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Court of Appeals Reaffirms Vitality of Donovan-Arthur Rule

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jurisdiction is sought be one which could have been brought as a counterclaim in the original action had the original action been brought in the supreme court. Since only a defendant can counterclaim,[72] it is logical to conclude that CPLR 303 should be available only to a defendant.[73]

In *Green,* the party seeking to take advantage of CPLR 303 was the plaintiff in the primary action. Harlowe's counterclaim was asserted not against him, but rather against Bender; hence, the primary plaintiff should not be considered a defendant within the context of CPLR 303. Moreover, since a *Dole* claim has generally been considered a defense rather than the commencement of an action, it would seem that even Bender could not have utilized CPLR 303 to secure in personam jurisdiction over Harlowe.[74]

Finally, it should also be noted that the counterclaim interposed by Harlowe was superfluous. Bender had already introduced the apportionment issue by impleading Harlowe, and the latter's counterclaim added nothing to the action. In all probability, Harlowe, who could not actually benefit by the interposition of a *Dole* counterclaim, did so in conformity with his insurer's pro forma practice.[75]

In conclusion, while it is clear that Justice Gagliardi reached the correct result in *Green,* it is submitted that the court's inquiry into CPLR 303 should have revealed that, by its terms, this statute was intended to be utilized not by a plaintiff in the primary action, but instead, only by a defendant.

CRIMINAL PROCEDURE LAW

Court of Appeals reaffirms vitality of Donovan-Arthur *rule.*

Stemming from a long line of New York decisions, the *Donovan-Arthur* rule requires suppression of any statements elicited from a criminal defendant in the absence of his retained or assigned counsel unless the defendant has first waived his rights in the presence of his attorney.[76] Although it was originally held to be

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[72] *See* CPLR 3019(a).

[73] *See* CPLR 303, commentary at 156-57 (McKinney 1972).

[74] *See* notes 66-70 and accompanying text *supra.*

[75] Indeed, had the court ruled in favor of Green and held that Harlowe waived his jurisdictional defenses by counterclaiming, it is quite possible that Harlowe would have had a claim against his insurer "for its counsel's zealousness in exposing the insured to personal liability." 175 N.Y.L.J. 115 at 12, col. 3 (footnote omitted).

[76] The *Donovan-Arthur* rule was developed in a line of cases that predated the Supreme Court decisions in Miranda v. Arizona, 384 U.S. 436 (1966), and Escobedo v. Illinois, 378 U.S.

mandated by the New York State Constitution,[77] later decisions created several exceptions to the rule,[78] and in 1970 the Court of Appeals actually characterized it as "merely a theoretical statement of the law."[79] With its constitutional basis in doubt, consider-

478 (1964). *See generally* Paulsen, *The Winds of Change: Criminal Procedure in New York* 1941-1965, 15 BUFFALO L. REV. 297 (1966). An early case recognizing the importance of effective representation of a criminal defendant was People v. Di Biasi, 7 N.Y.2d 544, 166 N.E.2d 825, 200 N.Y.S.2d 21 (1960), *discussed in* 35 ALB. L. REV. 798, 800 (1971); 51 CORNELL L.Q. 356, 360 (1966). In *Di Biasi,* the Court held that statements made in the absence of retained counsel by a defendant who had been indicted for a capital crime were inadmissable in evidence. Shortly after *Di Biasi,* the same rule was applied to a defendant in a noncapital case who was unrepresented by counsel. People v. Waterman, 9 N.Y.2d 561, 175 N.E.2d 445, 216 N.Y.S.2d 70 (1961). The *Waterman* Court additionally held that since an indictment represents the formal commencement of a criminal action, the defendant's right to counsel attaches at that point. *Id.* at 565, 175 N.E.2d at 447-48, 216 N.Y.S.2d at 74-75.

