVE TO HAVE JURISDICTION.
THE QUESTION IS WHAT IS THE
BASIS FOR OUR JURISDICTION
BECAUSE IT WAS NOT CLEAR TO ME
EITHER?
>> IN FOOTNOTE 7, THE APPELLATE
COURT DISCUSSED DELISLE, IN A
STATEMENT THAT STATUTES PRESUMED
CONSTITUTIONAL --
>> YOU ARE NOT UNDERSTANDING THE
QUESTION.
LET ME DECLARE WHERE THE
QUESTION IS.
THIS COURT HAS JURISDICTION ON
CONFLICT, EXPRESSING DIRECT
CONFLICT ON CERTAIN
CONSTITUTIONAL BASIS, THAT IS
WHAT THE JUSTICES ARE ASKING,
NOT THAT YOU PRESERVE OR DIDN'T
PRESERVE BUT IS EXPRESSED IN
DIRECT CONFLICT, WHAT IS IT IN
CONFLICT WITH?
THAT IS THE JURISDICTIONAL
QUESTION THEY ARE ASKING YOU.
>> WE HAVE CONFLICT JURISDICTION

BECAUSE OF THE CONFLICT BETWEEN
FOURTH DISTRICT AND EXISTENCE OF
FRY WHICH HAS NOT BEEN ADOPTED
BY THIS COURT.
>> WHAT CASE?
YOU ARE SAYING THE FOURTH
DISTRICT'S OPINION CONFLICTS
WITH CASES THAT APPLY TO FRY?
>> ABSOLUTELY.
THOSE CASES THAT APPLY TO FRY
WERE BEFORE ADOPTION OF THE
STATUTE THAT IS IN 2013 WHICH IS
AT THE CENTER OF THIS CASE.
>> IT WAS NOT ADOPTED BY THIS
COURT.
IT WAS PASSED BY THE
LEGISLATURE.
IT IS TOTALLY PROCEDURAL IN
NATURE.
BOTH SIDES AGREE.
>> IT SEEMS TO ME YOUR ARGUMENT
ABOUT CONFLICT JURISDICTION
AMOUNTS TO AN ARGUMENT THAT
WOULD GIVE US CONFLICT
JURISDICTION ANYTIME A STATUTE
IS ADOPTED THAT CONFLICTS WITH
COMMON-LAW RULE OR IS DIFFERENT
FROM AN EARLIER VERSION OF THE
STATUTE THAT WAS INTERPRETED BY
THE COURTS.
CONFLICT JURISDICTION IS NOT
ABOUT CONFLICT BETWEEN A STATUTE
AND AN EARLIER VERSION OF THE
LAW BUT BETWEEN DECISIONS OF
COURTS ON THE SAME QUESTION OF
LAW.
I AM STRUGGLING TO FIND THAT IN
THIS CASE.
>> THE FOURTH APPLIED -- WE ARE
APPLIED JURISDICTION.
UNDER FRY, THAT IS OUR OPINION.
>> THE REAL QUESTION IS WHAT
CASE SAYS THAT?
IS THAT YOUR POSITION?
>> MARSH, THE FRY DECISION FROM
2007, A DIFFERENTIAL DIAGNOSIS
CASE AND REAFFIRM FRY AND HAVE
CASTILE IN 2003.
>> IS THIS THE LAST TIME, TO
STAND THERE.

>> THE LAST TIME.
>> 2007 UNTIL TODAY, FRY IS THE STANDARD.
FRY STANDARD CHANGE AT ALL.
>> IT IS A DIFFERENTIAL DIAGNOSIS COMMONLY USED IN FRY.
>> THE FRY STANDARD IN 2007 IS THE SAME STANDARD YOU ARE OBJECTING TO IN THIS CASE.
>> THE COURT APPLIED.
>> IT DID AND WE OBJECTED THE TRIAL COURT LEVEL, WE PROTECTED OUR RIGHTS UNDER FRY.
>> IN YOUR BRIEF, TO THE FOURTH DISTRICT COURT OF APPEAL, THE STATUTE FOR PROCEDURES, IT IS UNCONSTITUTIONAL.
AND THE FOURTH DCA.
>> STATUTES ARE PRESUMED CONSTITUTIONAL AND THEY ARE RIGHT.
IF IT IS PROCEDURAL IT IS UP TO THIS COURT TO ADOPT IT.
>> THEY DECIDED THEY SIMPLY REJECTED THE ARGUMENT THAT WAS PRESENTED, THE STATUTE WAS INAPPLICABLE BECAUSE THE COURT HAD NOT ADOPTED IT TO THE EXTENT THAT IT WAS PROCEDURAL.
THAT WAS THE ONLY ISSUE THE FOOTNOTE ADDRESSES.
IS THAT CORRECT?
LET ME ASK YOU IS THERE ANY COURT THAT DISAGREES WITH THAT HOLDING IN THE FOOTNOTE.
>> THAT IS CONSTITUTIONAL.
AND DIDN'T ADDRESS THE CONSTITUTIONALITY OF IT.
>> THE STATEMENT IS PRETTY CLEAR, AND GIVEN EFFECT INTO THE OTHER TIMES.
>> THAT IS --
>> ANY CASE IN THAT?
>> I THINK YES.
>> ASSIGNED ME TO THE CASE IN THE QUESTION OF LAW THAT A STATUTE, I WOULD LIKE TO SEE THE SITE.
>> IT IS ERRONEOUS.
>> ARTICLE 5 SECTION 3 SAYS

