**EXCERPTS OF DIRECT AND CROSS-EXAMINATION TESTIMONY OF MEDICAL EXPERT REGARDING EXPLANATION OF LACK OF PHYSICAL TRAUMA FOUND**

**DURING MEDICAL EXAMINATION OF CHILD SEXUAL ABUSE VICTIM**

**DIRECT EXAMINATION**

**Prosecutor:**

**Q.** Dr. D., by whom are you employed?

**A.** TJU Hospital.

**Q.** In what capacity?

**A.** I am a clinical associate professor of pediatrics…. I am Co-Director of the Pediatric Outpatient Department. And I am director of the Pediatric Sexual Assault Follow-Up Program.

**Q.** Doctor, what is that sexual assault program?

**A.** TJU Hospital is one of two hospitals in the City…that are receiving hospitals for sexual assault victims who are children. The other hospital that receives children is Children’s Hospital. As Director of the program, I supervise the resident doctors at the hospital who do the evaluations of children who are brought to the emergency room with sexual assault complaints. I also run a follow-up clinic for those victims in which they are scheduled to come back for a follow-up visit approximately two to three weeks afterwards.

**Q.** Doctor, how long have you been working in that capacity?

**A.** Seven years.

**Q.** And how long have you been a doctor?

**A.** Since 1974.

**Q.** Can you please tell the jury your educational background?

**A.** My undergraduate training was at…. Then I did three years of training, specifically in pediatrics, the first year called an internship, the second two years called residency training…. Following that, I …did an additional year above the required training, in pediatrics in a discipline called Ambulatory and Community Pediatrics, which basically trained me to do my job, which is to be responsible for running an outpatient department in a setting of a medical school.

**Q.** What exactly is pediatrics?

**A.** Pediatrics is the area of the specialty of medicine that deals with all different types of medical and emotional problems of children ranging from infancy through their teen years and even into the early adult years.

**Q.** Now, Doctor, you indicated that you supervise residents who do evaluations of children who come into TJU Hospital, is that correct?

**A.** That is correct.

**Q.** What do you do when you supervise them?

…………………………….

**Q.** Doctor, do you, yourself, ever examine children who come into TJU Hospital with complaints of sexual assault?

**A.** Yes.

**Q.** In what situations would you be examining them?

**A.** I occasionally examine them when they are referred in from outside private doctors and, occasionally, at the request of the Department of Human Services. Most of those times, there is a suspicion of long-term, ongoing incest. I also examine children at the time they appear at the follow-up clinic.

**Q.** Doctor, how many children would you say that you have examined in your career who have come in with sexual assault complaints?

**A.** I personally examined probably about 450, to maybe 500. I have been involved in the management of over a thousand cases.

**Q.** Have you published in the area of child sexual assault?

**A.** Yes, I currently have eleven publications based on research studies done at TJU through my work with the sexual assault program. And they are in various different medical journals.

**Q.** Doctor, can you give the jury a sampling of what kind of topics those papers cover?

**A.** The topics cover everything from sexually transmitted diseases in children who are sexually abused, to types of injuries that are seen in children who are sexually abused….

…………………………………………

**Q.** Do any of those papers concern the *lack* of physical trauma that children experience upon sexual assault?

**A.** Yes.

**Q.** Have you given any lectures in the area of child sexual assault?

**A.** Yes. I have given a number of lectures. The number is hard to estimate, but I certainly lecture both locally and nationally on topics relating to child sexual abuse. And I probably lecture with the frequency of six to eight times a year, either locally or nationally about child sexual abuse.

**Q.** Are you aware of all the new literature that comes out in this area?

**A.** Whenever you are giving lectures and research studies, you have to stay up on the current information; yes, I am.

**Q.** Have you ever testified before as an expert in the area of child sexual assault, particularly concerning the lack of physical trauma that may result in cases of child sexual assault?