Extension of the right to counsel to the preindictment stage of the proceeding came in People v. Donovan, 13 N.Y.2d 148, 193 N.E.2d 628, 243 N.Y.S.2d 841 (1963). In *Donovan,* the Court suppressed the confession of a defendant whose lawyer was denied access to him at the preindictment stage of the proceedings, holding that such denial violated both the privilege against self-incrimination and the right to counsel. *Id.* at 151-52, 193 N.E.2d at 629, 243 N.Y.S.2d at 843. Following *Donovan,* uncertainty existed as to the exact limits of the rule, especially since it was unknown whether a defendant would have to request counsel before the right would attach. *See* Note, Escobedo *in New York,* 40 ST. JOHN'S L. REV. 51, 55-59 (1965). After the decisions in People v. Gunner, 15 N.Y.2d 226, 205 N.E.2d 852, 257 N.Y.S.2d 924 (1965), and People v. Friedlander, 16 N.Y.2d 248, 212 N.E.2d 533, 265 N.Y.S.2d 97 (1965), however, this uncertainty no longer existed. *Gunner* and *Friedlander* indicate that it is not necessary that the defendant actually be *denied* access to counsel, nor that he specifically request to see his attorney for the rule to apply.

The final step in the evolution of the right to counsel in the precommencement stage of a New York criminal action was taken in People v. Arthur, 22 N.Y.2d 325, 239 N.E.2d 537, 292 N.Y.S.2d 663 (1968). The Court in *Arthur* held that once the defendant's attorney enters the proceeding, the police may no longer question the defendant irrespective of whether he requested the attorney or even knows of his presence. Such questioning is permitted only if the defendant first waives his rights in the presence of the attorney. *Id.* at 329, 239 N.E.2d at 539, 292 N.Y.S.2d at 666. Thus, it is clear that the *Donovan-Arthur* rule applies to assigned as well as retained counsel, and is applicable even when counsel fails to request the police to refrain from questioning the defendant. Finally, the rule has been held to be entitled to retroactive recognition. People v. Miles, 23 N.Y.2d 527, 542, 245 N.E.2d 688, 696, 297 N.Y.S.2d 913, 924 (1969). It should be noted, however, that the rule is not without exceptions. *See* note 94 *infra. See generally* W. RICHARDSON, EVIDENCE § 545 (10th ed. J. Prince 1973) [hereinafter cited as RICHARDSON].

[77] *See* People v. Arthur, 22 N.Y.2d 325, 328-30, 239 N.E.2d 537, 538-39, 292 N.Y.S.2d 663, 665-67 (1968); People v. Donovan, 13 N.Y.2d 148, 151, 193 N.E.2d 628, 629, 243 N.Y.S.2d 841, 843 (1963). The constitutional provisions held to mandate the *Donovan-Arthur* rule are the privilege against self-incrimination, the right to counsel, and those rights arising from the due process clause of N.Y. CONST. art. I, § 6.

[78] *See* People v. Kaye, 25 N.Y.2d 139, 250 N.E.2d 139, 303 N.Y.S.2d 41 (1969); People v. McKie, 25 N.Y.2d 19, 250 N.E.2d 36, 302 N.Y.S.2d 534 (1969). For a discussion of *Kaye* and *McKie,* see note 94 *infra.*

[79] People v. Robles, 27 N.Y.2d 155, 158, 263 N.E.2d 304, 305, 314 N.Y.S.2d 793, 795 (1970), *cert. denied,* 401 U.S. 945 (1971).

able uncertainty developed as to the continued viablity of the rule.[80] Recently, however, the Court of Appeals, in *People v. Hobson*,[81] reaffirmed the continued existence of the *Donovan-Arthur* rule, declaring that "[a]ny statements elicited [from a defendant] . . . , after a purported 'waiver' obtained without the presence or assistance of counsel, are inadmissible."[82]

Hobson presented the Court with an opportunity to reconsider the rule in a classical *Donovan-Arthur* setting. Defendant Hobson had been photograph-identified as the perpetrator of a robbery in Suffolk County. Several months later, while being held on unrelated charges, he was placed in a lineup for identification as the robbery suspect. Defendant's assigned counsel[83] was present at the lineup, but left shortly after Hobson was identified. Following his attorney's departure, defendant signed a waiver form and agreed to speak to the police. Although the detective involved knew that Hobson was represented by counsel, he made no effort to contact the attorney before commencing an interrogation that elicited inculpatory statements from Hobson.[84] Before trial, Hobson unsuccessfully moved to suppress these statements. He was subsequently convicted, upon a plea of guilty, of robbery in the third degree.[85]

The Court of Appeals held that Hobson's confession should have been suppressed,[86] thus reaffirming the continued viability of the *Donovan-Arthur* rule. In reaching this result, the Court overruled two cases often viewed as departures from the *Donovan-Arthur* rule—*People v. Robles*[87] and *People v. Lopez*.[88] The *Hobson*

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[80] *See* People v. Pellicano, 40 App. Div. 2d 169, 338 N.Y.S.2d 831 (4th Dep't 1972) (divided appellate division refused to apply the *Donovan-Arthur* rule). A noted commentator also expressed uncertainty as to the status of the rule following the *Robles* decision. *See* RICHARDSON, *supra* note 76, § 545, at 547-48.