THERE HAS TO BE AN EXPRESS
DIRECT CONFLICT BETWEEN THE CASE
ON REVIEW, THE DISTRICT COURT OF
APPEALS CASE ON THE SAME
QUESTION OF LAW.
THE QUESTION OF LAW IS WHETHER
THE STATUTE IS PROCEDURAL OR
SUBSTANTIVE.
>> A FRY JURISDICTION IN THE
COURT APPLIED DOBRIN NUMBER ONE
IN THE NUMBER 2 SECOND ISSUE,
AND THE EXCLUSIVE AUTHORITY IN
ARTICLE 5 SECTION 2 FILES TO
ADOPT STATUTE.
>> YOU IDENTIFY TWO QUESTIONS OF
LAW IN THIS CASE, THE QUESTION
IS WHETHER THIS STATUTE IS
PROCEDURAL OR SUBSTANTIVE, AND
OUR COURT THAT ADDRESSES THE
STATUTE WHETHER IT IS
SUBSTANTIVE OR PROCEDURAL.
AND THERE WAS CONFLICT IF YOU
CAN CITE THE CASE.
>> SUBSTANCE, PROCEDURE, MASSEY
VERSUS DAVID IN 2008 AND
FIRST-TIME PROCEDURAL LAW AND
SUBSTANTIVE LAWS, PROCEDURES IS
DEFINED AS THE MANNER MEANS
METHOD OF WATER FOR WHICH THE
PARTY ENFORCES SUBSTANTIVE
RIGHTS.
>> HOW DOES THAT CONFLICT WITH
FOOTNOTE 7?
>> THE ISSUE WAS THE APPLICATION
OF THE STANDARD, 90.702 CODIFIED
GOMBERT, HAD NOT BEEN ADOPTED BY
THE COURT AND UNTIL IT IS
ADOPTED BY THIS COURT AS
PROCEDURAL THIS COURT HAS THE
AUTHORITY TO ADOPT SO A FRY
JURISDICTION.
>> YOU ARE PRESUMING THE ANSWER
THE QUESTION YOU WANT TO
PRESENT.
I CANNOT FOLLOW THE WORKINGS OF
YOUR MIND ON THIS ISSUE.
>> ON THE CONSTITUTIONAL ISSUE
THE ONLY REFERENCE IS FOOTNOTE 7
AND IS ALL YOU WILL FIND AT THE
DISTRICT COURT LEVEL.

THEY DID NOT SPECIFICALLY SAY WE CERTIFY THIS QUESTION IN THAT NATURE BUT THAT IS WHAT THEY DID AND THAT IS PART OF THAT DECISION, THEY PASSED ON THE CONSTITUTIONALITY OF 90.702.
>> TELL US, I KNOW ONE OF THE INCIDENTS YOU RAISED IS WHETHER THE EXPERT'S TESTIMONY, SPECIFICALLY DR. CRAPOH, DR. RASMUS AND, WHETHER OR NOT THE TRIAL COURT PROPERLY ADMITTED THEIR EXPERT.
>> THE TRIAL COURT DID, I CAN DIRECT YOU TO THE RECORD ON THE EXPOSURE THEORY.
THERE IS A LOT OF TALK ABOUT THE EVERY EXPOSURE LINE OF CASES AND THEY CITE SEVERAL CASES.
YOU CAN FIND SIX CASES THAT GO THE OPPOSITE ON THE EVERY EXPOSURE THEORY.
AND OUR EXPERTS, SPECIFICALLY AT 12286 DISCUSSES HOW EVERY EXPOSURE IS NOTHING BUT A THEORY, IT IS A THEORETICAL CONCEPT.
WOULD YOU AGREE, ANY INCREASED RISK OF MESOTHELIOMA.
THERE IS A THEORETICAL THRESHOLD SOMEWHERE ABOVE BACKGROUND.
IT HAS NOT BEEN ESTABLISHED WHAT IT IS.
>> WHAT WAS THE BASIS EXCLUDING THAT TESTIMONY?
WHY WAS THAT INCORRECT?
>> THEIR STATEMENT AND OPINION IS WRONG.
THEY REPEATEDLY REJECT IT.
SPECIFICALLY MISSTATED, HE SAID IT IS THEORETICAL AND TAKE THAT ALONG WITH THE FACT ALL THE WITNESSES ON BOTH SIDES AGREE THERE IS NO SAFE LEVEL OF EXPOSURE ABOVE BACKGROUND TO ASBESTOS.
HARD TO ARGUE WHEN THE RECORD, THE OPINION IS CONTRARY TO THE RECORD BECAUSE IT STARTS WITH THE WORLD HEALTH ORGANIZATION.