**A.** Yes.

**Q.** How often would you say you have testified as an expert?

**A.** I would estimate about sixty times.

**Q.** And where have you testified?

**A.** It has been in the city of P….

**Q.** Okay, and, Doctor, have you testified in cases in which I have been the assistant district attorney?

**A.** Yes, you have been.

**Q.** Now, have you ever been called by defense counsel or the defense bar to testify in cases involving child sexual assault?

**A.** I have been contacted now in the range of 15 or 16 times by defense counsel to have me evaluate and discuss cases. Each time after I’ve given my opinion of the cases, the defense counsel have decided not to use my testimony in court, so I have not testified in court, but I have been consulted by defense counsel.

**Prosecutor:**  Thank you. I have no further questions on his qualifications.

**THE COURT:** Do you have any questions, Defense Counsel?

**Defense Counsel:** No, I accept his qualifications, Your Honor.

**THE COURT:** Thank you.

**Prosecutor:**

**Q.** Dr. D., are you here at my request?

**A.** Yes, I am.

**Q.** Have you ever personally examined a child by the name of R.H.?

**A.** I have not.

**Q.** I want you to look at what has been marked as C-11, which you have in your hand, the medical records from J. Hospital involving R.H.

**A.** Yes.

**Q.** Can you see on that report who exactly did examine her?

**A.** Dr. T.P.

**Q.** Is he any longer at JTU Hospital?

**A.** No, he is not. He was one of our senior pediatric residents….

**Q.** Could you tell the members of the jury where this child was seen in the hospital when she came in on February…?

**A.** This child was seen in the emergency room, in a special section of the emergency room called the Crisis Center.

**Q.** Was an examination performed on R.H.?

**A.** Yes.

**Q.** Can you tell the members of the jury what exams were performed on R.H.?

**A.** There was a general physical examination that was done on this child. And in addition to that, a very specific examination of the genital area, including an internal examination or a pelvic examination, doctors call it.

**Q.** Can you explain the steps involved in the examination?

**A.** In general, what the physician would do would be to examine other parts of the body first, not to concentrate in the area that—of the genitals or the anal area, in part because that area is very sensitive for some children to have anyone look at, and secondly because of the fact that if the child has a sexual assault complaint, those are parts of the body that they’re very specifically complaining about, so that the physician would go through a regular examination and then, at that time, have the child undress, and at this age the child would be examined lying on her back and with gentle pressure, spreading her legs and looking in the genital area, and also then spreading her buttocks and looking in the anal area.

**Q.** Now, Doctor, can you tell us in terms of the way the vagina is structured, where is the most narrow part of the vagina?

**A.** The most narrow part of the vagina is actually what we call the hymenal ring. At the location of the hymen, the genital area of the child, again, is somewhat funnel-shaped. The opening between the outer lips and inner lips is a rather wide opening, and the opening tapers down at the point where the vagina parts with the narrow part of the funnel. Right at the transition point between the wide point of the funnel and the narrow part of the funnel is where the hymen is located, and the hymen tends to be the most narrow point in the system.

**Q.** How far can a doctor see when examining a child in this way?

**A.** Well, it depends on how cooperative the child is at the time of the examination. If the child is reasonably cooperative and if the physician is reasonably skilled, one can see the labia minora and the labia majora, the outer lips, external lips of the external genital of the female, or they can see the clitoris area, at the top of the genital opening they see a cup-shaped entryway to the vaginal area, which is sometimes called the fossa navicularis. That fossa navicularis is a cup-shaped area, which on either side has the labia majora and labia minora, the inner and outer lips as its side-to-side boundaries. Looking in deeper one can usually appreciate the location of the hymen in the little girls, and are usually able to appreciate a small opening through that hymen.

**Q.** Doctor, can you tell the members of the jury what the results were of the genital examination?

**A.** The examination was completely normal, except for the presence of one to two cc’s of a white vaginal discharge on the external labia, which are the big lips of the external genitals of the child. And there was also the presence of a white discharge in the vaginal area, which is the vagina itself.

**Q.** Could we show the witness Court Exhibit 1? Is it indicated in Court Exhibit Number 1, Doctor, the fact that a Johnson Kit had been done?

