>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE OF THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEAD, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.
LADIES AND GENTLEMEN.
THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME COURT.
FIRST CASE ON THE DOCKET IS DEBAUN VERSUS STATE.
COUNSEL?
>> GOOD MORNING.
MAY IT PLEASE THE COURT.
BRIAN ELLISON HERE ON BEHALF OF THE PETITIONER, GARY DEBAUN.
SEXUAL INTERCOURSE IS A SPECIFIC TERM OF ART.
THIS COURT AND THE LEGISLATURE RECOGNIZED THAT IT HAS A WELL-SETTLED MEANING.
BACK IN 1926 THIS COURT SAID THAT SEXUAL INTERCOURSE IS DEFINED AS THE ACTUAL CONTACT OF THE SEXUAL ORGANS OF A MAN AND A WOMAN AND ACTUAL PENETRATION INTO THE BODY OF THE LATTER.
THE LEGISLATURE HAS ALSO DEFINED THE TERM IN THE EXACT SAME WAY.
IN FACT, EVERY SINGLE TIME THE LEGISLATURE OR THIS COURT REFERRED TO SEXUAL ACTIVITY THEY HAVE GROUPED THEM INTO SPECIFIC DISCRETE CATEGORIES WHERE SEXUAL INTERCOURSE IS ALWAYS MUTUALLY EXCLUSIVE TO ALL OTHER SEXUAL CONTACTS.
BACK IN 1986 WHEN HIV WAS ADDED TO THE VENEREAL DISEASE LAW IT MADE COMPLETE SENSE FOR THE LEGISLATURE TO INTEND TORE SEXUAL INTER COURSE TO HAVE A NARROW DEFINITION IT ALWAYS HAD.

>> WHY WOULD THAT BE?
>> BECAUSE AT THAT POINT, YOUR HONOR, THE LEGISLATURE IS PRESUMED TO HAVE KNOWN THAT THE SODOMY LAW WAS STILL IN EFFECT AT THAT POINT AND IT COVERED ALL SEXUAL ACTIVITY OTHER THAN SEXUAL INTERCOURSE.
SO AT THAT POINT, EVERYTHING THAT THE LEGISLATURE HAD TO WORRY ABOUT WAS CATEGORY OF SEXUAL CONTACT THAT WAS IN THE SODOMY LAW OR SPECIFIC KIND OF SEXUAL CONTACT THEY MENTIONED IN THE VENEREAL DISEASE LAW, 384.24.
WITH ALL OF THOSE TOGETHER EVERY KIND OF SEXUAL CONTACT IS COVERED.
THE STATE'S MAIN ARGUMENT HERE IS APPLYING PHARAOH TERM, THE NARROW DEFINITION TO THE TERM LEAD TO AN ABSURD RESULT, SOMETHING COMPLETELY IRRATIONAL THAT IS CONTRARY TO WHAT THE LEGISLATURE INTENDED BUT THAT'S NOT SO BECAUSE AT THAT POINT EVERYTHING WAS COVERED.
SEXUAL INTERCOURSE WAS LIMITED SPECIFICALLY TO MAN AND WOMAN.
SEXUAL CONTACT, REPRODUCTIVE SEXUAL CONTACT.
EVERYTHING ELSE IS COVERED BY SODOMY.
IT WAS ONLY SUBSEQUENTLY--
>> BACK WHEN THIS LAW WAS ENACTED IT WAS A CRIME TO HAVE MALE TO MALE SEXUAL CONTACT?
>> CORRECT.
UNDER THE MISDEMEANOR SODOMY LAW IN 1986.
THE ONLY REASON THAT DOESN'T EXIST NOW IS THAT THERE IS A BAN IN THE LAW CREATED BY THE UNCONSTITUTIONALITY OF SODOMY LAWS BACK IN 2003 IN WARREN VERSUS TEXAS WAS DECIDED.
THIS CREATE AS SITUATION MUCH LIKE THIS COURT ENCOUNTERED A LITTLE BIT EARLIER BACK IN 1971

IN THE WILSON CASE WHEN IT WAS
THE FELONY SODOMY STATUTE THAT
WAS DECLARED UNCONSTITUTIONALLY
VAGUE.
AT THAT POINT THE PROBLEM WAS
THAT RAPE WAS DEFINED
SPECIFICALLY AS THE PENETRATION
OF THE VAGINA BY THE PENIS.
SO IN BETWEEN THE TIME THE
FELONY SODOMY WAS
UNCONSTITUTIONAL AND THE RAPE
STATUTE HADN'T BEEN AMENDED,
RAPE COULDN'T BE PUNISHED AS A
FELONY WHEN IT INVOLVED PEOPLE
OF THE SAME SEX.
AND THIS COURT SAID IN WILSON,
ADDRESSING A VERY SIMILAR
ARGUMENT TO THE ONE THE STATE IS
RAISING NOW, THIS WAS UNINTENDED
RESULT.
IT'S THE LEGISLATURE'S
PREROGATIVE TO FILL THE GAPS.
ALTHOUGH WE MIGHT ALL AGREE THAT
THE RAPE STATUTE SHOULD BE READ
TO INCLUDE ALL KIND OF
IMPERMISSIBLE OR UNWANTED SEXUAL
CONTACT IT IS NOT OUR PLACE TO
CHANGE THE TERMINOLOGY OF THE
STATUTE.
IT IS THE LEGISLATURE'S.
SO EVEN THOUGH THIS MIGHT SHOCK
THE JUDICIAL CONSCIENCE AND THE
LOWER COURT MIGHT HAVE FOUND IT
WANTED TO INTERPRET RAPE MORE
BROADLY IN ORDER TO MAINTAIN
SOCIAL ORDERS HOW THEY PUT IT,
THE LEGISLATURE SAID THIS IS THE
CLEAR AND UNAMBIGUOUS INTENT OF
THE LEGISLATURE.
IT IS NOT OUR PLACE TO
CHANGE IT.
THIS COURT SHOULD FOLLOW THAT
DECISION BECAUSE IN THIS CASE
EVEN THOUGH WE MIGHT ALL AGREE
THAT THIS STATUTE SHOULD BE READ
MORE BROADLY TO INCLUDE ALL KIND
OF SEXUAL ACTIVITY THAT COULD
POTENTIALLY TRANSMIT A DISEASE,
THAT'S NOT WHAT IS IN THE
STATUTE.

