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## Evidence—Res Ipsa Loquitur in Accidents Involving Skidding and Swerving Vehicles

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## EVIDENCE—RES IPSA LOQUITUR IN ACCIDENTS INVOLVING SKIDDING AND SWERVING VEHICLES

Plaintiff was a passenger in an automobile northbound on a state highway. It was raining or snowing and there was slush on the highway causing slippery conditions. Defendant's truck, headed south, crossed into the northbound lane and struck the car in which plaintiff was riding, injuring plaintiff. At the trial, defendant gave no explanation for the accident and offered no proof on the issue of negligence. The jury returned a verdict for the plaintiff. The Appellate Division, by a divided court, reversed the judgment on the law and dismissed the complaint. The court found that there was no evidence as to the cause of the skid. The Court of Appeals reinstated the judgment for the plaintiff. *Held*, when a vehicle crosses onto the wrong side of the road and damage results, a case of negligence is made out *prima facie* sufficient to go to the jury for a determination of liability. *Pfaffenbach v. White Plains Express Corp.*, 17 N.Y.2d 132, 216 N.E.2d 324, 269 N.Y.S.2d 115 (1966).

In a negligence action, the plaintiff has the burden of showing defendant's failure to exercise due care, resulting in the breach of some duty owing to the plaintiff, and that burden of persuasion can never be shifted to the defendant.<sup>1</sup> Where possible, the plaintiff discharges this burden by introducing direct evidence tending to prove the facts alleged. However, when direct evidence is not available, the plaintiff may carry his burden by proffering circumstantial evidence, providing that such circumstances, "unexplained, justify an inference of negligence."<sup>2</sup> It is as circumstantial evidence that the doctrine of *res ipsa loquitur* may be invoked by a plaintiff.<sup>3</sup> To rely upon the doctrine, plaintiff's evidence must show that the instrument causing the injury was under the control and management of the one charged with negligence<sup>4</sup> and that the accident is one which would not ordinarily have occurred without neglect by the defendant of some duty owing to the plaintiff.<sup>5</sup> Having satisfied these requirements, plaintiff has made out a *prima facie* case of negligence. In other words, the procedural effect of *res ipsa loquitur* in New York is to raise an inference of negligence which the trier of fact may accept or reject.<sup>6</sup> In exceptional cir-

1. Galbraith v. Busch, 267 N.Y. 230, at 233, 196 N.E. 36, at 37 (1935).

2. *Id.* at 233, 196 N.E. at 38.

3. Prosser, *Res Ipsa Loquitur in California*, 37 Calif. L. Rev. 183 (1949); Seavey, *Res Ipsa Loquitur; Tabula in Naufragio*, 63 Harv. L. Rev. 643 (1950). *But see* Jaffee, *Res Ipsa Loquitur Vindicated*, 1 Buffalo L. Rev. 1 (1951).

4. George Foltis, Inc. v. City of New York, 287 N.Y. 108, 38 N.E.2d 455 (1941); Slater v. Barnes, 241 N.Y. 284, 149 N.E. 859 (1925); see Prosser, Torts § 39, at 222-25 (3d ed. 1964); 9 Wigmore, Evidence § 2509, at 381 (3d ed. 1940).

5. *E.g.*, George Foltis, Inc. v. City of New York, 287 N.Y. 108, 38 N.E.2d 455 (1941); Galbraith v. Busch, 267 N.Y. 230, 196 N.E. 36 (1935); see Prosser, *op. cit. supra* note 4, § 39, at 218-22; 9 Wigmore, *op. cit. supra* note 4, § 2509.