**A.** Yes, it indicated on the check list of the laboratory specimens that a Johnson Kit, which is essentially a collection of swathes or Q-tips from various areas of the body which are sent to the criminalistics laboratory for analysis for sperm and seminal fluid, was done.

**Q.** Where were these swathes taken from on R.H.?

**A.** They were taken from the vulva, which are the external genital parts. Vulva is the same as labia minora and labia majora, and the outer lips and the inner lips of the external parts of the vagina. Another sample was taken from the vagina itself, the narrow tube, and there is a notation of the cervix here as another site of the collection. Routinely the collection also includes a swab from inside the throat and inside the rectum of the child and those—that’s the standard collection kit that’s sent to the police crime laboratory.

**Q.** And what’s the purpose of having the Johnson Kit done?

**A.** Basically, the Johnson Kit looks for specific evidence that sperm and seminal fluids that surround the sperm have been deposited inside an opening of the body or onto the surface of the body. So, it is looking very, very specifically for the product of the ejaculation of the male

somewhere on the body of the victim.

**Q.** Was any product of ejaculation detected in the swabs taken from R.H.?

**A.** No.

**Q.** Doctor, let’s assume as follows: Let’s assume that R.H., who is the young girl who was the subject of this examination, is a twelve-year-old child. That, according to her testimony, and adult male placed his penis in to her vagina, into her “hole,” as she put it, and moved up and down on top of her. He then got off of her and walked her down to another location on the first floor of the residence, got on top of her again but did not place his penis in her vagina. He then walked her upstairs again, took baby oil from the bathroom, took her into a bedroom, placed her on a bed, put baby oil on her vagina and inserted his penis in her vagina and moved up and down. He then removed his penis from her vagina when somebody walked in the room. Assuming those to be the facts, and…that the child was examined at the hospital approximately two to four hours later, to a reasonable degree of medical certainty, are the medical findings consistent with those allegations of sexual assault?

**A.** Yes.

**Q.** And why is that, Doctor?

**A.** In many cases of sexual assault, there is no injury or other specific physical findings when the examination is done, regardless of whether it is done a short period of time after the abuse or whether it is done at a time somewhat distant from it.

**Q.** Why might there be no evidence of trauma after a sexual assault, particularly after vaginal penetration by a penis?

**A.** There are several reasons, and it varies from case to case as to what the reason might be or the collection of reasons. The first reason that is commonly found is that the injuries that occur in sexual penetration are sometimes very minor injuries. And these injuries can heal sometimes by the time that the child is examined. Particularly if the examination is delayed for more than a few days.

In other instances, no injuries actually do take place. This might be due to one of several different kinds of mechanisms. The first is that the vaginal opening or the anal opening, which is also commonly penetrated, have a certain amount of flexibility or stretchability to them. And with the insertion of a penis, the natural tendency is to push the skin or tissues out of the way and at the time that the penis is withdrawn, there is a natural tendency for the tissues to spring back into their normal size and shape. It is like stretching an elastic band; you can stretch it to a certain point and when you let it go it comes back to its regular shape.

That would be most likely to happen in situations where there is not deep penetration. The deeper the penetration, the more likely there is to be injury. But penetration can be more superficial, not completely entering the full length of the penis into the vagina. And that would be less likely to cause injury, also.

The use of lubricants, greases, oils of various types can also cut down on the frequency of injuries because they cut down the friction between the penis and the vaginal opening. It is the friction that causes some of the tearing injuries that you see in some of the cases.

When you look at studies of childhood sexual assault and are looking for the evidence of trauma, there is a wide range of reported injuries, both in frequency and in location. And by a wide range, there are studies that suggest that somewhere between fifteen percent and perhaps as high as eighty-five percent of children will have physical injuries….

The best studies that are done suggest the frequency is somewhere around a third of the children who present with sexual assault complaints and are evaluated actually do have injuries and the other two-thirds don’t.

……………………………….

