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# Court Dictation of Choice of Anesthesia

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INCREDIBLE AS IT SEEMS, the courts of one of the foremost States of the Nation (California), have effectively overruled medical experts as to a medical "fact of life." The court has said, in effect, that it (rather than scientific experts) will decide what anesthesia should or should not be used by anesthesiologists. How such a thing could happen is most interesting to see. It came about thus:

In malpractice cases against doctors (physicians and surgeons), negligence ordinarily is not presumed but must be proved.[1] The burden of the proof is upon the plaintiff to show that the defendant lacked the proper knowledge and skill[2] or failed to use that degree of care ordinarily exercised by doctors under similar circumstances,[3] and all this proof must be established by expert testimony. Generally speaking, a physician or a surgeon is presumed to have treated or to have operated upon his patient carefully and skillfully.[4] Except—when the *Doctrine of Res Ipsa Loquitur* applies. That doctrine is a weird and wonderful thing, sometimes.

Indeed, the law ordinarily does not look upon the doctor as a guarantor of good results, and usually no presumption of negli-

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1 "In cases involving charges of malpractice against a professional man, negligence will not be presumed but must be proved." Hine v. Fox, 89 S. 2d 13 (Fla., 1956).

2 The burden of proof is upon the plaintiff in action for malpractice, to show a want of proper knowledge and skill. The doctrine of res ipsa loquitur does not apply in malpractice actions and negligence cannot be inferred from the occurrence alone. Bettigole v. Diener, 124 A. 2d 265 (Md., 1956).

3 In malpractice actions, in absence of a res ipsa loquitur situation, plaintiff must offer proof that defendant doctor failed to use that degree of care ordinarily exercised by other doctors under similar circumstances and testimony must be produced from qualified experts. Warren v. Roos, 273 P. 2d 569 (C. A. Calif., 1954).

4 "Generally, a physician or surgeon is presumed to have carefully and skillfully treated or operated on his patient, and no presumption of negligence is to be indulged from fact of injury to patient or adverse result of treatment or operation." Waddell v. Woods, 158 Kan. 469, 148 P. 2d 1016, 152 A. L. R. 629 (1944).

gence can be inferred from injury to the patient or from an adverse result of treatment or operation. However, certain factual situations occurring in malpractice cases introduce the application of the doctrine of res ipsa loquitur. This rule of evidence is peculiar to the law of negligence and permits the jury under proper instruction to draw an *inference* of negligence.[5] It virtually is a qualification of the general rule that negligence is never presumed but must be affirmatively proved.[6] Such an inference throws upon the party charged the duty of producing evidence to overcome the inference created. The application of the doctrine of res ipsa loquitur in a malpractice case involving spinal anesthesia[7] has caused far-reaching effects in the practice of anesthesiology.

The term *res ipsa loquitur* was first used by Baron Pollock in 1863[8] when the now-famous barrel fell from the second floor of a warehouse, injuring a passer-by in the street below. Originally the doctrine required:

a) That there must be a reasonable evidence of negligence.

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[5] The rule of res ipsa loquitur is a rule of evidence which permits the inference of negligence where an accident occurs under circumstances which, in the ordinary course of human experience, would not happen but for the negligence of defendant and is but an evidential inference for the jury's consideration under proper instructions. Carpenter v. Baltimore and O-R. Co., 109 F. 2d 375 (C. C. A. 6, Ohio, 1940).

Res ipsa loquitur doctrine is not a substantive rule of law, but a rule of evidence which permits jury, but not the court unless the court is the tryer of facts, to draw an inference of negligence, where instrumentality causing injuries is under exclusive management and control of one of the parties and accident occurs under circumstances where in ordinary care of events it would not occur when ordinary care is observed. Fink v. N. Y. Central R. R., 144 Ohio St. 1, 56 N. E. 2d 456 (1944).

[6] "Res ipsa loquitur is a rule of evidence peculiar to the law of negligence, and amounts to qualification of the general rule that negligence is never presumed but must be affirmatively proved." Weller v. Worstall, 129 Ohio St. 596, 196 N. E. 637 (1935).