6. George Foltis, Inc. v. City of New York, 287 N.Y. 108, 38 N.E.2d 455 (1941); see Prosser, *op. cit. supra* note 4, § 40; 2 Wigmore, *op. cit. supra* note 4, §§ 285, 290(5). In a minority of jurisdictions, *res ipsa loquitur* raises a presumption of negligence rather than a mere inference. The presumption shifts the burden of producing evidence to the defendant and, where defendant fails to come forward with rebutting evidence, the jury is bound to return a verdict in favor of plaintiff. See Prosser, *op. cit. supra* at 234, n.38.

cumstances, the inference may be so compelling that the conclusion of negligence is inescapable if not rebutted by other evidence.<sup>7</sup> In such a situation, plaintiff may be entitled to summary judgment or a directed verdict.<sup>8</sup> Generally however, a *res ipsa loquitur* case, if not rebutted, will merely allow plaintiff to reach the jury.<sup>9</sup>

In automobile negligence actions, the applicability of *res ipsa loquitur* has come to depend upon the particular fact situation involved and the legal relationship between plaintiff and defendant. The New York courts have been vexed by the problem of applying *res ipsa loquitur* where a vehicle leaves the road or its own lane of traffic and where such an occurrence involves either a sudden swerve or a skid of the vehicle. American jurisdictions have differed in their approach to these problems. Upon a showing that a vehicle leaves the road or crosses over into the opposite lane of traffic by virtue of a sudden swerve, a plaintiff, whether a guest passenger or not, is generally allowed to rely upon *res ipsa loquitur* in making out a *prima facie* case.<sup>10</sup> However, where such an occurrence is caused by the skid of the vehicle, the courts have generally refused to allow a plaintiff, whether a guest passenger or not, to invoke *res ipsa loquitur* without showing something more.<sup>11</sup>

The early New York cases seemed to indicate that New York would follow the majority of states and allow a plaintiff to rely upon *res ipsa loquitur* where he could show that defendant's vehicle suddenly swerved off the roadway and the injured plaintiff was either a guest passenger in the vehicle<sup>12</sup> or a pedestrian.<sup>13</sup> In 1935 however, the Court of Appeals decided *Galbraith v. Busch*<sup>14</sup> which laid the groundwork for thirty years of confusion in this segment of New York tort law. The plaintiff was a passenger in defendant's automobile, which was proceeding down a good highway in clear weather and at a moderate speed. Suddenly and for no apparent reason, defendant's vehicle left the roadway and crashed into a tree, injuring the plaintiff. The Court ruled that upon a showing of this and nothing more, plaintiff could not rely upon *res ipsa loquitur* and his complaint was dismissed.<sup>15</sup> The Court reasoned that, even assuming that the circumstances justified "an inference that the automobile was not carefully operated or was not carefully maintained,"<sup>16</sup> the plaintiff was a guest passenger to whom the defendant owed no duty to discover and repair defects in the car. Consequently, the accident could just as possibly have been the result of a non-

7. *E.g.*, *Baroff v. Becker*, 197 F. Supp. 9 (E.D.N.Y. 1961); *O'Brien v. Purpura*, 25 Misc. 2d 1009, 205 N.Y.S.2d 3 (Sup. Ct. 1960); see *George Foltis, Inc. v. City of New York*, 287 N.Y. 108, 121, 38 N.E.2d 455, 462 (1941) (dictum); Prosser, *op. cit. supra* note 4, § 40; *cf. Schwartzberg v. Norotsky*, 20 Misc. 2d 638, 194 N.Y.S.2d 26 (Sup. Ct. 1959).

8. See Prosser, *op. cit. supra* note 4, § 40.

9. *Ibid.*

10. See Annot., 79 A.L.R.2d 6, § 28 (1961).

11. See Annot., 58 A.L.R. 264 (1929), supplemented in 113 A.L.R. 1002 (1938).

12. *Bennett v. Edward*, 239 App. Div. 157, 267 N.Y. Supp. 417 (1st Dep't 1933).

13. *Locicero v. Messina*, 239 App. Div. 635, 267 N.Y. Supp. 901 (1st Dep't 1933).

14. 267 N.Y. 230, 196 N.E. 36 (1935).