[81] 39 N.Y.2d 479, 348 N.E.2d 894, 384 N.Y.S.2d 419 (1976), *rev'g* 47 App. Div. 2d 716, 336 N.Y.S.2d 1003 (2d Dep't 1975) (mem.).

[82] *Id.* at 481, 348 N.E.2d at 896, 384 N.Y.S.2d at 420.

[83] Significantly, counsel had been assigned to defendant for the robbery charge. Had the attorney been assigned solely to represent defendant on the unrelated charges, the *Donovan-Arthur* rule would not have barred admission of the statements concerning the robbery. *See, e.g.*, People v. Taylor, 27 N.Y.2d 327, 266 N.E.2d 630, 318 N.Y.S.2d 1 (1971). *But see* People v. Ramos, No. 461 (N.Y. Ct. App. Oct. 26, 1976).

[84] 39 N.Y.2d at 482-83, 348 N.E.2d at 896-97, 384 N.Y.S.2d at 420-21.

[85] *Id.* at 481, 348 N.E.2d at 896, 384 N.Y.S.2d at 420. The conviction was affirmed by the appellate division. 47 App. Div. 2d at 716, 336 N.Y.S.2d at 1003.

[86] 39 N.Y.2d at 491, 348 N.E.2d at 903, 384 N.Y.S.2d at 427.

[87] 27 N.Y.2d 155, 263 N.E.2d 304, 314 N.Y.S.2d 793 (1970), *cert. denied*, 401 U.S. 945 (1971).

[88] 28 N.Y.2d 23, 268 N.E.2d 628, 319 N.Y.S.2d 825, *cert. denied*, 404 U.S. 840 (1971). The *Hobson* Court also overruled People v. Wooden, 31 N.Y.2d 753, 290 N.E.2d 436, 338 N.Y.S.2d 434 (1972) (mem.), a case which merely followed the *Lopez* holding.

Court, in an opinion written by Chief Judge Breitel, declared that both *Robles* and *Lopez* represented a sudden, unexplained retreat from an established and well-reasoned line of authority.[89] Noting that the purpose of the rule is to provide an "effective safeguard against an involuntary waiver of counsel"[90] by a person in the grips of the state's coercive police power, the *Hobson* Court declared that neither *Robles* nor *Lopez* provided a convincing rationale for vitiating the rule.[91] These considerations led the Court to conclude that the doctrine of stare decisis did not require adherence to the two decisions.[92]

Undoubtedly, *Robles* was a bar to application of the *Donovan-Arthur* rule. In *Robles,* defendant's attorney asked the police to "watch" the defendant while he left the room. In answer to a question posed to him during his lawyer's absence by an acquaintance on the police force, defendant admitted to murdering two people. At no time during the subsequent interrogation did the police secure a waiver of defendant's rights in the presence of his lawyer or even inform defendant's attorney of the questioning.[93] Allowing Robles' statement to be admitted in evidence, the Court of Appeals held, without elaboration, that the *Donovan-Arthur* rule was a mere theoretical statement and not a basic rule of law.[94] The rule, said the *Robles* Court, "is not applicable unless there is evidence of conduct . . . which would indicate an intention to victimize a defendant or

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[89] 39 N.Y.2d at 486-88, 348 N.E.2d at 899-901, 384 N.Y.S.2d at 423-25.

[90] *Id.* at 484, 348 N.E.2d at 898, 384 N.Y.S.2d at 422.

[91] *Id.* at 485-87, 348 N.E.2d at 898-900, 384 N.Y.S.2d at 423-24.

[92] Commenting on its abandonment of the *Robles* and *Lopez* decisions, the *Hobson* Court noted that adherence to precedent is particularly important when property and contract rights are involved since the public continually relies on the stability of the law in those areas. The absence of day-to-day reliance on the stability of constitutional law, combined with the necessity of correcting errors in constitutional interpretation, requires less reliance upon stare decisis in reassessing constitutional precedents, especially those involving individual rights. *Id.* at 488-89, 348 N.E.2d at 901-02, 348 N.Y.S.2d at 425-26.