The underlying reason for the rule of res ipsa loquitur is that facts of injury are solely within knowledge of the defendant and are not accessible to the plaintiff, founded on absence of specific proof of acts or omission constituting negligence. Rosper v. Old Fort Mills, 81 Ohio App. 241, 78 N. E. 2d 909 (1947).

In action for alleged malpractice, the breaking of a needle used to administer a spinal anesthetic does not permit the application of the rule of evidence known as res ipsa loquitur, but proof of the breaking of the needle coupled with its location outside of the channel of soft tissue and against the bone gave rise to a prima facie case of negligence sufficient to call upon the defendant anesthetist for an explanation. Wiley v. Wharton, 68 Ohio App. 345, 41 N. E. 2d 255 (1941).

[7] Seneris v. Haas, 291 P. 2d 915 (Calif., 1955).

[8] Byrne v. Boadle, 2 H & C 722, 159 Eng. Rep. 299 (1863).

b) That the thing must be under control of defendant or his servant.

c) That the accident is one which does not occur if the one in possession uses proper care.

If these requirements are met, the facts afford reasonable evidence that the accident arose from want of care.[9] In effect, the doctrine is comparable to circumstantial evidence in an unusual accident.[10] In most states the doctrine usually is applied in malpractice cases only when the facts possess an air of the dramatic, and when negligence is evident to the layman without the testimony of an expert.

In the usual malpractice case, negligence must be affirmatively proved by testimony of an expert. The physician must have done something in diagnosis or treatment of his patient which the recognized standard of medical practice of his community forbids, or he must have neglected to do something required by that standard.[11] Such testimony must be produced by qualified experts.[12] The fact that the patient has an unfavorable reaction to certain therapy does not make the doctrine of res ipsa loquitur applicable[13] nor does it give rise to an inference of negligence.[14]

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[9] Seatt v. London & St. Katherine Docks Co., 3 H & C 596, 159 Eng. Rep. 665 (1865): "There must be reasonable evidence. But where the thing is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants that the accident arose from want of care."

[10] Prosser, Res Ipsa Loquitur in California, 37 Calif. L. R. 183 (1949).

[11] Before a physician or surgeon may be held liable for malpractice, he must have done something in the treatment of his patient which the recognized standards of medical practice of the community forbids in such cases, or he must have neglected to do something required by that standard. Woods v. Pommerening, 271 P. 2d 705 (Wash., 1954).

[12] See above, n. 3.

[13] In malpractice action by patient against physician, who prescribed medicine containing arsenic, which allegedly poisoned patient, if treatment prescribed by physician was an approved and acceptable treatment and dosages prescribed were proper, mere fact that patient had an unfavorable reaction from use of medicine would not make doctrine of res ipsa loquitur applicable, nor would it be sufficient to establish actionable negligence against physician. Hawkins v. McCain, 239 N. C. 160, 79 S. E. 2d 493 (1954).

Res ipsa loquitur doctrine was inapplicable in action against surgeon for malpractice in continuing operation on plaintiff after he suffered first of four electrical shocks caused by short circuit in electro surgical unit used for operation. Smith v. American Cystoscope Makers, Inc., 266 P. 2d 792 (Wash., 1954).

[14] When a physician undertakes to perform duties of his profession he impliedly warrants that he possesses and will use the requisite skill and

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This fundamental rule is based on the likelihood that the lack of success may be attributed to causes other than the physician's negligence.[15]

The doctrine of res ipsa loquitur usually has been applied to malpractice cases in certain factual situations. These include: instances when sponges and instruments are left in the abdominal cavity; when teeth are knocked out during tonsillectomy; when a wrong tooth is pulled; when burns are produced by hot water bottles on an untreated area of the body; or, when the wrong leg is amputated. Such factual situations do not require expert testimony because the negligence involved is said to be within the experience and knowledge of the layman.[16] However, the accident must have been of a kind that ordinarily does not occur in the absence of someone's negligence. It must have been caused by an agency or instrumentality within the exclusive control of the defendant and must not have been due to any

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care ordinarily possessed and used by others in his profession, but unsuccessful results of his treatment do not give rise to a presumption of negligence. Rainey v. Horn, 72 S. 2d 434 (Miss., 1954).