15. *Ibid.*

16. *Id.* at 235, 196 N.E. at 38.

negligent mechanical defect as the result of negligent operation.<sup>17</sup> Two years later the Court of Appeals decided *Lahr v. Tirrel*.<sup>18</sup> While the facts were similar to *Galbraith*, this accident occurred on a slippery road covered with ice and slush. The car *skidded* off the road and overturned. The Court again ruled that a plaintiff guest passenger could not rely upon *res ipsa loquitur* to take his case to the jury. The Court reiterated the rule of *Galbraith* and, concurring with the apparent weight of authority,<sup>19</sup> ruled that an inference of negligence could not arise from a mere showing of a skid of a vehicle upon a slippery surface.<sup>20</sup> In subsequent cases, the Court of Appeals has strictly adhered to the doctrines set forth in these two leading cases.<sup>21</sup>

The lower New York courts have restricted *Galbraith* to its facts and have allowed *res ipsa loquitur* to be invoked where defendant's vehicle suddenly swerved from its lane into a vehicle in the oncoming lane of traffic and plaintiff was an occupant of the other vehicle.<sup>22</sup> A pedestrian, off the roadway, has also been allowed to rely upon *res ipsa loquitur* where he has shown that defendant's vehicle left the roadway and struck him.<sup>23</sup> And likewise, upon facts similar to *Galbraith*, a non-guest passenger has been successful in invoking *res ipsa loquitur*.<sup>24</sup> These cases have rejected *Galbraith* by reasoning that the plaintiffs involved did not assume the risk for mechanical defects in the vehicles which caused them injury; therefore the accident was one which would not have ordinarily occurred without the negligence of the defendant, either in the operation or maintenance of his vehicle. The lower courts have further restricted *Galbraith* by allowing a guest passenger to reach the jury where there is some sufficient additional ingredient from which the negligence of the driver may be inferred.<sup>25</sup>

In those situations which involve a vehicle *skidding* off or across the road,

17. *Id.* at 235, 196 N.E. at 39.

18. 274 N.Y. 112, 8 N.E.2d 298 (1937).

19. See *supra* note 11.

20. *Lahr v. Tirrell*, 274 N.Y. 112, 117, 8 N.E.2d 298, 300 (1937).

21. *E.g.*, *Gooch v. Shapiro*, 8 N.Y.2d 1088, 170 N.E.2d 830, 208 N.Y.S.2d 34 (1960), *affirming* 7 A.D.2d 307, 182 N.Y.S.2d 744 (1st Dep't 1959); *Cole v. Swagler*, 308 N.Y. 325, 125 N.E.2d 592 (1955); *Marinan v. Kronberger*, 280 N.Y. 640, 20 N.E.2d 1011 (1939) (alternative ground).

22. *Cameron v. Dooley*, 18 A.D.2d 130, 238 N.Y.S.2d 338 (3d Dep't 1963); *cf.* *Anderson v. Bee Line, Inc.*, 1 N.Y.2d 169, 134 N.E.2d 457, 151 N.Y.S.2d 633 (1956); *Gale v. City of New York*, 18 A.D.2d 12, 238 N.Y.S.2d 135 (1st Dep't 1963), *appeal dismissed*, 13 N.Y.2d 892, 193 N.E.2d 501, 243 N.Y.S.2d 674 (1963); *Betts v. Queens Farm Dairy Co.*, 162 Misc. 583, 295 N.Y. Supp. 78 (Sup. Ct. 1937).

23. *E.g.*, *O'Brien v. Purpura*, 25 Misc. 2d 1009, 205 N.Y.S.2d 3 (Sup. Ct. 1960); *Hornecker v. Weisse*, 19 Misc. 2d 917, 189 N.Y.S.2d 671 (Sup. Ct. 1960).

24. *E.g.*, *Silvern v. Barbagallo*, 195 N.Y.S.2d 32 (Sup. Ct. 1959) (invitee riding in a taxi); *Russo v. State*, 166 Misc. 316, 2 N.Y.S.2d 350 (Ct. Cl. 1938) (prisoner riding in a state police vehicle).