**Q.** Was a colposcope used in this examination of R.H.?

**A.** There is no indication on the medical record that a colposcope was used….

**Q.** Doctor, I would like you to address your attention now to what has been marked the court’s Exhibit Number 1, which is the result of the Johnson Kit….Doctor, looking at the results of the Johnson Kit, you note that there was no sperm found in the areas..., namely the vaginal area and the vulvular area; is that correct?

**A.** Yes.

**Q.** Doctor, assuming the facts that I have already posed to you, even with penetration of a penis into a vagina, would a Johnson Kit necessarily reflect the presence of sperm, even if you have that kind of penetration?

**A.** No, it would not have to be present.

**Q.** Why is that?

**A.** The most common reason is that in order to have sperm or the acid phosphatase which is found in the fluid that surrounds the sperm detected in these types of tests, you need to have had an ejaculation take place. The man has to have an orgasm. And sperm and semen have to exit the penis. If it does not exit the penis, it will not de deposited either on the child’s genital area or within the vagina. And if it hadn’t been placed there, it would not be detected.

Another unfortunately common reason is that, in taking the samples, it is a guessing game as to where to take the sample from. The samples are usually taken by one or two methods, most commonly using a Q-tip and inserting it in an area that might have sperm located in it. Or using an eyedropper and taking some fluid from the vaginal area with an eyedropper. You are sampling a small amount either with the Q-tip or with the eyedropper, only a small amount of fluid and you might be sampling from an area that doesn’t have any of the fluid present.

**Prosecutor:** Thank you, Doctor. I have no further questions.

**THE COURT:** Cross-examine.

**CROSS-EXAMINATION**

**Defense Counsel:**

**Q.** It is a given, sir, that you did not examine the child nor at any time in the future did you examine this child by way of follow-up?

**A.** That is correct, this child did not return for follow-up.

**Q.** So that being so, then none of the people who were there, the residents, had an opportunity to see this child a second time?

**A.** As far as I know, no one did.

**Q.** From the information you had at your disposal?

**A.** From the information I had at my disposal, no follow-up examination was done.

**Q.** Can you tell me how long the examination lasted, from your examination of this sheet?

**A.** There sometimes is an indication.

**Q.** Notice it says, “Discharge time 10:45 a.m.” Do you see that?

**A.** Yes. This child was brought into the emergency room at 8:00 a.m. and the discharge time was 10:45 a.m. So the total elapsed time was two hours and forty-five minutes. It doesn’t tell me how long the actual examination took place.

**Q.** In other words, that period of time of two and three-quarter hours that you just mentioned, is a period of time the child was at the hospital physically?

**A.** That is correct.

**Q.** There is no reference in the document to which you are referring to spell out the exact period of time that this child was actually examined by your then Dr. T.P., correct?

**A.** That is correct, I don’t see a specific notation.

…………………………………...

**Q.** You do see a date of birth up there in the upper right-hand corner, do you not, Doctor?

**A.** Yes, I do.

**Q.** So that when this child was examined at J. Hospital by your Dr. P., you know that this child was how old?

**A.** She was twelve years and nine months.

**Q.** …Would your answers generally—I will get specific in a minute—but would your answers generally be the same if your response to her hypothetical question related to a girl who was approximately sixty to sixty-five pounds on one hand and a girl who I would say was one hundred and twenty to one hundred and thirty pounds on the other?

**A.** My responses would be the same. The weight would not be a major factor.

…………………………………..

**Q.** Is there anything in Dr. P.’s report, which you are looking at now, which suggests that the child’s hymen was ruptured at the time of that examination?

**A.** There is no indication that the hymen was ruptured.

**Q.** If the hymen had been ruptured at the time of that sexual assault, would there be some evidence of trauma, of soreness or anything to that nature, that would come to a doctor’s attention when he examined the child vaginally?

**A.** If, indeed, the hymen were ruptured, the doctor would visualize the injury to the hymen.

…………………………………

**Q.** Would the entry of the penis over and over again, as has been suggested to you in the hypothetical question which has been addressed to you by the assistant district attorney, all of that you are saying the possibility exists that the hymen would be ruptured; is that what you are telling these people?