[15] The application of the doctrine to malpractice cases is somewhat limited, since most courts follow the rule that negligence of a physician will not be inferred or presumed merely because of adverse results in medical treatment. Note, 26 Ill. L. R. 350 (1930). The reason upon which this rule is founded seems to be in the likelihood that the lack of success may be attributable to causes other than the physician's negligence. Malila v. Meacham, 187 Ore. 330, 211 P. 2d 747 (1949). But there are certain factual situations in which there is a growing tendency to extend the doctrine into malpractice. Ybarra v. Spangard, 25 Cal. 2d 486, 154 P. 2d 687, 162 A. L. R. 1258; Noted, 25 B. U. L. R. 295, 33 Calif. L. R. 331 (1944); 18 So. Calif. L. R. 310 (1944).

"To extend the doctrine to a situation where a series of people are seriatim in control or in partial control of the plaintiff or his things and where the injury may have occurred by the act of any one of them unobserved by the others, is using the doctrine to accomplish a result without reference to the reasons for it or its limitations. It is not equitable to impose liability upon all members of the group when it is evident that the harm was not result of group action and that most of the members of the group were innocent of wrongdoing." Seavey, Res Ipsa Loq.: Tabula in Naufragio, 63 Harv. L. R. 643 (1950).

Courts have often refused to apply doctrine when exclusive control by defendant was questionable. (Injury to eye during or after appendectomy) Meadows v. Patterson, 21 Tenn. App. 282, 109 S. W. 2d 417 (1937); (Injury to neck and spine during T&A) Beckwith v. Boynton, 235 Ill. App. 469 (1924).

"The basis of the decision appears quite clearly to be a burden imposed upon defendant because of their special responsibility towards the plaintiff, which in reality has very little to do with the ordinary notion of res ipsa loquitur." Note, 33 Oregon L. R. 236 (1954).

[16] Walker v. Distler, 296 P. 2d 452 (Idaho, 1956).

A plaintiff may invoke the doctrine of res ipsa loquitur in certain malpractice cases, as where the surgeon has left a foreign object in the body of a patient, because in those cases the negligence involved is said to be within the experience and knowledge of layman.

voluntary action or contribution on the part of the plaintiff.[17] Some texts state that the doctrine throws upon the party charged, the duty of producing evidence of the true cause of injury, whether culpable or innocent, which is accessible to the defendant but inaccessible to the person injured. It is, in effect, a type of circumstantial evidence suffcient to take the case to the jury. However, the nonavailability-of-evidence concept is new and usually is considered a nonessential requirement.

The doctrine of res ipsa loquitur, where applicable, gives to the plaintiff a procedural advantage. Its least effect (applicable in most of the states) would be to create only an inference, or mere permissible deduction, that the jury may make without express direction of the court to that effect. This inference at least sends the case to a jury, but it is not enough to entitle the plaintiff to a directed verdict.

Most courts frown upon the application of res ipsa loquitur in medical-malpractice suits, since, in the ordinary malpractice case, laymen are not qualified to say that the doctor was negligent, but expert testimony is required—testimony that must originate from another physician or surgeon. Thus, whenever expert testimony cannot be obtained, an insuperable handicap is placed upon the plaintiff. To avoid miscarriage of justice, some courts permit the inference of negligence in certain malpractice cases, by lay testimony, when the particular factual situations strongly suggest negligence. Excellent illustrations are the famous cases of instruments or sponges left in the abdomen. Some courts, however, extend the doctrine to other medical situations in which negligence is obvious,[18] such as the pulling of the wrong tooth. "The charitable presumptions which ordinarily protect the practitioner against legal blame when his treatment is unsuccessful are here not available." [19]

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[17] Ybarra v. Spangard, 25 Cal. 2d 486, 154 P. 2d 687, 162 A. L. R. 1258 (1944).