25. *E.g.*, *Ritter v. Zunft*, 9 A.D.2d 155, 193 N.Y.S.2d 55 (3d Dep't 1959) (wrongful death, icy road and excessive speed); *Brandt v. Jones*, 7 A.D.2d 234, 181 N.Y.S.2d 909 (3d Dep't 1959) (wrongful death and excessive speed); *Kinary v. Taylor*, 243 App. Div. 651, 276 N.Y. Supp. 688 (3d Dep't 1935) (wrongful death); *cf.*, *e.g.*, *Montgomery v. Humphrey*, 284 App. Div. 365, 132 N.Y.S.2d 448 (3d Dep't 1954) (evidence that defendant's car drifted across the center line of the road).

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the lower courts have generally expanded the reasoning of *Lahr* and have refused to permit plaintiffs whether guest passengers or not, to rely upon *res ipsa loquitur*.<sup>26</sup> The few cases which have deviated from this trend have generally done so on the *additional ingredient* theory mentioned above. Usually they have found such an ingredient in evidence of excessive speed.<sup>27</sup>

In the instant case, the Appellate Division reversed on the law, the judgment entered on the verdict by the trial court.<sup>28</sup> The court related the facts showing a skid and held that the evidence failed to establish a *prima facie* case of negligence since there was no evidence that the skid was caused either by a defective condition in defendant's truck or by negligence in its operation.<sup>29</sup> The Court of Appeals, while not referring to a skid in its statement of the facts, distinguished the instant case from the two upon which the Appellate Division relied.<sup>30</sup> These two cases involved skidding vehicles with facts similar to the instant case. The first, *LoPiccolo v. Knight of Rest Prod. Corp.*,<sup>31</sup> was an affirmance of a "defendant's jury verdict and thus the legal problem [applicability of *res ipsa loquitur*] was not deemed open in this court."<sup>32</sup> The second case, *Gooch v. Shapiro*,<sup>33</sup> may have pivoted upon the defendant's explanation which was "not forthcoming in this case."<sup>34</sup> After noting that these cases stemmed from *Galbraith* and *Lahr*, which were passenger actions, the Court concluded that, under the facts of the instant case, "showing this and nothing more, a case of negligence is made out *prima facie* . . . ." <sup>35</sup> The Court then went beyond the facts and stated, "The same rule, open to additional factual evaluation of his own responsibility for events, would apply to a passenger in a car which goes out of control."<sup>36</sup> The Court reasoned that the delicate balancing process

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26. *E.g.*, *Gooch v. Shapiro*, 7 A.D.2d 307, 182 N.Y.S.2d 744 (1st Dep't 1959), *aff'd*, 8 N.Y.2d 1088, 170 N.E.2d 830, 208 N.Y.S.2d 34 (1960); *Hollenbeck v. Hollenbeck*, 286 App. Div. 937, 142 N.Y.S.2d 911, *reargument denied*, 286 App. Div. 977, 144 N.Y.S.2d 722 (3d Dep't 1955); *Hammond v. Hammond*, 227 App. Div. 336, 237 N.Y. Supp. 557 (3d Dep't 1929); *cf., eg.*, *Kronick v. Laxere*, 11 A.D.2d 739, 204 N.Y.S.2d 616 (2d Dep't 1960); *Verner v. Musler*, 10 A.D.2d 584, 196 N.Y.S.2d 51 (2d Dep't 1960); *Gabrielly v. Mailley*, 19 Misc. 2d 560, 196 N.Y.S.2d 131 (Sup. Ct. 1959); *Povol v. Storch*, 19 Misc. 2d 559, 196 N.Y.S.2d 309 (Sup. Ct. 1959).