>> BUT YOU, WOULDN'T YOU AGREE
THAT AT THE TIME THAT THE
STATUTE WAS ENACTED THAT WAS
THE INTENT?
EVEN IF YOU'RE SAYING THEY
DIDN'T USE TERMS THAT SHOULD
HAVE BEEN USED BUT WOULD YOU
AGREE WHEN THAT STATUTE WAS
ENACTED IT WAS INTENT TO MAKE
SURE THAT ANYBODY THAT WAS GOING
TO HAVE ANY KIND OF SEXUAL
ACTIVITY THAT COULD TRANSMIT
AIDS ADVISE THE PARTNER OF
THEIR, WHETHER THEY HAD THE
DISEASE OR NOT.
>> I WOULD SAY THAT THE
LEGISLATURE'S INTENT HAS TO BE
READ FIRST AND FOREMOST FROM THE
LANGUAGE THAT THEY ACTUALLY
USED.
>> I UNDERSTAND THAT HOW
STATUTORY CONSTRUCTION GOES.
WHAT I'M ASKING YOU IS, BASED ON
WHAT WE KNOW OF WHAT WAS GOING
ON AT THE TIME THE STATUTE WAS
ENACTED, WAS THERE INTENT TO
COVER MORE BROAD RANGE OF SEXUAL
ACTIVITIES?
>> NOT WITHIN THIS SPECIFIC
STATUTE AND THE REASON WE KNOW
THAT IS THAT THEY CHOSE A
SPECIFIC TERM, A TERM OF ART,
WHICH IS PRESUMED TO KNOW THE
MEANING OF BECAUSE ELSEWHERE
THROUGHOUT THE FLORIDA CODE, THE
LEGISLATURE HAS DISCUSSED WHAT
SEXUAL INTERCOURSE IS AND WHAT
IT IS NOT.
IN FACT, THAT IS INTERESTING THE
VERY SAME YEAR IT ADDED HIV TO
THE VENEREAL DISEASE LAW IT
ADDED DEFINITION FOR THE FIRST
TIME TO THE DEVIATE STATUTE.
MR. DEBAUN'S DOESN'T FALL OWN
SEXUAL INTERCOURSE BUT DEVIANT
SEXUAL INTERCOURSE.
THE STATUTE--
>> DOESN'T THAT REALLY CUT
AGAINST YOUR ARGUMENT?
YOU'VE TO THE A BROAD CATEGORY,

SEXUAL INTERCOURSE.
THEN THERE'S A SUBCATEGORY ARGUABLY THAT THEY WERE DEALING WITH THERE OF DEVIANT SEXUAL INTERCOURSE.
IT COULDN'T BE DEVIANT SEXUAL INTERCOURSE WITHOUT BEING SEXUAL INTERCOURSE, CORRECT.
>> THAT IS INCORRECT.
>> I WOULD THOUGHT YOU WOULD SAY.
>> IT IS COMPLETELY OPPOSITE OF SEXUAL INTERCOURSE.
DEVIANT SEXUAL INTERCOURSE IS DEFINED ANYTHING BUT THE REPRODUCTIVE CONDUCT BETWEEN A MAN AND WOMAN.
DEVIANT SEXUAL INTERCOURSE IS TEE FIND.
EUROPEAN NILE, ORAL, EUROPEAN NILE, ANAL, EVERYTHING EXCEPT FOR REPRODUCTIVE SEXUAL CONDUCT.
THE LEGISLATURE IS PRESUMED TO KNOW THAT.
THE LEGISLATURE PRESUMED TO KNOW HOW ALL FLORIDA COURTS DEFINE SEXUAL INTERCOURSE IS DISCRETE FORM OF SEXUAL ACTIVITY COMPLETELY MUTUAL EXCLUSIVE FROM ALL OTHER FORMS OF SEXUAL CONTACT INCLUDING DEVIANT SEXUAL INTERCOURSE SYNONYMOUS WITH SODOMY.
OF THE SODOMY IS RECOGNIZED AS EVERYTHING BUT REPRODUCTIVE SEXUAL CONDUCT.
SO AT THE TIME, YOUR HONOR, WE MIGHT AGREE THAT THE LEGISLATURE IN GENERAL INTENDED TO CURB THE SPREAD OF VENEREAL DISEASE BUT WHAT THE LEGISLATURE DID IS USE A NARROW TERM, IT IS PRESUMED TO KNOW WHAT THAT TERM MEANT.
SUBSEQUENTLY DURING THE COURTS ALL INTERPRETED WHAT THAT TERM MEANS AND THE CATEGORY OF SEXUAL ACTIVITY MR. DEBAUN'S CONDUCT FAUST INTO.
ALL THE TIME THE LEGISLATURE NEVER AMENDED STATUTE.

NEVER EXPLICIT I SAID WE NEVER
INTENDED SEXUAL INTERCOURSE TO
BE BROADER.
THEY MEANT IT TO READ LIKE EVERY
OTHER VENEREAL DISEASE LAW IN
THE COUNTRY WHICH DON'T USE
SEXUAL ENTER COURSE AS FORBIDDEN
SEXUAL CONDUCT.
ALL USE MUCH MORE EXPANSIVE
LANGUAGE.
ANY SEXUAL ACTIVITY THAT COULD
LEAD TO SPREAD OF DISEASE OR
SPECIFICALLY ENUMERATE EVERY
SINGLE KIND OF ACT.
>> THAT IS THE EASIEST WAY TO
DEAL WITH ANY OF THIS WHERE YOU
TRY TO PREVENT SPREAD OF DISEASE
TO SAY SEXUAL ACTIVITY THAT
COULD CAUSE SPREAD OF THE
DISEASE, RIGHT.
>> THAT'S RIGHT.
THE LEGISLATURE KNEW THAT.
THEY HAVE KNOWN THAT SINCE 1986.
THEY HAVE KNOWN HOW THEY HAVE
CATEGORIZED THESE SEXUAL
ACTIVITIES THROUGHOUT FLORIDA
LAW.
HOW THIS COURT AND OTHER COURTS
HAVE DEFINED WHAT THESE SEXUAL
ACTIVITIES ARE CALLED AND WHAT
THEY'RE TERMED IN ALL OF THAT
TIME THEY HAVEN'T AMENDED THE
STATUTE.
THEY HAVEN'T CHANGED IT.
THEY'RE PRESUMED TO KNOW WHAT
THEY DID IN THEIR OWN
ENACTMENTS.
THEY'RE PRESUMED TO KNOW ABOUT
THIS COURT'S HOLDINGS.
THEY PROBABLY ALSO KNOW HOW ALL
THE OTHER STATES HAVE DONE THIS.
THERE IS A RATIONAL EXPLANATION
FOR WHY IN 1986 THEY DID IT THIS
WAY BECAUSE AT THAT TIME, ALL
OTHER SEXUAL CONDUCT WAS ALREADY
COVERED.
I HAVE NOT THAT MUCH MORE TO
ADD, SO UNLESS THE COURT HAS ANY
FURTHER QUESTIONS FOR ME I WILL
SAVE MY TIME FOR REBUTTAL.

