A TRIBUTE TO PRESIDING JUSTICE ANTHONY V. CARDONA:
THE CORE VALUES OF COURTESY AND RESPECT
DISPLAYED IN JURISPRUDENCE AND COURT
ADMINISTRATION

Thomas E. Mercure*

For the past sixteen years, it has been my privilege to serve on
the Appellate Division, Third Department under the exemplary
leadership of Presiding Justice Anthony Cardona. During that
time, I have personally witnessed his tireless commitment to
improving the quality of our Court’s work and his compassion for
the parties that appear before us. Our “PJ” is—without fail—a
steady leader, warm colleague and caring friend. He is also keenly
aware of the human consequences of the cases that come before our
Court, displaying tremendous sensitivity, wisdom, and decency in
considering the impact of our decisions.

First and foremost, the PJ keeps his focus on the fact that there
are real human beings whose lives are impacted both by the
decisions that the court makes and the manner in which the court
functions. He never forgets that with each case and administrative
question, real people are at the end of every decision he makes. And
so, he is painstaking in both his jurisprudence and his constant
efforts to improve the process of our court in ways that promote
confidence in our judicial system and reflect the philosophy taught
to him by his father, Victor: “Work hard, treat people fairly, and the
rest will take care of itself.”

The PJ truly lives by that philosophy. It animates every aspect of
his work, as well—not the least of which includes his decision-
making. As Judge Benjamin Cardozo once described the work of
deciding cases:

[E]very one of us has in truth an underlying philosophy of
life... which gives coherence and direction to thought and
action. Judges cannot escape that current any more than

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other mortals. All their lives, forces . . . have been tugging at them— inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs . . . which, when reasons are nicely balanced, must determine where choice shall fall.1

The forces that have made the PJ who he is are reflected in his background. Tony was born and raised in Albany. His father Victor immigrated to the United States in the early twentieth century. In 1927, Victor opened an Italian grocery store on Grand Street in Albany, and he operated the store with Tony’s mother Dora until they retired in 1980. Tony has said that it was through his parents’ example, observed through their actions in operating their store, that he came to deeply appreciate his father’s philosophy of life.

Tony’s experiences as a child taught him to value family, fairness, respect for others, courtesy, and a strong sense of right and wrong. In fact, he was so greatly influenced by his father’s philosophy that it was only fitting that Tony’s father raised his hand along with him as Tony was sworn in as a new Supreme Court Justice in 1990. By remaining true to that philosophy of hard work and respect for others, Tony has become the remarkable jurist that he is, dedicated to the pursuit of excellence, service, fairness and justice.

The PJ’s core values find illustration in his decisions, and a review of those decisions could fill the pages of this issue. I elected, therefore, to focus on his dissents. After all, the Third Department has a reputation for unanimity—my informal review shows that, of the 1,838 appeals decided by it in 2008, only 26 included a dissent.2 Indeed, our court has been described as the “most agreeable” of the appellate divisions.3 This “agreeability” is due in no small part to the courteous tone set by the PJ himself. Collegiality, or “making sauce” as he would put it, is the hallmark of the PJ. So, on the rare occasions where the PJ’s disagreement with a decision leads him to dissent, we should expect to, and do, see his core values on display.

The PJ has not forgotten where he came from and firmly acts to protect the “little guy” who finds him or herself navigating the turbulent waters of the court system. For example, he is inclined to allow plaintiffs their day in court, tending to find questions of fact in the context of close cases involving summary judgment motions.

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1 BENJAMIN N. CARDozo, THE NATURE OF THE JUDICIAL PROCESS 12 (1921).
The Court of Appeals has vindicated his analysis in several instances, recently agreeing with the PJ that questions of fact precluded summary judgment in a case where a young plaintiff was involved in a collision on the highway. Likewise, he was vindicated in his position that summary judgment was inappropriate where an inmate plaintiff believed he was directed to clean his cell block and used unsafe techniques to do so, focusing on the coercive atmosphere in which inmates find themselves.

The PJ is also loath to read statutes or apply legal doctrines in such a way as to prevent an injured plaintiff from reaching trial, such as when he argued that the assumption of risk doctrine was inapplicable in a case involving a speed skater who was injured while practicing on a track with allegedly defective padding. And he has advocated for the expansion of avenues of recovery for injured plaintiffs in the Labor Law section 240 context. Similarly, in insurance coverage disputes, he inclines toward the insured, reasoning that a just result is more difficult to obtain if one cannot afford counsel. Once a case has proceeded to trial, the PJ has often expressed a reluctance to set aside a jury’s verdict or reduce its damage award, a stance that reflects both his concern that injured parties be made whole and his well-known regard for the collective wisdom of the jury.

Perhaps most importantly, the PJ never loses sight of his goal of ensuring that the Third Department has the necessary tools at its

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10 The PJ has frequently spoken to myself and his other colleagues of his experience in serving as a juror. See Carol DeMare, Judge Exits Stage to Take a Box Seat, ALBANY TIMES-UNION, Sept. 25, 2001, at B1.
disposal to reach the “right” result. One example of that tendency occurred in a case where the PJ thought a jury verdict in favor of the defendant—the employer of an individual who allegedly sexually assaulted the plaintiff—should have been set aside. The PJ wrote that, while a jury verdict is entitled to deference, “it is also important to recognize that a trial court’s conclusion that a jury verdict is not a fair reflection of the evidence is entitled to great respect.” In short, the PJ sought to maintain the independent role of the trial judge—and, by extension, the appellate judge—to ensure that substantial justice was done.