27. *E.g.*, *Evans v. S.J. Groves & Son Co.*, 315 F.2d 335 (2d Cir. 1963); *Reich v. Evans*, 7 A.D.2d 765, 180 N.Y.S.2d 159 (3d Dep't 1958); *Sweet v. Farmers Syndicate, Inc.*, 279 App. Div. 1118, 112 N.Y.S.2d 580 (3d Dep't 1952); *Newman v. Metropolitan Tobacco Co.*, 20 Misc. 2d 1013, 189 N.Y.S.2d 600 (Sup. Ct. 1959) (alternative holding).

28. *Pfaffenbach v. White Plains Express Corp.*, 22 A.D.2d 795, 253 N.Y.S.2d 891 (2d Dep't 1964).

29. *Id.* at 796, 253 N.Y.S.2d at 891.

30. Instant case at 135, 216 N.E.2d at 324, 269 N.Y.S.2d at 116.

31. 7 A.D.2d 369, 183 N.Y.S.2d 301 (1st Dep't 1959), *aff'd*, 9 N.Y.2d 662, 173 N.E.2d 51, 212 N.Y.S.2d 75 (1961) (Defendant's truck skidded across a slippery bridge into plaintiff's truck which was proceeding in the opposite direction.).

32. Instant case at 135, 216 N.E.2d at 324, 269 N.Y.S.2d at 116.

33. 7 A.D.2d 307, 182 N.Y.S.2d 744 (1st Dep't 1959), *aff'd*, 8 N.Y.2d 1088, 170 N.E.2d 830, 208 N.Y.S.2d 34 (1960) (Defendant-driver, whose vehicle skidded across into an oncoming vehicle, testified to his exercise of due care both prior to and during the skid of his vehicle.).

34. Instant case at 135, 216 N.E.2d at 325, 269 N.Y.S.2d at 116.

35. *Ibid.*

36. *Ibid.*

of *Galbraith* has no "practical application to the real world of motor vehicle operation,"<sup>37</sup> and that the rigid categories of negligence and non-negligence lacked the precision once assumed.<sup>38</sup> Consequently, the Court felt that the question of "a skid or explanation for a skid, or a car on the wrong side of the road, or the explanation of why it is there"<sup>39</sup> should be left to the "factual judgment of the jury."<sup>40</sup> In a concurring opinion, Judge Burke agreed with the majority of the Court except where the plaintiff is a guest passenger. In addition to restating the reasoning of *Galbraith* and *Lahr* as to guest passengers, he argued that the evidence needed to establish negligence is more readily available to a guest passenger than to a stranger.<sup>41</sup>

While *res ipsa loquitur* is not mentioned in the instant case, it is readily discernible from the facts that this doctrine is the object of the Court's thrust. The absence of the term from the Court's opinion may be taken as an indication that the Court feels the use of the term adds nothing but a false aura of mysticism which tends to confuse both judge and jury alike. If this is an accurate deduction, the step should be heralded in view of the fact that the doctrine in New York means only a *prima facie* case based on circumstantial evidence.<sup>42</sup> The instant case, restricted to the facts enunciated in the majority opinion, simply settles the rule previously followed by the lower courts.<sup>43</sup> However, the Court's dicta regarding future treatment of related factual situations is both persuasive and striking. In addition, the lone concurring opinion suggests an innovation in the so called *skidding* cases. The majority opinion is striking in two respects. First, it departs from the *Galbraith* doctrine and places New York on a par with most other jurisdictions in permitting guest passengers to rely upon *res ipsa loquitur* in the *swerving* vehicle cases. Second, and even more unexpected, it departs from *Lahr* and the weight of authority<sup>44</sup> and allows all plaintiffs to rely upon the doctrine in the *skidding* class of cases. Not only is this indicated by the words of the Court,<sup>45</sup> but it is also fortified by the absence of the word "skid" from the majority's version of the facts while it is included in the concurring opinion's<sup>46</sup> and the Appellate Division's<sup>47</sup> recitals of the facts. It would thus seem that the Court earnestly intended to obviate all distinctions between *swerving* and *skidding* cases.