[93] *See* 27 N.Y.2d at 157-58, 263 N.E.2d at 304-05, 314 N.Y.S.2d at 794-95.

[94] *Id.* at 158, 263 N.E.2d at 305, 314 N.Y.S.2d at 795. In so describing the *Donovan-Arthur* rule, the *Robles* Court relied on People v. Kaye, 25 N.Y.2d 139, 250 N.E.2d 329, 303 N.Y.S.2d 41 (1969), and People v. McKie, 25 N.Y.2d 19, 250 N.E.2d 36, 302 N.Y.S.2d 534 (1969). Examination of these two cases reveals that the Court's reliance on them in *Robles* is questionable. Both *Kaye* and *McKie* merely represent exceptions to the *Donovan-Arthur* rule, *see* RICHARDSON, *supra* note 76, § 545, at 547, and are not at all inconsistent with the rule itself. The *Kaye* exception provides that a spontaneous statement made by the defendant, not elicited by questioning, is admissible in evidence notwithstanding failure to comply with *Donovan-Arthur* requirements. 25 N.Y.2d at 143-44, 250 N.E.2d at 331-32, 303 N.Y.S.2d at 44-46. In *McKie,* the Court declared that the *Donovan-Arthur* rule does not apply to statements made while not in custody. 25 N.Y.2d at 26-28, 250 N.E.2d at 39-41, 302 N.Y.S.2d at 539-40.

outwit his attorney in order to carry on an inquiry."[95] Clearly, the *Robles* Court drastically limited, if indeed it did not completely abrogate the rule.

It is submitted, however, that *Lopez* was not a barrier to reaffirmation of the *Donovan-Arthur* rule by the *Hobson* Court. The Court in *Lopez* held that a postindictment waiver of counsel by a defendant *not represented* by an attorney may be effectuated without having any lawyer present.[96] In contrast, the *Donovan-Arthur* rule is applicable only when the defendant *is represented* by counsel.[97] Thus, since *Lopez* actually did not involve a *Donovan-Arthur* situation, it was unnecessary for the *Hobson* Court to have overruled that decision.[98] Quite possibly, by overruling *Lopez* the Court is indicating that any statements elicited from a defendant during the "critical stages"[99] of the proceeding must be taken either in the presence of counsel or pursuant to a waiver entered into with the advice of counsel. If so, this rule presumably would be applicable regardless of whether the defendant is in fact represented by counsel during the critical stages.[100]

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[95] 27 N.Y.2d at 159, 263 N.E.2d at 305, 314 N.Y.S.2d at 795.

[96] 28 N.Y.2d at 25-26, 268 N.E.2d at 628-29, 319 N.Y.S.2d at 826-27.

[97] *See* note 76 and accompanying text *supra.*

[98] Judge Gabrielli, concurring in the *Hobson* result, opined that the overruling of *Lopez* was unnecessary and improper. 39 N.Y.2d at 491-92, 348 N.E.2d at 903, 384 N.Y.S.2d at 427 (Gabrielli, J., concurring).

[99] The United States Supreme Court, in Kirby v. Illinois, 406 U.S. 682 (1972), indicated that the sixth amendment right to counsel attaches at the "critical stage" of the criminal proceeding. *See* Gerstein v. Pugh, 420 U.S. 103, 121-23 (1975). Under New York law, the critical stage of a criminal proceeding "begins with the filing of an 'accusatory instrument' . . . ." People v. Blake, 35 N.Y.2d 331, 339, 320 N.E.2d 625, 631, 361 N.Y.S.2d 881, 890 (1974); People v. Sugden, 35 N.Y.2d 453, 461, 323 N.E.2d 169, 173-74, 363 N.Y.S.2d 923, 929-30 (1974). An accusatory instrument is defined as "an indictment, an information, a simplified information, a prosecutor's information, a superior court information, a misdemeanor complaint or a felony complaint." CPL § 1.20(1).

