



# MondayMonday

## Cardozo's Ghost Lives

July 27, 2015

One of our unimpeachable sources (Cindy Adams column on Page Six of the *New York Post*) reports that no less than Robert Redford (a/k/a Bob Woodward) will play former CBS anchorman Dan Rather in the upcoming movie "Truth," the story of how Rather lost his job for reporting the truth about George W. Bush.

In 2004, Rather reported that the then President's father had arranged for his son to serve in the National Guard rather than be shipped off to combat in Vietnam. With George W. up for re-election, CBS Chairman and Bush supporter, Sumner Redstone, it is alleged, couldn't have the truth known. So instead, he shot the messenger.

We were trained as a journalist. We worshipped at the altar which was our family's 19" black and white RCA console in the living room. We believed that Edward R. Murrow was God and that the messengers of news were his angels. CBS was Jerusalem and ABC, where we worked, was Tel Aviv (though we



thoroughly enjoyed the Sodom and Gomorrah of its local "Eyewitness News" operation.) While the spigot through which news flowed in those days was certainly narrower than it is today, clean water is clean water.

According to "Truth", Rather reported the truth and paid the price. It might seem cold, but that's what real-life journalists are supposed to do (Brian Williams take note.) Cardozo (as always) said it best: All we can ask is that we do our best and that it be nobly done. McLuhan was wrong: The medium is not the message.

We are never one to look a gift horse in the mouth, so while we don't quite understand all the mystery of *Matos v. Shelter Rock Homes, Inc.*, 2015 NY Slip Op 06223 (2d Dep't 7/22/15), we thank a panel helmed by retiring Justice Skelos and gratefully accept its largesse.

The fact pattern is hardly complex. The moving defendant was hired by

defendant property owner "to perform, inter alia, masonry work on the premises." Plaintiff, walking past the construction site "was injured when he was struck by a fence door" which, moving defendant, plaintiff alleged, failed to repair. That's it.

The court reminds us that contractual obligations "standing alone" do not bestow tort liability as to third parties, like plaintiff here. Unless, that is, in seeing to its contractual obligations, the contracting party either fails to "exercise reasonable care in the performance of his duties, launching "a force or instrument of harm, or acts so as to "entirely displace[ ] the other party's duty to maintain the premises safely." You know, like in *Espinal*. But what if neither of those things happen, as in this case?

AD2 explains that plaintiff here raised a triable issue of fact as to whether the contractor "launched a force or instrument of harm by failing to properly repair the fence door."

The best we can fathom is that the spirit of Judge Cardozo in *Moch v. Rensselaer* (1928) is alive and well in Brooklyn . . . and we are thankful.

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