THANK YOU.
>> MAY IT PLEASE THE COURT.
JEFFREY GELDENS, ASSISTANT
ATTORNEY GENERAL.
I'M HERE ON BEHALF OF THE
RESPONDENT, THE STATE OF
FLORIDA.
THE STATUTE ISSUES A PUBLIC
HEALTH STATUTE.
IT IS NOT A CRIMINAL STATUTE.
AND IT IS UNAMBIGUOUS AS A
RESULT EVER SINCE 1986.
>> WHEN YOU SAY IT IS NO THE A
CRIMINAL STATUTE, IT HAS
CRIMINAL PENALTY.
THAT'S WHY WE'RE HERE, RIGHT.
>> THAT'S CORRECT, YOUR HONOR,
IT IS A CRIMINAL PENALTY BUT
REGULATORY OFFENSE IN THE PUBLIC
HEALTH CODE.
IT LAYS OUT THE PENALTIES AS FOR
THE PENALTY FOR SUB ONE, WHICH
IS, THAT THE GENERAL, ALL THE
OTHER DISEASES EXCEPT HIV IS A
MISDEMEANOR.
SUB TWO, WHICH IS HIV
SPECIFICALLY IS A FELONY.
SO YES, IT DOES ENFORCE THE PUB
HEALTH ENDS BY MEANS OF A
CRIMINAL PENALTY.
HOWEVER, IN THE HISTORY OF THE
STATUTE--
>> BEFORE WE GET TO THE-- THIS
IS WHAT, SOMETIMES PEOPLE ARE
CRITICIZED BECAUSE THEY JUMP TO
THE HISTORY WITHOUT STARTING
WITH THE LANGUAGE.
SEXUAL INTERCOURSE VERSUS SEXUAL
ACTIVITY, IF SEXUAL INTERCOURSE
IS DEFINED SO BROADLY, THAT IT
INCLUDES ANY TYPE OF SEXUAL
CONTACT DOESN'T THAT DO VIOLENCE
TO SOME OF THE OTHER STATUTES
THAT SPECIFICALLY LOOK AT, SAY,
IF IT'S RAPE AS A WHOLE
DIFFERENT THING THAN IF IT'S
OTHER TYPES OF SEXUAL CONTACT?
SO WE HAVE TO START WITH WHAT IS
SEXUAL INTERCOURSE AS USED IN
THE STATUTE IS PLAIN AND

UNAMBIGUOUS.
IS THAT OUR STARTING POINT?
>> THAT'S CORRECT, YOUR HONOR.
AND KEY TO WHAT YOU JUST SAID IS
AS USED IN THE STATUTE.
THE PHRASE IS NOT IN ISOLATION.
THE PHRASES IN THIS PARAGRAPH
AND WHEN I WAS ALLUDING TO THE
HISTORY OF THE STATUTE I MEANT
WHEN THE STATUTE HAD ADDITIONAL
LANGUAGE ADDED TO IT AS THE
PETITIONER REFERENCED.
IN 1986 LAID OUT IN THE THIRD
DISTRICT, THE VENEREAL DISEASES
STATUTE WAS COMPLETELY REWRITTEN
TO, ITS PRESENT FORM.
IN OTHER WORDS IT WAS WRITTEN AS
SEXUALLY TRANSMISSIBLE DISEASES
STATUTE.
IT BECAME NO LONGER THE VENEREAL
DISEASES STATUTE.
THAT STATUTE DIDN'T INCLUDE HIV.
THEN IN 19, IN 1988 LEGISLATURE,
ADD AD COMPREHENSIVE AIDS
PROGRAM STATUTE ESSENTIALLY
LAYING OUT EDUCATION PROGRAMS,
REQUIREMENTS FOR TESTING,
REQUIREMENTS FOR DISCLOSURES,
EVERYTHING FROM HIGH SCHOOLS,
THE LIFE MANAGEMENT COURSE IN
HIGH SCHOOL, HIGH SCHOOL
STUDENTS HAVE TO TAKE TO THE
STATE UNIVERSITIES, TO THE STATE
AGENCIES AND THAT AS PART OF
THAT STATUTE, THAT ADDED THE
CONSENT PROVISION WHICH IS, WHAT
IS AT ISSUE IN THIS CASE.
IN THIS CASE THE RECORD REVEALS
AS LAID OUT IN THE ARREST
AFFIDAVIT, THAT THE PETITIONER
WAS REQUESTED TO GET A TEST BY
THE VICTIM IN THIS CASE, HIS
PARTNER BECAUSE HE SUSPECTED
THAT THE DEFENDANT MIGHT BEEN
INFECTED.
AS LAID OUT IN THE ALLEGATIONS
BELOW, HE WENT AND GOT A TEST
AND BEHAVE IT TO HIM AND IT WAS
A FALSE TEST.
IT SAID THAT IT WAS SOMETHING

OTHER THAN HIV THAT HE HAD.
THAT'S THE TYPE OF CONDUCT THAT IS AT ISSUE IN THIS CASE AND THE STATUTE LAYS OUT THE CONSENT PROVISION.
THE LEGISLATURE SPECIFICALLY ADDED THAT CONSENT PROVISION TO PROTECT UNWILLING VICTIMS FROM THE SEXUAL CONTACT BEING TRANSMITTED.
>> YOU MENTIONED THE DISSENT IN PASSING, JUDGE SHEPARD'S DISSENT.
IF WE START THOUGH WITH THE PLAIN MEANING OF SEXUAL INTERCOURSE AND HOW THE COURTS HAVE INTERPRETED SEXUAL INTERCOURSE, IN ALL OTHER SITUATIONS AS BEING BETWEEN A MAN AND A WOMAN AND PENETRATION, HOW DO WE JUST, AND AGAIN, WE ALL APPRECIATE THIS IS PROBABLY WHAT THE LEGISLATURE MEANT TO DO IS, OR MAYBE THEY DIDN'T BECAUSE THERE WAS THIS OTHER STATUTE BUT LET'S ASSUME THEY MEANT TO DO IT BUT DON'T WE HAVE TO START WITH WHAT THE LANGUAGE IS THAT THEY USED WHICH IS LANGUAGE THAT AT THE TIME WAS DEFINED AS BEING BETWEEN A, PENETRATION BETWEEN A MAN AND A WOMAN?
I GUESS, I'M STILL TRYING TO GET PAST THAT BECAUSE THAT'S WHAT OUR STATUTORY CONSTRUCTION TEACHES US IS THAT WE START WITH THE WORDS ACTUALLY USED, NOT WHAT THEY MIGHT HAVE, WHAT THE LEGISLATURE MAY HAVE MEANT TO DO.
>> THAT'S CORRECT, YOUR HONOR.
THE FIRST STEP IS TO LOOK AT THE WORDS USED AND WORDS USED ARE SPECIFICALLY ENACTED CHAPTER, CHAPTER 384.
AND AS WE LAY OUT IN THE BRIEF THE FIRST SECTION OF CHAPTER 384 THE LEGISLATURE FINDS IS SEXUALLY TRANSMITTED DISEASES ARE EPIDEMIC.