[100] Although the *Hobson* majority did not discuss the effect of overruling *Lopez*, Judge Gabrielli, in his concurring opinion, recognized that with *Lopez* overruled an unrepresented postcritical stage defendant may not waive his rights unless an attorney is present. *See* 39 N.Y.2d at 491-92, 348 N.E.2d at 903-04, 384 N.Y.S.2d at 427-28 (Gabrielli, J., concurring). Buttressing this interpretation of *Hobson* is the recent decision of the supreme court in People v. Reyes, 176 N.Y.L.J. 96, Nov. 18, 1976, at 11, col. 5 (Sup. Ct. N.Y. County). There, Justice Coon, citing *Hobson,* held that once judicial proceedings have begun, even an unrepresented defendant may only waive his right to counsel in the presence of a lawyer. *Id.*, col. 6. Moreover, this result would seem to be indicated by careful comparison of then Judge Breitel's dissent in *Lopez* with his opinion in *Hobson.* The *Lopez* dissent indicated that a postindictment, unrepresented defendant "is entitled to the advice of a lawyer and that the right may not be waived except in the presence and with the acquiescence of counsel." 28 N.Y.2d at 26, 268 N.E.2d at 629, 319 N.Y.S.2d at 827 (Breitel, J., dissenting). The *Lopez* dissent further maintained that to permit a waiver of counsel by an unrepresented defendant during the postindictment stage of the proceeding might be less "egregious [than] where counsel is

Notwithstanding the questions created by the overruling of *Lopez*, it is submitted that the *Hobson* Court reached the correct result in reaffirming the *Donovan-Arthur* rule. The Court's analysis revealed that the doctrine of stare decisis does not compel a court to mechanically follow the latest relevant decision, but dictates instead that a court should be guided by "precedents which reflect principle and doctrine rationally evolved."[101] Moreover, the overruling of *Robles* and concomitant reaffirmation of the *Donovan-Arthur* rule ensures, at the very least, that any waiver of protected constitutional rights by a represented criminal defendant will be knowingly, intelligently, and voluntarily made.[102] Without such a safeguard, a defendant may unwittingly be deprived of his constitutional right to counsel.[103] In the final analysis, *Hobson* is a reaffirmation of the

already retained or assigned, but the frustration of the right may be as grave if the waiver comes on the very eve of the inevitable retainer or assignment of counsel . . . ." *Id.* at 29, 268 N.E.2d at 631, 319 N.Y.S.2d at 830. Although *Lopez* involved a postindictment situation, Judge Breitel's reasoning would appear to be applicable to any defendant during the critical stages. *See id.* at 28-29, 268 N.E.2d at 631, 319 N.Y.S.2d at 829-30.

Interestingly, it was the reasoning of the *Lopez* dissenters that District Judge Frankel adopted in granting the defendant's petition for habeas corpus relief. *See* United States *ex rel.* Lopez v. Zelker, 344 F. Supp. 1050 (S.D.N.Y.), *aff'd without opinion*, 465 F.2d 1405 (2d Cir.), *cert. denied*, 409 U.S. 1049 (1972). A close reading of Judge Frankel's opinion reveals that the district court accepted, as a matter of federal constitutional law, the argument that a waiver of the right to counsel after indictment, if permissible at all, can only be made in the presence of counsel. *See* 344 F. Supp. at 1054.

[101] 39 N.Y.2d at 487-88, 348 N.E.2d at 900-01, 384 N.Y.S.2d at 424-25. Stare decisis has never been regarded as an absolute doctrine by the Court of Appeals. *See, e.g.*, Simonson v. Cahn, 27 N.Y.2d 1, 3, 261 N.E.2d 246, 247, 313 N.Y.S.2d 97, 98 (1970); Woods v. Lancet, 303 N.Y. 349, 354-55, 102 N.E.2d 691, 694 (1951). In the past the Court has discarded previously established rules of law when reason and justice so required. *See, e.g.*, Silver v. Great Am. Ins. Co., 29 N.Y.2d 356, 278 N.E.2d 619, 328 N.Y.S.2d 398 (1972)(overruling proscription against applying doctrine of forum non conveniens when one party is New York resident); Gelbman v. Gelbman, 23 N.Y.2d 434, 245 N.E.2d 192, 297 N.Y.S.2d 529 (1969)(abrogating intrafamily tort immunity for nonwillful torts).

[102] *See* 39 N.Y.2d at 484, 348 N.E.2d at 898, 384 N.Y.S.2d at 422. Not treated by the *Hobson* Court, however, were the protections to be afforded to the unrepresented criminal defendant prior to the onset of the critical stage.