[18] "If a surgeon, undertaking to remove a tumor from a person's scalp, lets his knife slip and cuts off his patient's ear, or if he undertakes to stitch a wound on the patient's cheek and by an awkward move thrusts his needle into the patient's eye, or if a dentist in his haste, leaves a decayed tooth in the jaw of his patient and removes one which is perfectly sound and serviceable, the charitable presumptions, which ordinarily protect the practitioner against legal blame where his treatment is unsuccessful are here not available. It is a matter of common knowledge and observation that such things do not ordinarily attend the service of one possessing skill and experience in the delicate work of surgery. It does not need scientific knowledge or understanding to understand that, ordinarily speaking, such results are unnecessary and are not to be anticipated if reasonable care be exercised by the operator." Evans v. Roberts, 172 Iowa 653, 154 N. W. 923 (1915).

[19] Prosser, Res Ipsa Loquitur in California, 37 Calif. L. R. 183 (1949).

A problem arises, however, with the occurrence of untoward reactions to therapy. Physicians are cognizant of the inherent potentiality—however remote—in every medical or surgical procedure, that the intended results may not eventuate. Such unexpected or unexplained results are best relegated to the field of ignorance or to the realm of the unknown, inasmuch as medicine is not an exact science. Medical statistics are kept to present to the physician an undistorted graphic record of the incidence of success or failure of a particular therapeutic procedure. The successful results contrast vividly with the less successful. There is no doubt that the possibility of harmful results influences the selection of a therapeutic regime. Mills calls the incidence of untoward results "the calculated risk."[20] He states that the figures specifically eliminate the element of negligence, and never should be used as a basis of probability of negligence. Exception might be taken to the term "calculated risk" as a contradiction in terms. In addition, in medical statistics concerning the success or failure of a given therapeutic procedure, negligence is *included* in the figures. In most instances, when a given procedure is to be analyzed, a large unselected series of consecutive cases is studied and the results are tabulated. In such techniques, negligence may be a complication and of necessity must be included in the series. Therefore, such figures may be used to show the possibility of negligence.

The Supreme Court of California has extended the interpretation of the doctrine of res ipsa loquitur in malpractice cases so that the physician must now be nearly a guarantor of results. And a review of a few recent, specific cases involving anesthesia makes it increasingly evident that they may have far-reaching influence on the practice of anesthesiology. In the case of *Ybarra v. Spangard,*[21] general anesthesia was administered for an appen-

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[20] Mills, Res Ipsa Loquitur and the Calculated Risk in Medical Malpractice, 30 So. Calif. L. R. 80 (1956).

[21] "In the face of these examples of liberalization of the tests for res ipsa loquitur, there can be no justification for the rejection of the doctrine in the instant case. As pointed out above if we accept the contention of defendants herein there will rarely be any compensation for patients injured while unconscious. A hospital today conducts a highly integrated system of activities, with many persons contributing their efforts. There may be, e.g., preparation for surgery by nurses and interns who are employees of the hospital; administering of an anesthetic by a doctor who may be an employee of the hospital, an employee of the operating surgeon, or an independent contractor; performance of an operation by a surgeon and assistant who may be his employees, employees of the hospital, or independent contractors; and presurgical care by the surgeon, or hospital physician, and nurses. The number of those in whose care the patient is placed is not a good reason for

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dectomy. During this operation, the patient sustained an injury to the right shoulder. This was an injury to a healthy part of the body not the subject of treatment, nor within the area covered by the operation. The California Supreme Court held that such an injury raises the inference of negligence and calls upon the defendant physician to explain the unusual result.

The court felt that inasmuch as the patient was rendered unconscious and incapable of knowing who treated him negligently, everyone concerned with the hospital treatment (while the plaintiff was in the unconscious state) should be held as parties defendant. It was incumbent upon each to show that due care and skill was exercised and that he was not negligent in the treatment of the patient. This is based upon the element of the doctrine of res ipsa loquitur that defendants have the superior knowledge or have access to superior knowledge of the existence of negligence, when the plaintiff was unconscious. Therefore, the defendant should be forced to defend his position. The fact that some defendants were quite unlikely to have been parties to the injury to the patient does not seem to have bothered the court.[22] This decision in effect has made the physician and all his professional associates very nearly absolutely liable for injuries to any patient rendered unconscious by general anesthesia.