WE LIKE TO PASS THIS STATUTORY SCHEME.
THEY HAVE TARGETED THIS IN PARTICULAR.
THAT'S WHY ALL OF THE STATUTES THAT THE PETITIONER RELIES ON ARE NOT BACKGROUND ASSUMPTIONS THAT THE LEGISLATURE HAD IN ENACTING THESE STATUTES.
>> IS HE CORRECT IN 196 IT WOULD CERTAINLY BE LAW FULL TO, THERE TO BE SEXUAL INTERCOURSE, I MEAN, BETWEEN CONSENTING ADULTS BETWEEN A MAN AND A WOMAN, WERE SODOMY STATUTES STILL IN EFFECT THAT ACTUALLY PROHIBITED ANY SEX BETWEEN TWO MEN?
>> WELL THE SODOMY STATUTE ACTUALLY IS A, I BELIEVE THE LANGUAGE IS A CRIME AGAINST NATURE.
DOESN'T ACTUALLY SPECIFICALLY DELINEATE ACTS.
IT WAS APPLIED IN THAT MANNER.
THE WILSON OPINION THAT THE PARTNER ALLUDES TO, 1971 WITHIN OPINION WAS LAYING OUT ANALYSIS EVERYONE KNOWS THAT IT MEANS.
>> I GUESS WHAT YOU'RE SAYING IT WAS UNLAWFUL IN THIS STATE IN 1986 WHEN THE STATUTE WAS ENACTED FOR THERE TO BE SEX BETWEEN TWO MEN?
CORRECT.
>> SO THE IDEA THAT WE WOULD SAY, WELL, IF YOU DO SOMETHING UNLAWFUL BUT YOU BETTER TELL HIM FIRST, WOULDN'T IT HAVE MADE MORE SENSE TO HAVE BROADENED THE DEFINITION TO SAY, IF YOU'RE GOING TO DO SOMETHING ILLEGAL THAT IS UNLAWFUL IN THIS STATE, YOU BETTER TELL THE OTHER PERSON THAT YOU'VE GOT, THAT YOU HAVE AIDS?
>> WELL IN THE CONTEXT OF THIS STATUTE THE IDEA IS THE PENALTY FOR DOING SOMETHING UNLAWFUL IS NOT BEING EXPOSED TO A DEADLY DISEASE UNWITTINGLY.

IT'S TO PROTECT ALL VICTIMS OF
THAT PARTICULAR ACT SO EVEN
ASSUMING THERE IS NOT ANY
INDEPENDENT EVIDENCE OF THAT
TYPE OF INTENT, SAYING, WELL,
BECAUSE THAT ACTION IS ILLEGAL
WE DON'T WANT TO PROTECT THOSE
VICTIMS--
>> I'M NOT SAYING THEY DIDN'T
WANT TO.
DO WE LOOK AT THE FACT IN 1986
IN ADDITION HOW SEXUAL
INTERCOURSE HAD BEEN DEFINED BY
THIS COURT AND OTHER COURTS FOR,
HE SAID SINCE 1920.
YOU KNOW, THAT, WE HAVE GOT TO
ALSO LOOK THAT THE STATE OF THE
LAW WAS THAT SEXUAL INTERCOURSE
WAS NOT DEFINED AS BEING AN ACT
BETWEEN TWO MEN IN ANY LAWFUL
WAYS.
DOES THAT AT ALL PLAY INTO THE,
THE FACT THAT THE TERM HAD, WAS
A TERM OF ART BACK THEN AND NOT
AN EXPANSIVE USE MAY NOW BE THE
WAY THE STATUTE COULD BE READ
TODAY?
>> WELL, IF, IF THE DEFINITION
HERE, HOWEVER, IS NOT INCLUDED
IN THE PUBLIC, IN THE PUBLIC
HEALTH CODE.
THE STATUTE DOESN'T DEMEAN
SEXUAL INTERCOURSE AND BECAUSE
OF THAT YOU LOOK AT THE ENACTING
CONTEXT, THE BACKGROUND.
AS WE NOTE IN THE BRIEF AT THE
TIME IT WAS KNOWN ONE OF THE
METHODS OF TRANSMISSION WAS THE
ACTS ALLEGED IN THIS CASE THAT
THE DEFENDANT COMMITTED BUT MORE
IMPORTANTLY YOU HAVE THE,
BASICALLY AN OMNIBUS STATUTE
GOING THROUGH THE LEGISLATURE AT
THE SAME TIME CONTEMPORANEOUSLY
INCLUDES EDUCATING PEOPLE ON
HIGH-RISK BEHAVIORS.
IT IS COUNTER INTUITIVE, IT
WOULD BE ABSURD RESULT IF WE
WANT TO USE THAT LANGUAGE TO
CONCLUDE THE LEGISLATURE WHILE

INSTRUCTING PEOPLE WITH REGARD
TO THE HIGH-RISK BEHAVIORS AND
MANDATING THAT PEOPLE BE
INSTRUCTED IN THAT MANNER WITH
REGARD TO HIGH-RISK BEHAVIORS IN
THE EDUCATION PROGRAMS AND OTHER
AREAS OF THE PUBLIC HEALTH AREA,
THAT THEY WOULD THEN SAY, WHILE
WE'RE ENFORCING THAT ENDS, WE'RE
GOING TO COMPLETELY IGNORE THOSE
HIGH-RISK BEHAVIORS WITH
REGARD TO UNWITTING VICTIM A
CONSENT HAS NOT BEEN GIVEN.
THAT IS THE THEN ABOUT THE
STATUTE.
THE VICTIM CAN NOT BE A
VICTIM BY CONSENTING TO IT.
UNCLEAR WHETHER THAT WOULD
HAPPEN.
BUT THE CONSENT PROVISION SAYS
YOU CAN CONSENT T WOULD BE IN
FACT A DEFENSE OF CRIME TO SAY
THE VICTIM NEW AND CONSENTED TO
ACTS.
THAT IS WHY IT'S A CRIME IN
CASE.
BECAUSE THE DEFENDANT DID NOT
PROPERLY INFORM THE VICTIM,
DESPITE KNOWING THAT HE HAD THE
DISEASE AND THAT HE COULD
TRANSMIT IT BY SEXUAL
INTERCOURSE OF THIS KIND AND
REASON WE KNOW THAT AGAIN IS
BECAUSE THE VICTIM AS ALLEGED IN
THE CHARGING DOCUMENTS, ASKED
AND SAID, GET A TEST.
AS A RESULT OF THAT HE GOT A
FAKE TEST SO HE COULD ENGAGE IN
THESE ACTS.
CONSEQUENTLY, YOUR HONOR, THE
STATE'S POSITION THIS IS PUBLIC
HEALTH STATUTE.
IT IS SEPARATE FROM THE CRIMINAL
STATUTES WHICH CRIMINALIZE
SPECIFIC SEX ACTS.
THEY CRIMINALIZE THINGS AS WE
SAID IN THE BRIEF THINGS THAT
OTHERWISE MY THE LEGAL.
INCENSE STATUTE LACE OUT IN
STATUTE THAT DEFINES SEXUAL