YOU WOULD AGREE THERE IS NO SAFE LEVEL EXPOSURE, THAT IS MY UNDERSTANDING, THAT IS THEIR WITNESS WAS THE SCIENTIFIC AND MEDICAL COMMUNITY AS YET TO DETERMINE A LEVEL OF EXPOSURE BELOW WHICH IT DOES NOT OCCUR.
ANOTHER ONE FROM REYNOLDS.
YOU AGREE THE SCIENTIFIC AND MEDICAL COMMUNITY AS YET TO DETERMINE A LEVEL OF EXPOSURE ABOVE THE BACKGROUND IN WHICH IT WILL NOT OCCUR.
CORRECT.
OUR WITNESS NOW, THE MAINSTREAM SCIENCE GENERALLY ACCEPTED IN THE SCIENTIFIC COMMUNITY, NO EXPOSURE HAS YET BEEN DEFINED BELOW WHICH YOU WOULD NOT GET MESOTHELIOMA.
>> THE FOURTH DISTRICT SAYS EVEN IF FRY WERE TO APPLY, THIS TESTIMONY THEY ARE FINDING SHOULD HAVE BEEN EXCLUDED, WOULD BE INADMISSIBLE UNDER FRY.
I'M TRYING, I AM STRUGGLING WITH WHERE THE EVIDENCE IS THAT FRY WOULD HAVE EXCLUDED THE TESTIMONY YOU ARE REFERRING TO.
>> THIS COURT MADE A STATEMENT, THE EXPERT TESTIMONY IN THIS BLUNDER, PAGE 100 BUT IF YOU GO TO 12275 TO 12272 IN THE TRASH BAG AND 12275, YOU FIND DISCUSSION BY THE SPECIFIC CAUSATION DESCRIBING METHODOLOGY.
THE SCIENTIFIC METHOD.
THE LITERATURE REVIEW TO 1972, THOUSANDS OF ARTICLES HAVE BEEN LOOKED AT, AN EXPLANATION AND APPLICATION OF THE CRITERIA, CONTRARY TO THAT STATEMENT, HARD TO ARGUE THE RECORD WAS MISSTATED.
AND RECORD REFERENCES TO COMPARE SPECIFICALLY TO THE OPINION.
THE OPINION WENT SO FAR AS TO SAY THERE SHOULD HAVE BEEN A JURY INSTRUCTION AS TO WHETHER

THE PLAINTIFF SMOKED CIGARETTES.
STANDARD INSTRUCTIONS COVER
THAT.
WE MIGHT AS WELL SAY HOW MUCH
WAS IN THIS PRODUCT SO THAT
PRODUCT?
A LITANY OF SPECIFIC QUESTIONS
AND THE COURT HERE PURELY ON
GENERAL ACCEPTANCE IT IS
CONTRARY TO THE RECORD.
>> YOU ARE INTO REBUTTAL TIME,
YOU'RE WELCOME TO CONTINUE.
I'M DONE AT 5:08.
>> MAY IT PLEASE THE COURT?
ON BEHALF OF R.J. REYNOLDS,
SUCCESSOR TO LORILLARD,
JURISDICTIONAL ISSUES RAISED
THIS ONE ARE DRESSED IN HIS
ORIGINAL BRIEF, PAGES 6 THROUGH
9.
AND THE COURT EXPRESSED A
STATUTE TO BE CONSTITUTIONAL,
AND YOU DIDN'T HEAR THAT ARE YOU
TODAY.
AND CONFLICT WITH MORRIS, THIS
WAS A PURE OPINION CASE.
THESE WERE URGED FOR
JURISDICTION AND HAVE NO MERIT
WHATSOEVER.
TO THE EXTENT YOU HEARD
DIFFERENT ARGUMENTS TODAY, AND
EVERY SUBSTANTIVE THEORY BEFORE
THIS, AND DID NOT CONTINUE TO
BEGIN WITH.
>> IS THIS A PROCEDURAL OR
SUBSTANTIVE STATUTE.
IN PEREZ AND MORE RECENTLY BUN,
THE COURTS SAY IT IS PROCEDURAL
AND CAN BE APPLIED
RETROACTIVELY, AND HOW IT COULD
HAVE BEEN APPLIED TO THIS CASE.
I DON'T KNOW HOW YOU GET IT BOTH
WAYS.
>> I REFER TO THE SECOND DCA, IN
WHICH JUDGE KENNEDY EXPLAINED
THE DIFFERENCE BETWEEN
PROCEDURAL RETROACTIVITY AND
PROCEDURAL FOR PROCEDURAL VERSUS
SUBSTANTIVE.
THE SUN OIL CASE, SUBSTANCE AND

PROCEDURE, THEY EXPRESS A
DICHOTOMY THAT IS DIFFERENT
DEPENDING UPON THE CONTEXT IN
WHICH YOU LOOK AT IT BECAUSE
OTHERWISE IF THE STATUTE WAS
DECLARED RETROACTIVE BECAUSE IT
WAS PROCEDURAL IT WOULD BE
UNCONSTITUTIONAL FOR VIOLATING
SEPARATION OF POWERS.
THAT CAN'T BE.
IT IS DIFFERENT FROM THE
PURPOSES OF RETROACTIVITY, UNDER
ARTICLE 5 SECTION TO A.
THE STATUTE LIKE MANY STATUTES
THIS COURT INITIALLY ADOPTED TO
THE EXTENT STATUTES ARE
PROCEDURAL IN 1979.
AND THIS COURT HAS ADOPTED
PROCEDURAL.
90.702 IS SUBSTANTIVE WHEN
ADOPTED BY THE LEGISLATURE AND
SUBSTANTIVE IN PART NOW.
>> IN 2013, AMENDMENT
SUBSTITUTE.
>> 2013 AMENDMENT WAS
SUBSTANTIVE BECAUSE IT CHANGED
THE STANDARD OF HOW THE TRIAL
COURT DETERMINED, WHAT IS JUNK
SCIENCE AND WHAT IS NOT.
>> GIVING LITIGANTS SOME NEW
RIGHTS?
>> KNOW.
YOU DID NOT GIVE ANYBODY NEW
RIGHTS BUT CHANGED THE STANDARD
BUT BEAR IN MIND FOR THIS CASE,
TO ADDRESS YOUR QUESTION TO THE
OTHER SIDE, FOR THIS CASE, THE
FIRST STEP IS WHETHER
METHODOLOGY IS GENERALLY
ACCEPTED AND THERE ARE STEPS
BEYOND THAT.
THE REASON THE FOURTH DISTRICT
DECLARED THEY DID NOT PROVIDE
ADMISSIBLE TESTIMONY WAS THE
METHODOLOGY HAD NEVER BEEN SHOWN
TO BE GENERALLY ACCEPTED.
THE COURT DID NOT GO BEYOND THAT
BECAUSE IT DIDN'T HAVE TO GO
BEYOND THAT WHICH AS WE POINT
OUT IN OUR BRIEF.