[103] *See, e.g.*, Escobedo v. Illinois, 378 U.S. 478, 486 (1964); *In re* Groban, 352 U.S. 330, 344 & n.19 (1957) (Black, J., dissenting). Ensuring against an involuntary waiver of the right to counsel is but one purpose of the *Donovan-Arthur* rule; another important function of the rule is to effectuate the privilege against compulsory self-incrimination. *See* note 77 *supra*. The need for such a rule to accomplish these goals is premised on the theory that the average individual, untrained in law, may unwittingly surrender his rights when confronted with the coercive power of the state. As the *Hobson* Court noted, while *Miranda* warnings may be of some assistance to the defendant,

> [t]hese warnings often provide only a feeble opportunity to obtain a lawyer, because the suspect or accused is required to determine his need, unadvised by anyone who has his interests at heart. The danger is not only the risk of unwise waivers of the privilege against self incrimination . . . but the more significant risk of inaccur-

Court of Appeals' liberal interpretation of the right to counsel and privilege against self-incrimination provisions of the New York State constitution. It is hoped that this laudable policy of safeguarding these rights will continue to be vigorously applied by the judiciary of this state.

GENERAL MUNICIPAL LAW

Gen. Mun. Law § 50-e: Legislature liberalizes notice of claim requirements.

Section 50-e of the General Municipal Law requires that in any tort action against a public corporation in which a notice of claim must be served upon the corporation as a condition precedent to commencement of the action, such notice must be served within 90 days after the claim arises.[104] In apparent response to repeated judicial criticism,[105] the legislature recently amended section 50-e,[106] mitigating the harshness of some of its more stringent provisions.[107] Prior to the amendment, a claimant's slight departure from the strict prescriptions mandated by this section often enabled a munic-

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ate, sometimes false, and inevitably incomplete descriptions of the events described.

39 N.Y.2d at 485, 348 N.E.2d at 899, 384 N.Y.S.2d at 423.

[104] N.Y. GEN. MUN. LAW § 50-e(1)(a) (McKinney Supp. 1976).

[105] As long ago as 1952, the Court of Appeals, in Teresta v. City of New York, 304 N.Y. 440, 108 N.E.2d 397 (1952), acknowledged the inequities which can result from a literal enforcement of § 50-e. In *Teresta*, the Court deemed the City to have waived the notice of claim requirement when it had examined the plaintiff for his alleged injuries and yet failed to object to lack of notice until the eve of trial. Construing the section liberally, the Court noted that the statute should not be applied as " 'a trap to catch the unwary or the ignorant.' " *Id.* at 443, 108 N.E.2d at 398, *quoting* Sweeney v. City of New York, 225 N.Y. 271, 273, 122 N.E. 243, 244 (1919). More recently, in Murray v. City of New York, 30 N.Y.2d 113, 282 N.E.2d 103, 331 N.Y.S.2d 9 (1972), Judge Breitel, in articulating his concern with the harsh effects of § 50-e, stated:

> Except to the practitioner who is skilled in tort cases or claims against municipalities, it is a mousetrap. Such a statute should provide a greater discretion to give relief from its requirements and, of course, to avoid obvious abuses, set forth the standards for the exercise of that greater discretion. . . .
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> There should be prompt legislative correction of the statute.

Id. at 121, 282 N.E.2d at 108, 331 N.Y.S.2d at 16 (Breitel, J., concurring). *See also* Camarella v. East Irondequoit Cent. School Bd., 34 N.Y.2d 139, 313 N.E.2d 29, 356 N.Y.S.2d 553 (1974) (mem.); Sherman v. Metropolitan Transit Auth., 36 N.Y.2d 776, 777, 329 N.E.2d 673, 673, 368 N.Y.S.2d 842, 843 (1975) (Gabrielli, J., dissenting).

[106] Ch. 745, § 2, [1976] N.Y. Laws 1523 (McKinney).

[107] For an in-depth analysis of § 50-e, see Graziano, *Recommendations Relating to Section 50-e of the General Municipal Law and Related Statutes, to be published in* JUDICIAL CONFERENCE, TWENTY-FIRST ANNUAL REPORT (1976). Professor Graziano's report was submitted to the legislature by the Judicial Conference and provided the basis for the amendments to § 50-e.