**Prosecutor:** Objection. I believe that the hypothetical posed that the penis was put into the vagina twice, on the second occasion with the aid of baby oil.

**THE COURT:** Okay. But answer his question anyway.

**The Witness:** I would still say the hymen does not necessarily have to be ruptured in penile penetration.

**Defense Counsel:**

**Q.** Let’s assume that there is—and I am not talking about penile penetration now alone, I am talking about the entry of a penis up to the hilt, we will say, in a female, not just superficial penetration, but actually a deep thrust. Under those circumstances, Dr. D., would there be a rupturing of the hymen?

**Prosecutor:** Objection. There is no such evidence in the record on which to base such a hypothetical….It should be clear; those facts are not in evidence.

**THE COURT:** Those are not the facts in evidence. But it is a hypothetical question.

**The Witness:** Deep penetration is more likely to cause injury than superficial penetration. You do not have to necessarily have a permanent tear in the hymen on penetration, even with deep penetration, although it does increase the likelihood that you are going to see an injury.

**Defense Counsel:**

**Q.** If, as you were told that the male went up and down, up and down over a period of time, over this sixty-five pound girl, in your opinion, would you say that it would be more likely that her hymen would have been ruptured?

**A.** I have no idea how far the penis—

**Q.** Assuming deep penetration.

**A.** Assuming deep penetration, with repetitive thrusting, yes.

**Q.** By a male, let’s say, who has a very large member?

**Prosecutor:** Objection, Judge.

**THE COURT:** Well, it is still hypothetical. None of these facts are in evidence. It is only a hypothetical question.

**The Witness:** The size of the penis would increase the risk of injury. The depth of the penetration would increase the risk of finding injury. The frequency of penetration would increase the risk of injury. However, even with deep penetration, repetitive penetration with a large penis, you do not absolutely have to injure the hymen.

**Defense Counsel:**

**Q.** You don’t have to. But it is certainly much more likely, is it not, Doctor, assuming size, depth and frequency of penetration, to use your words?

**A.** It is more likely than in superficial penetration.

**Q.** You have had an opportunity to look at the criminalistic laboratory report,…Doctor?

**A.** That is correct.

**Q.** I believe, as a result of testimony which you gave, the answers to the questions framed by the assistant district attorney, it is clear in a microscopic examination for sperm vaginally, none was observed; is that correct?

**A.** Correct.

**Q.** And also vulvularly and cervically, no sperm was present on a microscopic examination, is that correct?

**A.** Correct.

**Q.** …Did you or did you not say in your responses to the assistant district attorney’s question that in order to have evidence of a spermatozoa, there would have to be an ejaculation or a climax in the male, there would have to be; is that what you said?

**A.** Some of the sperm would need to leave the inside of the penis and that would be at least a preclimactic ejaculation.

**Q.** You say now preclimactic. My question is this: You stated to the assistant district attorney in response to her question…that in order for there to be evidence of sperm or in order for sperm to be present, there would have to be an ejaculation, with the article and modifying the noun “ejaculation.”…?

**A.** That is correct. And I stand by that statement.

**Q.** …Now, you also said,…that there could be a preclimactic discharge; isn’t that correct?

**A.** That is correct. Since you used the term “climax,” there are two stages to climax. There is a somewhat unusual stage in which a small amount of sperm may leave the penis prior to the full orgasmic climax, which is called a preclimax. Many men do not have a preclimax and—

**Q.** And some do?

**A.** And some do.

**Q.** My mistake was that I was equating ejaculation with orgasm and that was wrong. Because there could be separateness in those two concepts, is that right?

**A.** That is correct.

**Q.** In your work over a period of time, have you been able to come up with any statistics in examinations, which you have made regarding the percentage of men who have quote “preclimax ejaculations”?

**A.** I don’t do those types of studies.

**Q.** So, obviously, if in a microscopic examination for sperm vaginally, no sperm was observed, then, one, there was never an orgasm, a full orgasm or was there any pre-ejaculation that could be detected upon examination?