>> DR. CRAPOH'S TESTIMONY WAS BASED ON A SUBSTANTIAL PART DR. MILLET'S TESTIMONY, THE APPELLATE COURT SAID WAS PROPER. OF DR. CRAPOH'S TESTIMONY WAS BASED ON THAT, WHY WAS HIS TESTIMONY IMPROPER?
>> DID NOT ACCEPT DR. MILLET'S RESULTS BECAUSE DR. MILLET'S RESULTS WERE DIFFERENT WHICH HE ALSO LOOKED AT AND FOURTH DISTRICT CORRECTLY HELD AND YOU DIDN'T HEAR FROM THE OTHER SIDE, HE MADE THIS STUFF UP IN 1991 AND WAS NEVER PEER-REVIEWED.
>> WHAT YOU ARE REALLY ARGUING AND THIS TO ME IS THE PROBLEM WITH THE APPLICATION, THAT AREN'T YOU TRIAL JUDGES USURPING THE JURY'S FUNCTION, THIS JERRY AND THE QUESTIONS THEY ASK AND THE TESTIMONY, YOU ARE EXPERTS. HOW MANY EXPERTS DID R.J. REYNOLDS HAVE?
>> ONE EXPERT ESPECIALLY ADDRESSED THE TESTIMONY.
>> YOUR OWN DOCUMENTS SAY THAT CIGARETTES RELEASE AS BEST AS FIBERS IN 1954.
WE ARE TALKING ABOUT CAN THE JURY RESIST TESTIMONY SO FALLACIOUS THAT THE JURY WOULD NOT BE ABLE TO EVALUATE THE SOLIDITY OF THE EXPERT OPINIONS ON CAUSATION?
>> WE SHOULD LOOK AT DR. CRAPOH'S TESTIMONY.
6783 OF THE RECORD, TESTIFIED, QUOTE, BECAUSE OF THE ISSUES OF FILTERED DEGRADATION AND TIME-LAPSE, I WOULD NOT RELY ON THAT STUDY FOR THE EXACT NUMBERS.
IT WOULD BE DIFFICULT TO PROVE YOU WERE GETTING THE SAME RESULTS YOU WOULD HAVE GOTTEN EARLIER AND IT IS, QUOTE, COMMON SENSE THAT THE FILTER WOULD RELEASE SOME OF THOSE FIBERS. THAT WAS HIS OWN TESTIMONY AND

THE BEST HE COULD DO IN FRONT OF
THE JURY.
DR. MILLET COULD TESTIFY, THIS
WAS AN ACCEPTED METHOD OF
SCIENTIFIC TOOL.
DR. MILLET'S TESTIMONY WAS
BOLSTERED BY DR. CRAPON REVENUES
IN AND NO ONE EVER ARGUED
HARMLESS ERROR IN THIS CASE IN
TERMS OF THE EXCLUSION OF DR.
CRAPOH AND RESIN USED IN.
THE ISSUE HERE IS THE TEST.
IF YOU LOOK AT THE DOCUMENTS
THAT HAVE BEEN INTRODUCED THE
BEST YOU WILL GET HIS TRACE AND
THE ONE WITNESS WHO FOUND A
LEVEL OF EXPOSURE WOULD BE NO
MORE THAN AN AVERAGE DAY IN NEW
YORK CITY IN 1954.
THIS DOES NOT GET THEM OVER THE
LINE AND THE TESTING WAS NOT
REPLICATED.
NO ONE KNOWS WHAT THE TESTING
WAS BECAUSE THEY STOPPED SELLING
IN 1956 AND THOSE DOCUMENTS
DON'T EXIST SO THE SCIENTIFIC
VALIDITY OF THOSE TESTS –
>> THAT ARGUMENT YOU'RE MAKING,
WAS IT NOT MADE TO THE JURY WITH
YOUR EXPERT AND THE ARGOT OF
COUNSEL?
>> IT IS TWO DIFFERENT
ARGUMENTS.
THE TESTIMONY CAME IN.
EVEN UNDER FRY, THE ARGUMENT
TODAY, DOCTORS CRAPO AND ITALY
GAVE PURE OPINION TESTIMONY.
EVEN UNDER MARSH, PURE OPINION
TESTIMONY DOESN'T ESTABLISH
SPECIFIC CAUSATION.
THE PURE OPINION TESTIMONY WAS
THIS CONDITION CAN BECAUSE IT BY
TRAUMA AND THE DOCTOR USE
DIFFERENT DIAGNOSIS TO CONCLUDE
IT MUST HAVE BEEN CAUSED BY
TRAUMA.
THE PURE OPINION IS THIS FILTER
RELEASES, RELEASES FIBERS,
SPECIFIC CAUSATION BASED ON THE
MANUFACTURER AND ACTUAL USE.