The *Galbraith* Court was correct in visualizing that the guest passenger cases produced a situation where there were two possible causes for a vehicle

37. *Id.* at 135-36, 216 N.E.2d at 325, 269 N.Y.S.2d at 117.

38. *Id.* at 136, 216 N.E.2d at 325, 269 N.Y.S.2d at 117.

39. *Ibid.*

40. *Ibid.*

41. *Id.* at 136-37, 216 N.E.2d at 235-36, 269 N.Y.S.2d at 117.

42. See authorities cited in *supra* note 6.

43. See cases cited in *supra* note 22.

44. See Annot., 58 A.L.R. 264 (1929), supplemented in 113 A.L.R. 1002 (1938).

45. Instant case at 136, 216 N.E.2d at 325, 269 N.Y.S.2d at 117.

46. *Ibid.*

47. *Pfaffenbach v. White Plains Express Corp.*, 22 A.D.2d 795, 253 N.Y.S.2d 891 (2d Dep't 1964).

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to swerve off the road, one involving negligence and the other not. However, they seem to have erred in concluding that the probability that the accident was caused by the non-negligent factor is equal to the probability that the accident was caused by negligence.<sup>48</sup> Despite the current furor over safety engineering and design of automobiles,<sup>49</sup> traffic safety surveys strongly indicate that mechanical defects are a substantial causative factor in only a relatively small percentage of automobile accidents.<sup>50</sup> It would seem, therefore, that one might confidently state that accidents which result from the sudden unexplained swerve of a vehicle do not ordinarily occur without some negligence on the part of the driver of the automobile. While there are cases of other jurisdictions which seemingly follow *Galbraith*, analysis discloses that the refusal to permit reliance upon *res ipsa loquitur* pivoted upon other grounds. Most of these cases will fit into one of the following categories: first, a guest statute required proof of gross negligence which the doctrine can not infer;<sup>51</sup> second, plaintiff was seeking summary judgment or a directed verdict in a jurisdiction where the doctrine merely raises an inference of negligence;<sup>52</sup> third, defendant offered evidence rebutting the inference or presumption and thus destroyed the procedural effect of the doctrine;<sup>53</sup> fourth, plaintiff pleaded or offered proof of specific acts of negligence in a jurisdiction which, due to such specificity, precludes reliance on the doctrine;<sup>54</sup> fifth, the agency producing the injury was not under the exclusive control and management of the defendant.<sup>55</sup>

While the equal possibility of a non-negligent versus a negligent cause argument gains added strength where the skidding of a vehicle is involved, its validity is not thereby established. Rather, the oft quoted maxim that *negligence cannot be inferred from the mere fact that a vehicle skidded* seems to have been more glibly parroted than thoroughly scrutinized. It must first be noted that there seems to be a paucity of statistical research on the subject. An elucidating

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48. *Galbraith v. Busch*, 267 N.Y. 230 at 235, 196 N.E. 36 at 39 (1935).

49. See generally Nader, *Unsafe at Any Speed—The Designed Built-In Dangers of the American Automobile* (1965). The recent controversy has primarily been concerned with minimizing the extent of injuries during a crash.

50. See Norman, *Road Traffic Accidents—Epidemiology, Control and Prevention* 49 (1962) (Police reports in the United Kingdom indicate that mechanical defects are a causative factor in 2.5% of the accidents investigated.); see also James & Dickenson, *Accident Proneness and Accident Law*, 63 Harv. L. Rev. 769, at 770 (1950); President's Committee for Traffic Safety: *Research Report—A Section of the Action Program for Highway Safety 11-12* (1963).

51. *E.g.*, *Carter v. Driver*, 316 S.W.2d 378 (Ky. 1958); *Lombardo v. DeShance*, 167 Ohio St. 431, 5 Ohio Ops. 2d 114, 149 N.E.2d 914 (1958).