Decisions in cases involving spinal anesthesia have taken an unusual turn in California. In this procedure the patient usually

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denying him all reasonable opportunity to recover for negligent harm. It is rather a good reason for re-examination of the state of legal theories which supposedly compel such a shocking result.

'We do not at this time undertake to state the extent to which the reasoning of this case may be applied to other situations in which the doctrine of res ipsa loquitur is invoked. We merely hold that where a plaintiff receives unusual injuries while unconscious and in the course of medical treatment, all those defendants who had any control over his body or the instrumentalities which might have caused the injuries may properly be called upon to meet the inference of negligence by giving an explanation of their conduct.'" Ybarra v. Spangard, 25 Calif. 2d 486, 154 P. 2d 687, 162 A. L. R. 1258 (1944).

[22] "We have no doubt that in a modern hospital, a patient is likely to come under the care of a number of persons in different types of contractual and other relationships with each other. It may appear at the trial that, consistent with the principles outlined above, one or more defendants would be found liable and others absolved, but this should not preclude the application of the rule of res ipsa loquitur. This places upon them the burden of initial explanation." In summation, the court said, "We merely hold that when a plaintiff receives unusual injuries while unconscious and in the course of medical treatment, all those defendants who had any control over his body or the instrumentalities which might have caused the injuries may properly be called upon to meet the inference of negligence by giving an explanation of their conduct." Ybarra case, above, n. 21.

is not rendered unconscious. By means of a spinal needle, anesthetic agents are injected into the subarachnoid space, producing analgesia of the lower trunk and legs. Inasmuch as many people have an intense fear of spinal analgesia, it is not surprising that there are a growing number of malpractice cases involving spinal analgesia. A patient does not relish the pain of piercing the skin of his back, nor the snapping sensation as the longitudinal ligament is pierced, or the sudden twinge of pain as the posterial nerve roots are touched by the spinal needle. To many patients this procedure is an unnecessary invasion of a very vital part of his nervous system. Any post-operative discomforts, together with emotional elements, may result in legal entanglements and may cause the anesthesiologist to doubt the medical indications for spinal analgesia. In Ohio,[23] the doctrine of res ipsa loquitur was held to be inapplicable in a case in which a spinal needle broke while the anesthesiologist was administering the spinal anesthetic agent. The court declared that just because a spinal needle broke while in the back of the patient, negligence need

[23] ". . . While the breaking of the needle in the instant case does not permit the application of the rule of evidence known as res ipsa loquitur, nevertheless the breaking of the needle under the circumstances, coupled with *its location, outside of the channel of soft tissues and against the bone*, as shown by the x-ray film gives rise to a prima facie case of negligence, sufficient to call upon the Defendant Michaels for explanation. And although while it may be that the anesthetist followed approved custom, in his attempt to administer the anesthetic, nevertheless custom alone, will not exonerate one from a charge of negligence.

". . . When the physician, acting in concert with another in the performance of an operation, perpetrates an act of malpractice, the other may be held liable for the acts of the tort feasor if he observes such tortious conduct and lets it continue without objection, or if he fails to observe and act upon that which, in the exercise of ordinary care and diligence under the circumstances, he should have observed and acted upon." Wiley v. Wharton, 68 Ohio App. 345, 41 N. E. 2d 255 (1941).

". . . While conformity to a custom and usage is a matter proper to be submitted to the jury for its consideration in determining whether or not ordinary care has been exercised, customary methods or conduct do not furnish a test which is conclusive or contracting on the question of negligence or fix a standard by which negligence is to be gauged. Methods employed in any trade, business or profession, however long continued cannot avail to establish as safe in law that which is dangerous in fact." Ault v. Hall, 119 Ohio St. 422, 164 N. E. 518, 60 A. L. R. 128 (1928).

The res ipsa loquitur doctrine is not applicable in malpractice cases involving diagnosis and scientific prescription, cannot be invoked in aid of specific charges of negligence, and is inapplicable where complaint alleges and plaintiff affirmatively shows how his injuries occurred. Sieling v. Mahrer, 71 Ohio L. A. 571, 113 N. E. 2d 373 (1953).