INTERCOURSE.
IT IS CLEARLY NOT CONCERNED WITH THE EXCHANGE OF BODILY FLUIDS, THE PUBLIC HEALTH CONCERN THAT EXISTS IN THE STATUTE.
AND CONSEQUENTLY IT IS DISTINCT.
ALL OF THE STATUTES THAT THE PETITIONER IS RELYING ON ARE ALL CRIMINAL STATUTES THAT AFFECT PARTICULAR SEX ACTS AND THAT'S WHY THEY'RE NOT APPLICABLE.
IF YOU LOOK AT CHAPTER 384 AS A WHOLE, CHAPTER 384 INCLUDES THOSE PENALTIES JUSTICE CANADY WAS TALKING ABOUT.
CHAPTER 384.34 AS I RECALL HAS THE TWO SECTIONS AND SPECIFICALLY IN 1997 THE LEGISLATURE ADDED A PENALTY FOR, TO MAKE IT A FELONY.
CONSEQUENTLY YOU HAVE THE LEGISLATURE TWEAKING THE STATUTE TO INSURE THAT THIS HAS TEETH.
THAT PEOPLE WHO DON'T RECEIVE THE NECESSARY DISCLOSURE AND DON'T HAVE THE OPPORTUNITY TO CONSENT ARE NOT VICTIMIZED.
>> IF WE'RE REALLY TALKING ABOUT WHAT THE LEGISLATURE MIGHT HAVE DONE OVER THE YEARS, THE SECOND DIRECT CASE CAME OUT IN 2011, SPECIFICALLY SAYING THAT, THAT SEXUAL INTERCOURSE WAS DEFINED AS SEXUAL PENETRATION BETWEEN A MAN AND A WOMAN AND AT THE END OF THAT OPINION IT SAID THE LEGISLATURE MAY OF COURSE AMEND THIS STATUTE TO BROADEN ITS APPLICATION.
I MEAN THIS CAN BE SOLVED EASILY I ABOUT THE LEGISLATURE.
THE QUESTION IS, WHETHER THE COURT IN INTERPRETING ANY STATUTE SHOULD DEPART FROM PRINCIPLES THAT WE USE, INCLUDING IF THERE IS ANY AMBIGUITY, THE RULE OF LENITY, SINCE THIS IS CRIMINAL STATUTE.
NO ONE IS CONDONING WHAT HAPPENS HERE OF THE ISSUE IS WHETHER IT

IS CRIMINAL ACTIVITY AS
CONSTRUED BUT THAT HE'S BEING
CHARGED WITH, RIGHT?
WE'RE NOT SAYING THIS WAS
SOMETHING HE SHOULD HAVE DONE
BUT THE QUESTION IS, CAN HE BE
CRIMINALLY PUNISHED FOR IT?
>> THAT'S CORRECT, YOUR HONOR.
THE QUESTION--
>> SO WHAT ABOUT, THOSE TWO
THINGS, RULE OF LENITY AS WELL
AS THE FACT FROM 2011 ON THAT
THE LEGISLATURE DID NOT AMEND
THE STATUTE TO SAY, TO BROADEN
ITS APPLICATION AS THE SECOND
DISTRICT HAD SUGGESTED IT DO?
>> WELL, GO BACK TO THE NET
TELLS CASE FROM THIS COURT IN
2003, BECAUSE COURTS COME TO
CONTRARY I CAN'T INTERPRETATIONS
STATUTE DOESN'T RENDER THE
STATUTE AMBIGUOUS.
THERE WERE DIFFERENT
INTERPRETATIONS I DON'T RECALL
WHAT DISTRICTS THEY WERE WITH
REGARD TO SENTENCING ENHANCEMENT
IN THE CRIMINAL PUNISHMENT CODE.
>> YOU'RE SAYING THE STATUTE IS
UNAMBIGUOUS?
>> THAT'S CORRECT.
>> THEREFORE, BUT YOU ARE STILL
SAYING YOU HAVE TO LOOK AT WHICH
STATUTORY SECTION IT IS IN, GOT
TO LOOK AT TITLE, YOU LOOK AT
INTENT.
THOSE ARE ALL THINGS WE DO WHEN
THE -- IS NOT PLAIN AND
UNAMBIGUOUS.
>> THE STATE ADMITS THAT PROCESS
IS ACTUALLY, THAT'S THE POLESTAR
IF YOU WILL THE LANGUAGE.
LOOKING AT ALL THE THINGS IS
LOOKING AT LANGUAGE IS NOT
APPLYING ANY KIND OF
INTERPRETIVE ANALYSIS.
THAT IS HOW YOU WOULD READ THE
STATUTE.
WHAT IS THE STATUTE SUPPOSED TO
DO AND LEGISLATURE IN 384.23
SAYS THIS STATUTE IS SUPPOSED TO

DO THESE THINGS, NAMELY PREVENT
THE DISSEMINATION OF THESE
DISEASES THAT WE'VE ELIMINATE.
THE STATUTE AT ISSUE, 384.23 SUB
2, LAYS OUT THE ANALYSIS FOR HIV
AND YOU HAVE THE ADDITION BY THE
LEGISLATURE OF THAT PROVISION
TARGETING HIV SPECIFICALLY.
YOU HAVE THEM SAYING IF YOU
VIOLATE THIS PROVISION, AS
OPPOSED TO PROVISION SUB ONE
WHICH IS EVERY OTHER DISEASE YOU
HAVE A FELONY.
IT IS A FELONY VERSUS A
MISDEMEANOR.
SO, WE RESPECTFULLY SUBMIT THAT
THE STATUTE DOESN'T REQUIRE
INTERTIFF ANALYSIS.
RATHER IT'S A QUESTION HOW WE
EXTRACT THE PLAIN MEANING OF THE
STATUTE.
IN OTHER WORDS IT IS NOT
AMBIGUOUS.
IT IS CLEAR STATUTE WAS INTENDED
TO ADDRESS HAS IN THIS CASE.
SOMEONE WHO KNOWS HE OR SHE IS
INFECTED WITH THIS DISEASE, HIV,
THUS TRIGGERING SUB TWO, ENGAGES
IN SEXUAL INTERCOURSE WITH THEIR
PARTNER.
THAT PARTNER WAS THE VICTIM IN
THIS CASE, DOESN'T KNOW AND AS A
RESULT, YOU HAVE A CRIME.
THAT'S EXACTLY WHAT THE
LEGISLATURE INTENDED TO PREVENT.
THEY USED THE LANGUAGE OF SEXUAL
INTERCOURSE BECAUSE THEY WANTED
TO DO THAT.
NOW THE FACT THAT MAY BE MORE
SPECIFIC IN WRITING STATUTE
DOESN'T NECESSARILY MEAN THAT
THE GENERAL TERM ITSELF IS
AMBIGUOUS.
THE GENERAL TERM, I FORGET WHICH
OF THE JUSTICES WAS ASKING THE
PETITIONER ABOUT THE NOTION,
JUSTICE CANADY WHO ASKED ABOUT
THE NOTION OF DEVIANT SEXUAL
INTERCOURSE GENERALLY, GREATER
INCLUDING LESSER, THE IDEA OTHER