52. *E.g.*, *Thompson v. Kost*, 298 Ky. 32, 181 S.W.2d 445 (1944) (reversing directed verdict for plaintiff); *Lively v. Atchley*, 36 Tenn. App. 399, 256 S.W.2d 58 (1952) (affirming denial of plaintiff's motion for a new trial).

53. *E.g.*, *Jones v. Nugent*, 164 Va. 378, 180 S.E. 161 (1935) (evidence of defective road due to an excessive drop from the road to the shoulder of the road); *Klien v. Beeton*, 169 Wis. 385, 172 N.W. 736, (1919) (evidence that after the accident the front tire was found to be blown out).

54. *E.g.*, *Klingman v. Loew's, Inc.*, 209 Minn. 449, 296 N.W. 528 (1941) (excessive speed on a curve); *Hartpence v. Grouleff*, 15 N.J. 545, 105 A.2d 514 (1954) (excessive speed).

55. *E.g.*, *Smith v. Tatum*, 199 Va. 85, 97 S.E.2d 820 (1957) (Passenger-plaintiff, who was a driving instructor, also considered to be in control of the vehicle.).

analysis of this problem was made by Judge Friendly in *Evans v. S. J. Groves and Son Co.*<sup>56</sup> When an accident involves a skidding vehicle, there is an immediate reaction suggesting that the skid alone was the cause of the accident. However, this does not answer the ultimate question of what caused the skid. It is certainly true that such skids usually occur on slippery roads. But, the propensity of these roads to be slippery is, generally, readily apparent to the driver due to conditions of snow, slush and/or ice. These patently hazardous conditions beckon the reasonably prudent driver to exercise a greater degree of caution in order to satisfy the standard of due care exacted by tort law.<sup>56</sup> It would seem to be only reasonable then, that "proof of a skid on a highway known to be dangerous takes a plaintiff far enough down the probability road to call on the defendants for an explanation and, in the absence of a satisfactory one, to go to the jury."<sup>57</sup>

Additional support for both of these arguments may be found in the philosophy embraced by the Court in the instant case.<sup>58</sup> The Court is accelerating the swing of the pendulum toward enlarging the spectrum of jury discretion in determining the issue of negligence.<sup>59</sup> It is an appraisal by the Court that the jury is better able to make an equitable determination of the presence or absence of negligence on an *ad hoc* basis than a Court is able to do by mechanically applying rigid categorical rules which themselves may have had their basis in the same speculation, conjecture and surmise so abhorred in *Galbraith* and *Lahr*.

DAVID C. HORAN

#### FAMILY LAW—APPLICATION OF THE RULES AGAINST SEARCH AND SEIZURE TO JUVENILE DELINQUENCY PROCEEDINGS

The petition charging Williams, a fifteen year-old boy, with being a juvenile delinquent, alleged that he broke into a resort cottage and stole some jewelry. Two hours after this theft, a security guard saw Williams acting in a suspicious manner elsewhere in the same resort. Although the guard did not see Williams commit or attempt to commit a crime,<sup>1</sup> he apprehended the youth and turned him over to the New York State Police. After being questioned in an approved facility,<sup>2</sup> Williams admitted the theft and took the police to his bungalow; there he returned the stolen jewelry. At 5:00 a.m., after reducing his confession to a written statement, he was released into the custody of his sister. During the entire period the police had Williams in custody, they failed to make any

56. 315 F.2d 335 (2d Cir. 1963).

57. See N.Y. Vehicle and Traffic Law § 1180(a), (c).

58. *Evans v. S.J. Groves & Son, Co.*, 315 F.2d 335, 343 (2d Cir. 1963).

59. Instant case at 136, 216 N.E. at 325, 269 N.Y.S.2d at 117.

1. See N.Y. Family Ct. Act § 722; N.Y. Code Crim. Proc. § 183.

2. As required by N.Y. Family Ct. Act § 724(b)(ii) (here the Ellenville sub-station of the New York State Police).