Where the patient selected the hospital at which operation was to be performed and hospital prepared patient for operation and furnished all accessories including chemicals required in operation, and its employees applied the chemicals, the doctrine of res ipsa loquitur was not applicable to attribute negligence to the surgeon. Blackman v. Zeligs, 90 Ohio App. 304, 470 Ohio 393, 103 N. E. 2d 13 (1951).

not necessarily be inferred. It is incumbent on the plaintiff affirmatively to prove negligence.

In another instance,[24] spinal analgesia was administered to a patient undergoing an emergency operation. When the spinal needle was inserted into the subarachnoid space, the patient experienced a terrific pain that radiated down the right leg. He stiffened, screamed, and fainted. When he awoke the next morning, the plaintiff's leg was partially paralyzed. A neurologist testified that such a painful reaction was a common experience, and that the plaintiff suffered an injury to the nerve roots in the lower end of the spinal cord. Testimony ascribed the cause to the inherently toxic quality of the injected drug, as distinguished from the negligence of the anesthesist. The doctrine of res ipsa loquitur was held not to apply.

In a more recent decision in the State of California,[25] the Supreme Court held that the rule of res ipsa loquitur applied in a similar factual situation. The plaintiff had been given a spinal anesthesia for childbirth delivery. In the first days postpartum, the plaintiff complained of pain and difficulty in moving the legs; and pain in the back, neck, head, arms, and wrists. By the fourth day postpartum, she could flex the right leg but had no control over the left foot. After two months in the hospital, she had regained the use of the right leg. The anesthesiologist testified that he had performed the lumbar puncture at L 4-5 (the fourth and fifth lumbar interspace) and had administered the usual anesthetic agents in the usual dosage. He then explained that occasional sensitivity to these agents occurs in a few isolated cases. The Court of Appeals[26] said, "the law has never held a physician or surgeon liable for every untoward result which may occur in medical practice."

However, upon appeal, the Supreme Court of California declared it a nonsuit and granted a new trial, stating: "It would appear that the plaintiffs have made out a prima facie case by both medical testimony and common knowledge that the injuries are not such as usually occur in the circumstances without negli-

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[24] Ayers v. Parry, 192 F. 2d 181 (C. A., N. J., 1951).
"Seldom, indeed, would physicians administer a spinal anesthetic if they are to be held responsible solely for an adverse reaction of the anesthetic on the nerve roots."
For a thorough discussion of proper rules, on a most enlightened scientific basis, see, Hall v. United States, 136 F. Supp. 187 (D. C., La., 1955).

[25] Seneris v. Hass, 281 P. 2d 278 (Calif., 1955), Modified on appeal, 291 P. 2d 915 (1955).

[26] Citing, Huffman v. Lindquist, 37 Cal. 2d 465, 473, 234 P. 2d 34 (1951).

gence on the part of someone." The court was convinced from the expert testimony of the obstetrician that in the absence of negligence such injuries do not occur, and from the neurosurgeon that the injury resulted from damage to the spinal cord per se.

It is significant that either they disregarded or disbelieved the testimony of the anesthesiologist, who testified that the lumbar puncture—although performed in a hurry (and what spinal anesthetic induction for delivery isn't!)—was performed at L 4-5. Unless the patient has a most unusual congenital defect, the possibility of injuring the spinal cord at that level is extremely remote.[27] It is common knowledge, at least among anesthesiologists, that the cord per se seldom extends below the body of the first lumbar vertebra. The possibility of touching or injuring the filaments of the cauda equina (the roots of the lumbar, sacral and coccygeal nerves) are a hazard inherent to the procedure, or constitute the "calculated risk." If all of the anesthesiologist's testimony as to the technique he used is true, he used the technique that is used for spinal anesthesia in the majority of the hospitals in our country. It is submitted that, in this case, the State of California has, for all intents and purposes, required the anesthesiologist when employing spinal anesthesia to be a guarantor of treatment.