STATUTES WHERE YOU HAVE BROADER ACTIONS THAT MIGHT NOT TRANSMIT THE DISEASE.
FOR EXAMPLE, THE PROSTITUTION STATUTE WHICH INCLUDES OFFERING TO ENGAGE IN PROSTITUTION, FOR EXAMPLE.
THOSE STATUTES WHEN THEY ENACTED THE ENHANCEMENT FOR DOING THESE THINGS WHILE BEING INFECTED HAD LANGUAGE SAYING SEXUAL ACTIVITY THAT MIGHT TRANSMIT THE DISEASE.
THAT'S BECAUSE THOSE STATUTES IN PROSCRIBING THOSE CRIMES HAD BROADER LANGUAGE AND INCLUDED THINGS NOT NECESSARILY THE ACTIONS ALLEGED IN THIS CASE WHICH IT IS INDISPUTABLY SEW COULD IN FACT HAVE EXPOSED THE VICTIM IN THIS CASE WITHOUT HIS OR HER KNOWLEDGE TO THE DISEASE AT ISSUE THAT THE DEFENDANT HAD.
CONSEQUENTLY, YOUR HONOR, THE STATUTE, THE STATE DOESN'T CONTEND THAT THE STATUTE REQUIRES INTERPRETATION.
THE STATUTE ITSELF IS PLAIN AND UNAMBIGUOUS.
IT'S A QUESTION HOW WE GET THERE AND DO WE USE ANY TYPE OF CANNONS.
THAT IS THE REASON TO THE SECOND QUESTION.
LENITY IS COMPLETELY IMMATERIAL IN THE COURT'S ANALYSIS AS THEY LAID OUT IN THE CASICHI CASE, LENITY IS LAST COURSE.
YOU HAVE TO GO THROUGH ALL THE OTHER CANNONS BEFORE YOU REACH LENITY.
THE REASON IS NOTICE.
THE REASON IN THIS CASE AS TO THE SPECIFIC FACT THERE IS IS NO REASON TO THINK THAT THE DEFENDANT DIDN'T THINK THAT THE ACTIONS MIGHT EXPOSE HIS PARTNER TO THE DISEASE.
BUT MORE IMPORTANTLY THE STATUTE ITSELF IS PLAIN.
IT SAYS IF YOU ENGAGE IN THIS

ACTIVITY IT'S A FELONY AND
TOUGHEN GAUGE CONSENT, YOU HAVE
TO GET CONSENT.
THAT CONSENT PROVISION WAS ADDED
BY LEGISLATURE SPECIFICALLY.
CONSEQUENTLY, IF YOU LOOK AT
TERM SEXUAL INTERCOURSE IN THE
CONTEXT OF THE STATUTE IT'S
UNAMBIGUOUS AND APPLIES TO WHAT
THE DEFENDANT DID NICK.
THAT IS, IN THIS CASE.
WE RESPECTFULLY AFFIRM
THE THIRD DISTRICT DECISION IN
THIS CASE.
>> THANK YOU.
REBUTTAL?
>> THE STATE'S ENTIRE ARGUMENT
BOILS DOWN TO YOU SHOULD IGNORE
EVERYTHING YOU EVER SAID ABOUT
SEXUAL ACTIVITY.
YOU SHOULD IGNORE EVERYTHING
THAT THE LEGISLATURE HAS EVER
SAID ABOUT WHAT SEXUAL
INTERCOURSE IS AND IS NOT.
AND INSTEAD OF LOOKING AT THAT
YOU SHOULD FIND THE MEANING OF
THIS WELL-SETTLED TERM PLAINLY
AND UNAMBIGUOUSLY REFERS TO
SOMETHING COMPLETELY DIFFERENT
THAN IT ALREADY MEANT.
>> THAT IS NOT THE STATE'S
ARGUMENT.
THAT IS NOT A FAIR
CHARACTERIZATION.
AS I UNDERSTOOD THE GENTLEMAN'S
ARGUMENT THIS IS CONTAINED IN
SPECIFIC SUBJECT MATTER STATUTE
AND YOU HAVE TO LOOK TO THAT AS
PART OF WHAT THE WORDS MEAN AS
USED IN THAT STATUTE.
AND TO CHARACTERIZE IT AS JUST
SOME FOOLISHNESS I'M NOT SURE IS
REALLY WHAT THE ARGUMENT THIS
MORNING IS ABOUT.
I WOULD LIKE FOR YOU TO RESPOND
TO HIS ARGUMENT WITH A
LEGITIMATE ARGUMENT THAT, NO, WE
DON'T LOOK TO THE SUBJECT MATTER
OF A STATUTE, WHAT IT IS TRYING
TO CORRECT AND THAT KIND OF

THING.
COULD YOU DO THAT.
>> I DIDN'T MEAN TO SUGGEST IT WAS FOOLISH, YOUR HONOR.
IT WAS ONLY MEANING TO SUGGEST THIS IS WELL-SETTLED TERM.
THE LEGISLATURE'S PRESUMED TO KNOW--
>> COULD YOU RESPOND TO HIS ARGUMENT.
>> YES.
>> HE COULD STAND UP SAY, YOU ARE TAKING A POSITION TOTALLY DISREGARD WHERE THE STATUTE IS, WHAT IS THE STATUTE IS ABOUT AND IGNORE EVERYTHING ELSE AND TWO WORDS AND BECAUSE THEY USED THOSE TWO WORDS IN SOME OTHER DIFFERENT KIND OF STATUTE, 400 YEARS AGO, THAT THAT IS WHERE, THAT IS, THAT'S WHAT THIS MEANS.
SO JUST--
>> NOT 400 YEARS AGO.
BACK IN 2011 THE SECOND DISTRICT--
>> COULD YOU ADDRESS HIS ARGUMENT.
>> YES, YOUR HONOR.
YOU DON'T LOOK JUST TO THE ONE STATUTE IN ISOLATION WHEN IT IS PRESUMED THAT THE LEGISLATURE KNOWS HOW IT IS DEFINED THIS TERM IN OTHER ENACTMENTS.
VERY SAME YEAR HIV WAS ADDED TO 34.24 THE LEGISLATURE WAS DISTINGUISHING SEXUAL ACTIVITY INTO DIFFERENT CATEGORIES THAT WERE MUTUALLY EXCLUSIVE FROM SEXUAL INTERCOURSE.
IT IS ALWAYS BEEN DEFINED AS BETWEEN A MAN AND WOMAN AND LEGISLATURE RECOGNIZED THAT.
>> BUT ISN'T THE CASE THAT A PARTICULAR TERM COULD VERY WELL BE A TERM OF ART IN A PARTICULAR CONTEXT WHEREAS IN ANOTHER CONTEXT IT MIGHT JUST BE GIVEN AS, THAT CONTEXT, THE ONLY SENSIBLE WAY TO UNDERSTAND IT WOULD BE BASED ON ITS PLAIN