AND THE METHODOLOGY WHICH THE
FOURTH DISTRICT CORRECTLY
REJECTED AND WAS HERE.
THE NOTORIOUSLY ABSENT DR.
LONGOH WHO THEY DESIGNED TO
CALL.
>> EVEN THOUGH HE WAS NOT A
WITNESS, HAD NEVER BEEN
PEER-REVIEWED AND STRUGGLING
WITH TALKING ABOUT PEER-REVIEWED
IN THE CONTEXT SO IF WE ARE NOT
USING THE FRY TESTS ANYMORE, DO
WE USE THE PORTION THAT TALKS
ABOUT IT HAS TO BE
PEER-REVIEWED?
AND THE WHOLE POINT, PART OF IT
IS YOU ARE LOOKING MORE AT
WHETHER IT IS RELEVANT AND
RELIABLE.
>> AT 5:09, IT IS NOT EXCLUSIVE,
NONEXCLUSIVE FACTORS FOR THE
TESTS AND WHETHER THE TECHNIQUE
HAS BEEN TESTED.
HAS BEEN SUBJECTED --
>> TO SEE IF WE GET THE SAME
RESULTS IN.
WHEN HE DID IT AGAIN.
>> BY PEERS?
>> THERE IS NO CUT AND DRIED
LINE.
INDEPENDENT EXPERTS, DEFENDING
HIS OWN METHODOLOGY.
THE POINT I WANT TO MAKE IS
PEER-REVIEWED PUBLICATION.
AS WE STAND HERE TODAY AS WE
READ THE COURT'S DECISION, A
CLASSIC EXAMPLE, THE LINE
BETWEEN THEM IS EXCEEDINGLY THIN
WITH APOLOGIES TO GERTRUDE
STEIN, JUNK SCIENCE IS JUNK
SCIENCE IS JUNK SCIENCE AND NO
MATTER WHAT LENS YOU LOOK AT
THIS TESTIMONY THROUGH THE BASIC
METHODOLOGY ON WHICH THESE
EXPERTS RELIED HAS NEVER BEEN
SUBJECTED TO PEER-REVIEWED,
NEVER TESTED BY THE SCIENTIFIC
METHOD AND WAS CREATED BY A
WITNESS PLAINTIFFS REFUSED TO
CALL AT TRIAL AND THAT WOULD

FLUNK ANY TEST WHICH I HAVE USED
UP CONSIDERABLE TIME AND STEPPED
ALL OVER MR. DORAN
IS THAT HE NOT BE
PENALIZED AND THE ABLE TO
PRESENT AND ARGUMENT.
>> GOOD MORNING, MAY IT PLEASE
THE COURT, RICHARD DORAN ON
BEHALF OF CRANE COMPANY.
I WANT TO FOCUS ON THREE POINTS
TODAY.
I CAME LATE TO THIS CASE.
>> SPEAK INTO THE MIC.
>> YOU WOULD THINK I WOULD
REMEMBER THAT AFTER ALL THESE
YEARS.
I WANT TO FOCUS ON THREE POINTS.
ESSENTIALLY, THE ONLY EXPERT
THAT TESTIFIED TO CRANE'S
PRODUCT BEING A CAUSE OF THE
PLAINTIFF'S DISEASE FAILED TO
MEET THE STANDARD OF DOLLARD OR
FRY, MADE THAT EVALUATION.
BASED ON THAT, IT IS DIFFICULT
TO UNDERSTAND YOUR CONCERN AS TO
WHY WE ARE IN THIS CASE.
THERE AS AN ALTERNATIVE RULING
BY THE FOURTH DISTRICT IN A VERY
DETAILED OPINION AND SEEMS TO
RESOLVE THIS THING WHETHER YOU
APPLY DAHLBERG OR FRY.
THE SECOND THING I WANT TO TALK
ABOUT.
>> I FIND IT HARD TO LOOK AT THE
STATEMENT THAT THIS WOULDN'T
APPLY EVEN UNDER FRY IN THE
ANALYSIS.
>> IN THE OPINION, THIS WAS A
NEW OR NOVEL APPROACH, EVERY
EXPOSURE APPROACH AS WE POINT
OUT IN CASE AFTER CASE IN OUR
BRIEF IT WAS REJECTED UNDER FRY
BECAUSE IT ISN'T PREDICATED ON
ACCEPTED MEDICAL --
>> THERE IS NO QUESTION, 50 PLUS
YEARS, THE PRODUCT AS BEST AS IN
DIFFERENT FORMS IS THE PRIMARY
REASON INDIVIDUALS DEVELOP THE
DISEASE MR. DORAN HAD.
WHEN WE ARE TALKING ABOUT JUNK