The effects of these decisions upon the practice of anesthesiology in the State of California have been profound. Since the physician-anesthetist now is liable as a guarantor of results (partly, perhaps, under the "deep pocket doctrine"), his judgment in selection of a type of anesthesia may be influenced by his legal liability. This is particularly true for private practitioners, as contrasted with the large university hospitals. The following are statements as to this effect, from anesthesiologists currently in practice in the State of California:[28]

> ". . . Spinals have been avoided except for clear cut indications."
>
> "Complications under general anesthesia frequently offer no legal threat whereas those related to spinal anesthesia are extremely hazardous in this respect."

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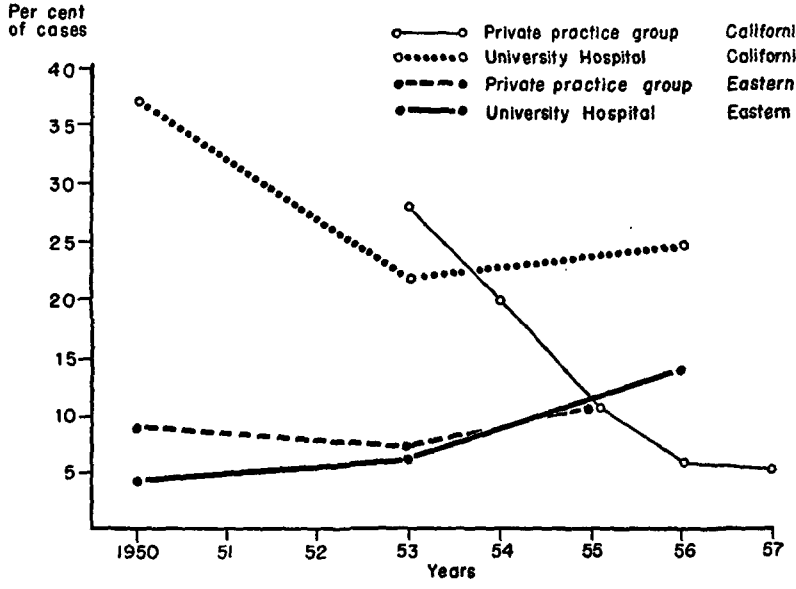
[27] Southworth and Hingson, Conduction Anesthesia, J. B. Lippincott Co. (1946) p. 738; Vandam, Leroy D. & Driggs, Robert D., Longterm Follow-up of patients who received 10,098 Spinal Anesthetics. 161 J. A. M. A. 586 (1956); Note, 156 J. A. M. A. 1486 (1954); Note, Modern Medicine, 110 (May 15, 1955).

[28] Personal communications, in several statistical inquiries made by the writer.

"Today, unlike the situation a few years ago, we seldom ever have a request from the surgeon for spinal anesthesia."

The influence of these decisions is graphically illustrated in medical statistics.




Use of spinal anesthesia in general surgery in the two selected instances in California show a progressive decline in use of spinal anesthesia. This contrasts sharply with the tendency in hospitals in other sections of the country. The incidence of administered spinal anesthesia in the latter institutions remains constant, or is increasing.

Of particular interest is the reaction of the anesthesiologist in private practice, concerning use of spinal anesthesia. This physician is most sensitive to the possibility of the legal entanglements. He does not feel the cloak of institutional protection about him. In fact, he usually considers himself more vulnerable to the sting of the "deep pocket doctrine" of liability. He fears that his reputation may be seriously damaged if a suit is filed against him for malpractice. It is evident, therefore, that the decisions of the California courts in regard to spinal anesthesia are now seriously affecting his selection of anesthesia.

It is a sad commentary on court misunderstanding of scientific facts, when a physician must deny the patient the advantages

of a particular type of anesthesia because of the possibility of a malpractice suit. Yet such is the present situation in the State of California, where the recent court decisions practically hold the physician strictly liable for untoward results.

It all began 100 years ago, when a barrel of flour fell in a warehouse and a learned justice spoke those catchy words in Latin: *Res ipsa loquitur!* It came to its "Alice In Wonderland" peak in California—land of the-incredible-come-true.