MEANING AS OPPOSED TO A TERM OF ART?
I THINK THAT'S BASICALLY THE DISTINCTION THE STATE IS MAKING AND THAT SEEMS TO ME TO BE IN GENERAL, A REASONABLE PROPOSITION AND I UNDERSTAND YOU DON'T THINK IT SHOULD APPLY HERE BUT I'M STRUGGLING TO UNDERSTAND WHY THAT GENERAL REASONABLE PROPOSITION ABOUT HOW, TERMS USED IN A PARTICULAR CONTEXT MIGHT BE USED AS A TERM OF ART BUT USED IN A DIFFERENT CONTEXT SHOULD BE INTERPRETED THE WAY WE ORDINARILY INTERPRET LANGUAGE BASED ON ITS PLAIN MEANING?
>> EXCEPT, YOUR HONOR, THAT THERE IS NO SPORT REALLY FOR THE ASSUMPTION THAT SEXUAL INTERCOURSE HAS THE BROAD EXPANSIVE MEANING THAT THE STATE CLAIMS THE ONLY THING THE STATE CAN RELY ON IS THE LEGISLATURE'S GENERAL INTENT TO GUARD AGAINST THE SPREAD OF VENEREAL DISEASE, PRIMARILY THE STATE AND THE THIRD DISTRICT BELOW RELIED ON DICTIONARY DEFINITIONS FROM THE MERRIAM-WEBSTER DICTIONARY.
WHAT IS INTERESTING ABOUT THAT THOSE DICTIONARY DEFINITIONS DON'T SUPPORT THE BROAD INTERPRETATION OF WORD.
THE FIRST DEFINITION IN THE DICTIONARY THAT THE THIRD DISTRICT AND THE STATE RELY ON SAYS, SEXUAL INTERCOURSE IS THE PENETRATION OF THE VAGINA BY THE PENIS.
THE SECOND DEFINITION THAT THE THIRD DISTRICT SEIZED ON, IT IS SO BROAD ONLY ARGUABLY SAYS THAT SEXUAL INTERCOURSE MEANS SOMETHING AS EXPANSIVE AS THE STATE SAYS.
SO TO SAY THAT THE TERM SEXUAL INTERCOURSE, EVERYONE READING THAT KNOWS THAT THIS REFERS TO ANY KIND OF SEXUAL ACTIVITY THAT

CAN SPREAD HIV, THERE IS NO
SUPPORT FOR THAT THE ONLY THING
THE ARGUMENT IS BASED ON THE
ASSUMPTION THAT THE LEGISLATURE
MUST HAVE INTENDED TO MEAN
SOMETHING BROADER BECAUSE
OTHERWISE IT WOULD LEAD TO
ABSURD RESULT.
AS I EXPLAINED EARLIER IT
DOESN'T LEAD TO AN ABSURD RESULT
BECAUSE AT THAT TIME THE
LEGISLATURE HAD ALL OTHER KINDS
OF SEXUAL ACTIVITY COMPLETELY
BANNED ALREADY.
THEY DIDN'T NEED TO USE
EXPANSIVE TERM.
>> SO BACK IN 1986, BEFORE
LAWRENCE VERSUS TEXAS ENGAGED IN
THIS CONDUCT WHAT WOULD HAVE
BEEN CRIMINAL PENALTY FOR IT,
REGARDLESS WHETHER IT WAS
TRANSMISSION OF AID?
WAS IT I THINK I ASKED YOU ABOUT
THIS BEFORE?
WAS IT CRIMINAL FELONY,
MISDEMEANOR THE SODOMY STATUTE
NO.
>> IN 1986 THE ONLY FLORIDA
SODOMY LAW THAT WAS
CONSTITUTIONAL WAS THE
MISDEMEANOR ONE.
THIS COURT IN FRANKLIN DEEMED
THE FELONY SODOMY STATUTE TO BE
UNCONSTITUTIONALLY VAGUE AND THE
LEGISLATURE COULDN'T DECIDE HOW
TO REDRAFT THE FELONY STATUTE.
AT THAT TIME IN 1986 IT WAS
MISDEMEANOR TO HAVE SEXUAL
INTERCOURSE WITHOUT INFORMING
YOUR PARTNER YOU HAD HIV IT WAS
ALSO A MISDEMEANOR TO ENGAGE IN
MISDEMEANOR SODOMY WHICH THE
COURTS ALWAYS INTERPRETED TO
MEAN EVERYTHING OTHER THAN
REPRODUCTIVE SEXUAL CONTACT
BETWEEN A MAN AND A WOMAN.
THE TERM SEXUAL INTERCOURSE IS
NOT PLAIN AND ORDINARY AS
REFERRING TO SOMETHING SO
EXPANSIVE TO INCLUDE ALL KIND OF

SEXUAL CONDUCT.
THE STATE'S ARGUMENT REALLY IS
THE LEGISLATURE MUST HAVE
INTENDED IT TO MEAN THAT.
BUT THAT IS NOT HOW THE WORD IS
EVER USED IN ITS PLAIN AND
ORDINARY SENSE.
IN FACT, BACK SINCE 1919 WHEN
THE FIRST VENEREAL DISEASE LAW
WAS PASSED THE WORD SEXUAL
INTERCOURSE WAS USED BACK THEN.
THIS COURT EXPLAINED WHAT IT
MEANT IN 1926.
LEGISLATURE NEVER CHANGED IT.
SUBSEQUENTLY ALL THE COURTS
ALWAYS RECOGNIZED THESE ARE
DISCRETE CATEGORIES OF SEXUAL
ACTIVITY AND SEXUAL INTERCOURSE
IS ALWAYS SOMETHING THAT REFERS
TO REPRODUCTIVE SEXUAL CONDUCT.
EVERYTHING ELSE IS ALWAYS BEEN
RECOGNIZED AS EITHER SODOMY,
DEVIANT SEXUAL INTERCOURSE,
SPECIFICALLY REFERRED TO ANAL,
PENILE OR ORAL SEXUAL CONDUCT.
IT IS NEVER FOUND BY ANY COURT
IN THE ORDINARY SENSE AS
SOMETHING EXPANSIVE AS STATE
SAYS IT IS.
ONLY THING THAT THE STATE IS
ARGUING TO APPLY NARROW
INTERPRETATION TO THE TERM IN
THE STATUTE WOULD LEAD TO
IRRATIONAL RESULT.
THEREFORE BECAUSE IT WOULD BE
IRRATIONAL WE CAN INFER THE
LEGISLATURE MEANT IT TO BE
SOMETHING BROAD.
THAT IS NOT TRUE.
AT THE TIME IT MADE COMPLETE
SENSE T WOULDN'T HAVE BEEN A
PRACTICAL LAW AT THAT POINT TO
MAKE SEXUAL INTERCOURSE MEAN
SOMETHING SO BROAD AS THE STATE
SAYS IT DOES.
AT THAT POINT SODOMY WAS
ILLEGAL.
SAY YOU WERE SOMEONE WHO WAS A
VICTIM UNDER THE STATUTE AND YOU
HAD ILLEGAL SEXUAL ACTIVITY,