SCIENCE OR WHATEVER, THERE ARE
VICTIMS ALL OVER THE COUNTRY
THAT HAVE BECOME SERIOUSLY ILL
AND DIED THE CAUSE OF THIS
PRODUCT.
HERE THE QUESTION IS WHETHER OF
THE DEFENDANTS THAT WERE LEFT
INCLUDING THE NONPARTY
DEFENDANTS, WHETHER THEY PLAYED
A CAUSATIVE ROLE IN THE
DEFENDANT'S DISEASE BUT WHEN WE
ARE TALKING ABOUT JUNK SCIENCE
AND ALL THAT I AM HAVING TROUBLE
AS IT APPLIES TO THE CASE WHEN
THERE ARE COUNTLESS STUDIES
ABOUT EXPOSURE AND HOW YOU END
UP CONTRACTING THIS WHAT IS
SOMETIMES OR MANY TIMES A FATAL
DISEASE.
CAN YOU GIVE ME THAT, WHAT IS AT
STAKE IN THIS CASE AND THE JURY
EVALUATING HOW MANY EXPERTS, 20
EXPERTS, ASKING COUNTLESS
QUESTIONS HOW THIS QUALIFIES AS
ONE OF THESE JUNK SCIENCE NEVER
BEFORE CASES THAT THE JURY WAS
NEVER CAPABLE OF EVALUATING?
>> I THINK THE BEST WAY I CAN
ANSWER THAT IS WHAT HAPPENED
WITH DR. DAHLGREN IS HE WENT
TOWARD PROVIDING PART OF THE
WAY, PROVIDING THE INFORMATION
THAT WOULD HAVE BEEN USEFUL TO
THE JURY IN MAKING THAT
ANALYSIS.
TO SIMPLY SAY ALL OF THESE
ENTITIES HAD IS BEST US IN THEIR
PRODUCTS, THE PLAINTIFF WAS
EXPOSED TO IT AND ERGO THAT WAS
A SUBSTANTIAL CAUSE IS NOT
ENOUGH.
>> DIDN'T THEY QUANTIFY, THE
PRODUCT WE ARE TALKING ABOUT
HERE, IN THE SHEETS, SO HOW LONG
HE WORKED THERE, HOW MANY TIMES
A DAY, WASN'T JUST SOME IS BEST
US SOMEPLACE.
SPECIES THEY DIDN'T QUANTIFY
THAT.
SPECIES HOW DO YOU --

>> THAT IS THE POINT.
YOU CAN'T DO IT BY SIMPLY COMING IN AND THIS IS AS A POINT OF LAW, WE CITE IN OUR BRIEF THE OPINION FROM THE SEVENTH CIRCUIT TO THE NINTH CIRCUIT, WHAT IT SAYS IS IF THAT SWITCHES THE BURDEN TO THE DEFENDANT, WHAT THEY SAY IS REQUIRING A DEFENDANT TO EXCLUDE THE CAUSE AND IMPROPERLY SHIFTS THE BURDEN IS TO DISPROVE CAUSATION, THE SUBSTANTIAL FACTOR SO THAT IS THE PROBLEM WE SEE WITH THIS ANALYSIS AND VIRTUALLY EVERY FEDERAL COURT HAS SEEN WITH THIS.
>> YOU ARE USING EVERY EXPOSURE, THE PETITIONER, THIS WAS IN, QUOTE, EVERY EXPOSURE CASE AND YOU DISAGREE WITH THAT THIS WASN'T JUST A HAPPENSTANCE THAT HAPPENED TO BE IN YOUR FACTORY ON A GIVEN DAY AND HAPPENED TO BREATHE IN THE AIR.
HE WORKED THERE FOR HOW MANY YEARS.
>> THERE WAS DUST BUT NOBODY TOOK THE CRANE EYES, NOBODY RE-CREATED THE WAY HE CUT IT UP, NOBODY CAPTURED THE DUST CLOUD, NOBODY MEASURED THE AMOUNT IN THE DUST CLOUD, THAT IS WHERE THIS FELL APART.
THEY COULD HAVE BROUGHT IN, TRIED TO DO THAT WITH THE PUFF TEST AND OTHER THINGS THERE WERE EFFORTS TO DO THAT BUT MY POINT, THEY HAVE THE BURDEN OF GOING FORWARD AND ALL THEY DID WAS PUT FORWARD A NOVEL THEORY.
THE FOURTH DISTRICT LOOKED AT THIS.
>> NOW YOU ARE SAYING IF YOU HAVE MULTIPLE CAUSES OF MESOTHELIOMA THAT HAS OCCURRED BECAUSE WE DON'T HAVE ASBESTOS IN OUR PRODUCTS ANYMORE, THAT OCCURRED OVER APPEAR GO OF YEARS, THE PLAINTIFF HAS THE