**A.** That is not correct….Pre-ejaculate fluid often does not have sperm in it, or if it does, it often has a very reduced amount of sperm in it.

**Q.** But nonetheless, it can be detected, can it not, Doctor?

**A.** It often is less positive for acid phosphatase and it is also, much, much, lower in volume and much, much smaller in volume than the total ejaculate and, therefore, would be much less likely to be picked up, if, indeed, a pre-ejaculation did occur.

**Q.** But it could, nonetheless, be picked up, could it not?

**A.** It is possible.

**Q.** But none was picked up in this case, correct?

**A.** Correct.

**Q.** And the same applies vulvularly and cervically, correct?

**A.** Correct.

**Q.** And the same thing applies with respect to the vaginal, vulvular and cervical examination for the existence of any prostatic acid phosphatase, is that correct?

**A.** Correct.

**Q.** Doctor, would there be a likelihood of trauma, injury, soreness in the vaginal area of a twelve-year-old, let’s say sixty or sixty-five pound girl, who had sex with a man whose penis was of considerable size, that the frequency of entry of the penis into the vaginal area was frequent and of considerable depth?

**Prosecutor:** Objection.

**THE COURT:** Yes. These are facts not in evidence….there is nothing in evidence about the size of this man’s penis—

**Defense Counsel:** It will be, Your Honor.

**THE COURT:** It will be?

**Defense Counsel:** Yes, it will. Rest assured.

**THE COURT:** All right. Can you answer the question, Doctor? It is all hypothetical.

………………………………..

**Defense Counsel;**

**Q.** You testified, Dr. D., that in reviewing Dr. P’s report, you became aware of the fact that there was one, possibly two cc’s vaginal discharge. Do you remember testifying to that?

**A.** That is correct.

**Q.** Isn’t it a fact, Doctor, that there could be vaginal discharge under dozens and dozens of different types of circumstances rather than just sex; isn’t that true?

**A.** That is correct.

**Q.** So when you testified in response to the assistant district attorney’s questions that there was a vaginal discharge that you were able to note from Dr. P.’s report, there is really nothing unusual about that, is there?

**A.** There is nothing unusual about that.

**Q.** Now, you have examined, I believe you said you personally, around 400 children?

**A.** Probably more like 450.

**Q.** And you have been the supervisory physician over examinations of pretty close to a thousand, isn’t that correct?

**A.** That is correct.

**Q.** And you said in many of the cases which you either, one, have handled yourself or, two, that you supervised, in many cases of sexual assault with children, there is no evidence of trauma?

**A.** That is correct, in seventy-five percent of the children, there is no evidence of trauma and in ninety-five percent there is no evidence of sperm or acid phosphatase.

**Q.** …in twenty-five percent of the cases over the long haul, you will find some evidence of trauma with children in a sexual assault case, in seventy-five percent of the cases you wouldn’t find it, correct?

**A.** Correct.

**Q.** What about children twelve years old, as opposed to children, let’s say, sixteen or seventeen, do you have any percentages, do you have any rates with respect to difference in age?

**A.** As far as the adult, the adult literature, I myself have not examined many children for sexual assault complaints who have been older than fourteen years of age. From the adult literature, the frequency of injury is much, much lower in the teenage and young adult population than we report in pediatrics. I don’t know if that is a matter of looking harder or really, truly less injury….

**Q.** This was more my mistake. I was talking about age. What I am really targeting in on is development. So that you could have a fourteen-year-old girl who has slowly developed and you could have one who has hardly developed at all. I am talking about in terms of development. There are children who are twelve who are pretty well developed, as preadolescents; is that correct?

**A.** That is correct.

**Q.** And there are some who are skinny little things and are not developed at all; isn’t that true?

**A.** Yes.

**Q.** Do you have percentages, Doctor, that you can point your finger at that would suggest what the rate is in terms of finding of trauma, let’s say, in twelve-year-olds who are less developed or twelve-year-olds who are developed greatly or more so like fourteen or fifteen-year-old children as opposed to those who are not developed at all or very slightly developed and look more like ten or eleven?