SODOMY, UNDER THE SODOMY LAW AT
THAT TIME, IT WOULD REQUIRE YOU
TO TURN YOURSELF IN TO LAW
ENFORCEMENT, SAY, I COMMITTED
SODOMY CONSENSUALLY, I'M TURNING
MYSELF IN FOR A MISDEMEANOR.
HOWEVER THAT PERSON ALSO
COMMIT ED A MISDEMEANOR BECAUSE
HE DIDN'T TELL ME HAD HIV THAT
IS UNWORKABLE, IMPRACTICAL LAW
AT THAT POINT.
AND ONLY BECAME A GAP IN THE
ENFORCEMENT OF THIS LAW AND
SCOPE OF THE LAW IN 2003 WHEN
LAWRENCE VERSUS TEXAS ELIMINATED
THAT SODOMY LAW.
AND AS THIS COURT RECOGNIZED IN
WILSON, YOU DON'T LOOK AT WHAT
THE LEGISLATURE'S INTENT WAS TO
FIGURE OUT WHAT THE PLAIN AND
ORDINARY MEANING OF A WORD IS.
YOU HAVE TO LOOK AT WHAT THE
STATUTE MEANT ORIGINALLY AND
WHAT EVERYONE RECOGNIZED IT
MEANT.
IF THERE IS A GAP IN THE LAW IT
IS THE LEGISLATURE'S LAW TO FILL
IN THE GAP.
THE LEGISLATURE THAT'S BEEN
AWARE OF THIS PRESUMABLY FOR
MANY YEARS GOING BACK TO HOW
THIS COURT DEFINED IT, BACK IN
1926 AND GOING BACK AS RECENTLY
AS 2011 WHEN THE SECOND DISTRICT
SAID THE PLAIN AND ORDINARY
MEANING OF SEXUAL INTERCOURSE
REFERS ONLY TO A MAN AND WOMAN.
COURTS FROM OTHER JURISDICTIONS,
FROM THE NEW HAMPSHIRE SUPREME
COURT, FOR EXAMPLE, HELD THAT,
THE TERM SEXUAL INTERCOURSE, THE
PLAIN AND ORDINARY MEANING
REFERS TO SOLELY TO REPRODUCTIVE
SEX.
DOES NOT REFER TO SEXUAL CONDUCT
BETWEEN TWO WOMEN OR TWO MEN.
IRONICALLY THE NEW HAMPSHIRE
COURT IN BLANCH FLOWER VERSUS
BLANCH FLOWER SAID WE'RE GETTING
PLAIN ORDINARY MEANING FROM THE

MERRIAM-WEBSTER DICTIONARY WHICH IS THE EXACTLY THE SAME DICTIONARY THE THIRD DISTRICT RELIED ON TO FIND THAT THE PLAIN ORDINARY MEANING MEANT SOMETHING BROADER.
THE PROBLEM WITH THE STATE'S ARGUMENT YOU DON'T LOOK AT ONE SPECIFIC STATUTE IN ISOLATION TO INFER HOW THE LEGISLATURE MIGHT HAVE WANTED THIS TERM TO MEAN WHEN YOU HAVE TO PRESUME THE LEGISLATURE WAS COMPLETELY AWARE.
>> BUT IF WE LOOK TO THE DICTIONARY, YOU SUGGESTED WE LOOK TO HOW IT'S BEEN DEFINED BY THE COURT AND HOW IT'S BEEN USED IN OTHER STATUTES BUT IF YOU LOOK AT THE DICTIONARY, THIS HAS ALWAYS BEEN SOMETHING I WONDERED AND LOOK TO THE PLAIN AND ORDINARY MEANING DO YOU LOOK BACK TO THE DICTIONARY DEFINITION IN 1986 OR LOOK AT DICTIONARY DEFINITION IN 2013 AND I DON'T KNOW?
I HAVEN'T STUDIED THE WEBSTER DICTIONARY TO SEE IF THE TERM HAS BEEN EXPANDED BUT WHAT IS THE GUIDE, WHAT HAVE WE SAID AS FAR AS STATUTORY CONSTRUCTION AND THEN HOW DID NEW HAMPSHIRE GET DIFFERENT ON WHAT THE DICTIONARY DEFINITION WAS THAN THE THIRD DISTRICT MAJORITY?
>> WHEN A TERM IS NOT DEFINED AND YOU'RE TRYING TO FIGURE OUT WHAT THE PLAIN, ORDINARY MEANING WAS, WHAT IS TYPICALLY DONE AND WHAT THIS COURT HAS DONE LOOK TO THE POINT WHERE THE TERM WAS INITIALLY USED FOR THE FIRST TIME IN A STATUTE.
SO FAR IN THIS CASE WE'VE BEEN OPERATING UNDER THE ASSUMPTION THAT 1986 IS THE OPERATIVE YEAR SINCE THAT IS THE FIRST YEAR HIV WAS ADDED TO VENEREAL DISEASE LAW, 384.24.

AND SO IT IS ARGUABLY REMEMBER
TO LOOK TO A DICTIONARY FROM
THAT YEAR TO DETERMINE WHAT
LEGISLATURE INTENDED FOR IT TO
MEAN AT THAT TIME.
AGAIN YOU WOULD ONLY GO THERE
ONLY IF THE PLAIN AND ORDINARY
MEAN WASN'T CLEAR AND IF THE
COURTS AN LEGISLATURE HADN'T
ALREADY DEFINED IT.
WHAT I WAS TRYING TO GET IN MY
EARLIER ARGUMENT, YOUR HONOR,
INSTEAD OF LOOKING TO A
DICTIONARY FROM 1986 TO LOOK TO
THE PLAIN ORDINARY MEANING OF A
WORD IS, THIS COURT SHOULD LOOK
TO ITS HOLDINGS AND HOLDINGS OF
OTHER COURTS AND LEGISLATURE'S
IDEAS HOW THESE SEXUAL
ACTIVITIES ARE GROUPED.
WOULDN'T MAKE ANY SENSE TO CAST
ALL OF THAT ASIDE AND INSTEAD GO
TO A DICTIONARY WHICH HAS
NOTHING TO DO WITH THE CRIMINAL
LAW WHATSOEVER.
GOING BACK TO YOUR HONOR'S
POINT, ARGUABLY 1986 IS
OPERATIVE YEAR.
YOU COULD GO BACK AS FAR AS 1919
WHEN 384.24 WHICH WAS FIRST
ENACTED WHICH AT THAT POINT ONLY
GUARDED AGAINST SYPHILIS,
GONORRHEA.
SEXUAL INTERCOURSE HAS BEEN USED
IN 384.24 SIPS BACK THEN.
ALL THAT TIME THE LEGISLATURE
NEVER EXPRESSED ANY INTENT TO
GIVE IT MORE EXPANSIVE MEANING
IN THIS COURT AND ELSEWHERE IN
THE ENTIRE CRIMINAL CODE.
UNLESS THIS COURT HAS ANY
FURTHER QUESTIONS, THANK YOU.