BURDEN OF COMING UP WITH A
QUANTIFIABLE NUMBER TO WHICH
THEY WERE EXPOSED BEFORE THEY
CAN PRESENT THAT TO THE JURY?
>> DAINTIES TO PROVIDE SOMETHING
THAT ALLOWS THE JURY TO MAKE
THAT, THAT ASSISTS THE JURY IN
MAKING THAT DETERMINATION.
WHAT DID THE JURY COME BACK
WITH, 20% FOR THIS ONE, 20% FOR
THIS ONE, THE REST FOR THE
TOBACCO INDUSTRY.
THERE WAS NOTHING IN ANY OF THE
TESTIMONY THAT WOULD SUPPORT
THAT.
>> THERE WAS A SAFE LEVEL OF AS
BEST US.
AND THEN HE TESTIFIED HE HAD NO
WAY TO KNOW HOW MUCH IS BEST US
THE CLIENT WAS EXPOSED TO BUY
THE PRODUCT.
>> HIS TESTIMONY WAS HE JUST
THOUGHT WITH NO BASIS WHATSOEVER
IN SCIENCE THAT WHATEVER THAT
LEVEL OF EXPOSURE WAS WAS WHAT
THE MINIMUM SAFE LEVEL WAS.
>> IT WAS A SUBSTANTIAL COST.
EVERYBODY AGREES IT IS A CAUSE.
>> LET SEPARATE TALKY TALK AND
SEE WHAT THIS MEANS.
WE HAVE CASES THAT DEAL WITH
TOXIC SUBSTANCES AND WE HEARD
THE ARGUMENT BEFORE THAT THE
SCIENTISTS MUST COME DOWN WITH
SPECIFIC TESTING ON HUMAN
SUBJECTS AND PRESENT THAT
EVIDENCE BEFORE YOU CAN PRESENT
THE CASE FOR TOXIC EXPOSURE,
THAT IS CONTRARY TO COMMON SENSE
THAT WE WILL DO EXPERIMENTS ON
HUMANS WITH TOXIC SUBSTANCES
THAT PRODUCE DEATH.
SEEMS TO BE WHAT YOU ARE
ARGUING.
UNTIL SCIENCE DOES THAT THERE IS
NO RESPONSIBILITY FOR TOXIC
SUBSTANCES.
>> AS WAS MENTIONED, THESE ARE
STANDARDS, IN THIS CASE, HE
COULDN'T EVEN POINT TO ANY

ANIMAL STUDIES THAT WERE
LEGITIMATE.
WHAT I REALLY WANT TO SAY TO THE
COURT IS THIS, THERE WAS A
PARTICULARLY GOOD BRIEF IN FRONT
OF THIS COURT FROM THE NATIONAL
ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS.
WE ARE HERE TO TALK ABOUT THE
BIGGER ISSUE, EVERYONE IS
FOCUSED SPECIFICALLY OF CIVIL
CASES, I RECOMMEND THAT BRIEF,
TALKS ABOUT THE CRIMINAL
CONTEXT, ISSUES OF LIBERTY ARE
AT STAKE.
JUSTICE KENNEDY HAS MENTIONED NO
DIRECT CONFLICT WITH THE
DISTRICT COURT OF APPEAL OR NO
EXPRESS DECLARATION OF THE
CONSTITUTIONALITY STATUTE AND NO
EXPRESS CONSTRUCTION OF THE
CONSTITUTION.
THIS IS NOT THE CASE TO DECIDE
THE UNANSWERED QUESTION FROM THE
DECISION IN THE AMENDMENTS TO
THE EVIDENCE CODE FROM LAST
YEAR.
THERE WILL BE A CASE, FAIRLY
CERTAIN THERE WILL BE A CASE
THAT WILL BE DEVELOPED THAT WILL
BRING AND PRESERVE THESE ISSUES
TO THIS COURT, THIS IS NOT THE
CASE.
FOR THOSE REASONS WE ASK THE
COURT TO AFFIRM THE DECISION
BEFORE THE DISTRICT.
>> QUICKLY ON PROCEDURE I
REFERRED THE COURT TO 8164 OF
THE RECORD, THIS IS OUR GR
REYNOLDS ON PROCEDURE ADDRESSING
THE MEANS, MANNER AND FORM A
PARTY MAY INTRODUCE AN EXPERT
OPINION TO SUPPORT THE PARTY'S
CLAIM FOR RIGHTS AND LITIGATION.
90.702 FALLS IN THE SCOPE OF THE
DEFINITION, PRACTICE AND
PROCEDURE SET FORTH BY THE
FOURTH DISTRICT AND THE SUPREME
COURT, 90.702 IS INDISPUTABLY
PROCEDURAL RATHER THAN THE

SUBSTANTIVE.
>> YOUR OPPONENT, YOUR OPPONENT TAKES THE POSITION.
>> CALLED DOWN.
LISTEN TO THE QUESTION.
>> YOUR OPPONENT HAS ARGUED THAT IT MAKES NO DIFFERENCE WHETHER IN THIS CASE, WHETHER WE'RE LOOKING AT FRY, THERE IS NO SCIENTIFIC BASIS FOR APPORTIONMENT OR CAUSATION APPORTIONMENT IN THIS CASE, WHISTLING IN THE WIND IS THE ARGUMENT, THE FUNDAMENTAL SCIENCE JUST NOT THERE.
WHY ARE WE ARGUING WHICH STANDARD BECAUSE NEITHER ONE SUPPORTS IT.
>> UNDER BOTH STANDARDS, IF YOU GO TO THE TRANSCRIPT ON THE CIGARETTE THERE WAS A TEST THAT WAS ACCEPTED BY THE FOURTH DISTRICT, EQUIVALENT TO ONE CIGARETTE, 38,005 TO 10 MILLION OF HIS BEST US FIBERS COME FROM THIS THAT.
SPECIFIC CAUSATION, I WOULD LIKE YOU TO ASSUME MR. ITALY 15 SMOKED ONE PACK OF KENT CIGARETTES BETWEEN THE YEARS 1953-56, THAT IS 20,000 CIGARETTES.
>> CRANE?
>> CRANE IS HYPOTHETICAL TO CRANE WHICH PLAINTIFF PRESENTED AN EXPOSURE CONTAINING 80%, WORKED 5 DAYS A WEEK FROM 1960252-1965, DESCRIBING HOW THE GASKETS WERE INSTALLED, CREATE VISIBLE DUST AND BREEZED BY THE PLAINTIFF AT 123855212389.
>> SAYING THERE IS NO SCIENTIFIC STUDY TO ESTABLISH WHAT THEY WOULD PRODUCE.
WHY ARE WE FUSSING ABOUT DOLLARS AND FRY?
>> ALL THE SCIENCE IS GENERALLY ACCEPTED AND UNDER FRY GENERAL ACCIDENTS IS THE GOLD STANDARD.
IS ONE OF THE FACTORS AND THE