……………………………………….

**A.** I don’t have specific data to help you there.

**Q.** What would your gut reaction be, though, as the intelligent man you are, sir?

**Prosecutor:** Objection.

**THE COURT:** Overruled.

**Defense Counsel:**

**Q.** Wouldn’t it be more likely for somebody who is less developed to show evidence of trauma as distinguished from somebody who is more developed, in the same general age range?

**A.** That would be using only one fact and there would be physical development, and not taking into account that there may be differences is the type of assaults that take place at younger ages versus older ages. It would be very difficult to ferret out whether age is a major factor, physical development is a major fact, or the types of assault that takes place is a major factor.

…………………………………

**Q.** You also testified that if the injuries are very minor, they could heal in a couple of days, I believe that was your testimony on direct examination, correct?

**A.** Correct.

**Q.** But that doesn’t apply in this case, because the examination was made within hours of the alleged sexual assault, correct?

**A.** That is correct.

**Q.** You indicated that, as the district attorney explained in her hypothetical question, which was in three parts, the third aspect of her question she said that there was a lubricant or baby oil used. And I believe at that time you testified that that would reduce or lessen or mitigate the possibility of trauma, the use of such baby oil, is that correct?

**A.** That is correct.

**Q.** But that was the third occasion of contact, that she talked about. On the first occasion, you will remember she told you in her hypothetical question that the first contact, no baby oil was used. Would there be more likelihood for trauma under those circumstances where no lubricant was used, Dr. D.?

**A.** There are more chances of having trauma when no lubricant is used. But in the vast majority of cases, there is no trauma at all. So I can’t say that it would be more frequent than not.

**Q.** Doctor, is it not a fact that where there is the possibility, prospectively speaking of sexual contact between a…male and a female,…that the female normally exudes certain sorts of juices, what have you, inside the body which in effect renders herself in a position to receive the male organ, isn’t that true, Doctor?

**Prosecutor:** Objection. I believe he is referring to consensual adult sexual contact.

**THE COURT:** I will overrule you. Doctor, can you answer it?

**The Witness:** Many women will produce an increased amount of mucus in the vagina with stimulation.

**Defense Counsel:**

**Q.** Now, Doctor,…what about, let’s say a young girl who is twelve years old, who I am estimating a weight of somewhere between sixty and seventy pounds, who is quickly and suddenly, according to what she says, taken against her will and a penis is inserted into her vagina, quickly, without the opportunity to secrete the fluids and the mucus to which you refer. Under those circumstances, Doctor, would there be more likelihood, sir, of trauma?

**A.** Again, it would increase the likelihood of injury above that situation in which mucus was produced. However, the documentation of the physical examination suggests that there was some discharge present in this child at the time of examination. And it is hard to say whether that was the direct result of the contact or whether it was there beforehand.

**Q.** You don’t know that, do you?

**A.** I don’t know that. But if it were there beforehand, it would act as a lubricant. If it is the result of, then there was stimulation. So I can’t tell you.

**Q.** Exactly. There is nothing in Dr. P.’s report, which could suggest to you that one to two cc’s of vaginal discharge was there prior to the sexual act?

**A.** Correct. But if it were there before, it would act as a lubricant. And if it is the result of stimulation, she has the ability to produce it.

**Q.** Doctor, you have spoken specifically to negative findings, okay, and the lack of findings of trauma and saying that that is consistent with the fact that a sexual assault actually happened.

Now, isn’t it also just as likely that the lack of physical findings would also be consistent with absolutely nothing happening?

**A.** In the absence of history of sexual assault, certainly a normal physical examination is a normal physical examination, and may be found in the absence of sexual penetration. Medical evidence includes the history. Medical people cannot divorce themselves from the history and the descriptions that the girl has given to the doctor and to other individuals are part of the history.

**Defense Counsel:** That is all I have, Doctor. Thank you so much.