SUBJECTIVITY IS WHERE THE
PROBLEM LIES.
>> YOU ARE MISSING MY POINT.
YOU ARE ASSUMING THERE IS A
SCIENTIFIC BASIS.
HE IS SAYING THERE IS NO
SCIENTIFIC BASIS FOR THAT, THE
FACT OR THE DATA FOR THIS CASE.
>> THAT WOULD BE CONTRARY TO
THOUSANDS OF ARTICLES,
EPIDEMIOLOGY OVER 50 YEARS.
AND THEY ALL AGREE --
>> EVIDENCE IN THIS RECORD
ESTABLISH THE SCIENTIFIC REALITY
OF THAT TESTIMONY.
WHICH EXPERTS WOULD YOU SUGGEST?
>> YOU CAN FIND THAT WITH DR.
BRODY, I TEXT ON SOME OF IT
EARLIER ON THE METHODOLOGY, 12
TO 70, 12276, THE METHODOLOGY
AND UNDER THAT LEVEL ALL THE
WITNESSES, 13890, CRANE'S
WITNESS, NO SAFE LEVEL FROM THE
STUDIES.
>> IF THERE IS NO SAFE LEVEL,
CRANE BROUGHT UP THERE SHOULD BE
MORE DEFENDANTS ON THE VERDICT
FORM.
>> THAT WOULD BE RIGHT IF YOU
PUT IN EVIDENCE AS BEST US AND
THE COURT MISREPRESENTED THE
RECORD.
THEY SAID MR. DELISLE, HE WAS
EXPOSED TO AS BEST US AND I AM
TELLING YOU, SPECIFIC QUESTIONS,
ANY IS CONTAINED BY AS BEST US,
THEY WENT PRODUCT BY PRODUCT, I
WOULDN'T KNOW, GEORGIA-PACIFIC,
NO, I HAVE NO IDEA, DO YOU HAVE
ANY WAY TO KNOW?
I DON'T KNOW.
IT IS IN THE RECORD.
THOSE PRODUCTS CONTAIN ASBESTOS,
THE WITNESS BACK THEN DOESN'T
KNOW AND THERE'S NOTHING IN THE
RECORD.
THEY LOSE IN DARTY, THIS IS A
DEFENDANT IN 100,000 AS BEST AS
CASES AND WE DID NOT GET MOTIONS
FROM THAT.

AND YOU GET THESE EMOTIONS DOING
A NUMBER ON THE COURT SYSTEM, WE
ARE SPENDING TIME, WITH A
DEFENDANT.
GENERAL ACCEPTANCE IS OPEN
SEASON.
>> ANY TIME YOU HAVE AN EXPERT
WITNESS, A DOCTOR OR PHD OR
WHATEVER IT IS, THE OTHER SIDE
OBJECTS, YOU WOULD HAVE TO HAVE
THAT ON EACH OF THOSE.
IT DOESN'T MATTER WHETHER IT IS
A NOVEL APPROACH OR A STANDARD
GENERALLY ACCEPTED ON SCIENTIFIC
PRINCIPLES.
>> IF YOU LOOK AT JOINER,
JUSTICES BREYER AND STEVENS HAD
BUYERS REMORSE, IF YOU LOOK AT
WHAT THEY SAID, IT IS NOT A
FOOTNOTES, THIS IS WHAT JUSTICE
BREYER SAID ON PRONGS 3, JUDGES
PUT ON THE LAB COAT IN PLAY
SCIENTIST, APPLICATION TO
METHODOLOGY YOU DON'T DO UNDER
FRY, JUSTICE BREYER A FEW YEARS
LATER, JUDGES ARE NOT
SCIENTISTS, DO NOT HAVE THE
SCIENTIFIC TRAINING AND CAN
FACILITATE MAKING SUCH DECISIONS
AND THE NEW ENGLAND JOURNAL OF
MEDICINE FILED ON BEHALF OF NO
ONE A JUDGE COULD BETTER FULFILL
HIS GATEKEEPER FUNCTION IF HE
HAD HELP FROM SCIENTISTS AND
JUSTICE STEVENS COMMENTING ON
GENERAL ACCEPTANCE THAT IT
SHOULD BE THE GOLD STANDARD, IF
YOU HAD THE GOLD STANDARD OF
GENERAL ACCEPTANCE AND GO TO
OTHER STUFF IF YOU DON'T HAVE
GENERAL ACCEPTANCE, JUSTICE
STEVENS QUERIED WHEN QUALIFIED
EXPERTS REACH RELEVANT
CONCLUSIONS ON THE BASIS OF
ACCEPTED METHODOLOGY WHY ARE
THERE OPINIONS ADMISSIBLE?
TWO SUPREME COURT JUSTICES THREE
YEARS AFTER THE DECISION HAVING
BUYERS OR MORE SAND WAS A CASE
OF INCLUSION.

>> THE COURT IS OF THE OPINION
YOUR TIME IS WAY OVER.
THE COURT IS IN RECESS.