That fight by the PJ to preserve our court’s capacity to do the right thing was brought home to me in a case where he disagreed with a majority decision that I authored holding that a criminal defendant had executed a valid waiver of the right to appeal. What is particularly striking is not that disagreement, however; it is rather his forceful argument that our court’s jurisdiction to reduce legal, but nevertheless harsh and excessive, sentences in the interest of justice extends even to those instances where an appeal waiver is valid. He stated:

The existence of this jurisdiction to intervene and correct injustice when all other safeguards have failed must contradict the suggestion that any action on the part of a defendant, the precise individual that the power is meant to ultimately protect, can work to restrict the Appellate Division in the exercise of that authority. In other words, I do not agree that, in a situation where this Court is confronted with what is essentially an unfair sentence that was imposed despite even the best efforts of the courts, attorneys and the defendants themselves, we would have no choice but to sit idly by while the injustice proceeded unchecked.

The PJ’s emphasis on the role of courts as protectors of the individual and his unique empathy, illustrated so vividly in his dissents, are also on display in what the PJ considers one of his

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12 Id. at 1068, 763 N.Y.S.2d at 868 (Cardona, J., dissenting).
15 See N.Y. CRIM. PROC. LAW § 470.15 (6)(b) (McKinney 2009).
16 Romano, 45 A.D.3d at 919, 845 N.Y.S.2d at 159 (Cardona, J., dissenting).
signature decisions, *Matter of Matthews*.\(^{17}\) The case was an emotionally charged one, involving an attempt to place a gastrostomy tube in a profoundly disabled young man over his parents’ objection and despite evidence that he could take nourishment without it.\(^{18}\) I sat on the panel in this case, and I remember vividly the telephone conference in which we reached agreement on the decision that was issued. The PJ made clear his view of this court’s authority to grant the application and stated that we would have done so had the evidence shown that the man’s “condition was deteriorating . . . and that he was being deprived of life-sustaining treatment.”\(^{19}\) He concluded, however, that the issue was the man’s “right to live with dignity and his right to make his own choice to eat in order to sustain himself.”\(^{20}\) Noting that the parents’ refusal to employ a feeding tube was supported by some medical evidence, the PJ wrote that deference must be accorded to the parents’ decision and that the trial court erred in granting the application to place the tube.\(^{21}\)

But the PJ’s genuine concern for others and his awareness of the human dimension that is necessarily at the heart of all the court’s work is perhaps best seen in his devotion of many years of his career to the area of family law. Following his graduation from Albany Law School in 1970, Tony practiced law for fourteen years and served as a Law Guardian in Albany County Family Court at that time. He then began his judicial career as an Albany County Family Court judge, where he served for six years until he was elected to the supreme court. Shortly following his appointment as Presiding Justice in 1994, he became co-chair of the Family Violence Task Force—a position he held for eleven years. In that role, he worked to enhance the education and training of judges regarding issues of family violence and worked to improve the court system’s response to family violence.

Within the Third Department itself, the PJ has insisted that appeals in family court cases be decided in written, signed opinions and urged that those decisions should be handed down within four to six weeks after they are argued, recognizing both the sensitivity of the issues involved and their importance to the participants. The PJ’s insistence upon prompt, thorough work is not limited to family

\(^{17}\) 225 A.D.2d 142, 650 N.Y.S.2d 373 (App. Div. 3d Dep’t 1996).
\(^{18}\) See *id.* at 144–45, 650 N.Y.S.2d at 374–75.
\(^{19}\) Id. at 152, 650 N.Y.S.2d at 379.
\(^{20}\) Id. at 146, 650 N.Y.S.2d at 376.
\(^{21}\) See *id.* at 148–52, 650 N.Y.S.2d at 377–79.
court cases, however; indeed, “[t]he mark of the Cardona court . . . is
preparedness, punctuality and productivity.”22 In all appeals, the
Third Department sets a goal of issuing decisions promptly and only
infrequently issues per curiam opinions.23 Moreover, court
watchers have noted that the members of our court are well-
prepared at oral argument and have increasingly constituted a “hot”
bench during the PJ’s tenure.24 All of this reflects the PJ’s firm
belief in treating those who come before our court with courtesy and
respect, and it is no accident that the Third Department has become
ever more “user-friendly” during the PJ’s time at the helm.25

But to simply call the Cardona Court “user-friendly” would do the
PJ an injustice because, in addition to ensuring that the process is
as smooth as possible, the PJ recognizes that our court’s most
fundamental obligation is to provide clear and consistent guidance
to both the trial bench and bar. In his view, detailed and well-
written opinions are the best way we can assist the trial bench and
the bar in interpreting our precedent, and this, in many ways, is the
Cardona Court’s most important contribution to the furtherance of
justice in this state. On the PJ’s watch, the Third Department has
been praised for its consistency, respect for prior case law, and lack
of major shifts in direction with changes in the makeup of our
court.26 Judges are sworn to uphold the law, and the PJ has always
rejected a results-oriented approach that jettisons intellectual rigor
and a deep respect for precedent. Instead, he demands that every
judge on the Third Department approach cases with an eye to the
law, without regard to his or her personal opinions or self-interest.
In the end, Tony Cardona’s emphasis on doing right, while staying
within and clearly articulating the bounds of the law, will be the
most enduring tribute to his time as Presiding Justice of the Third
Department and his greatest service to the people of New York.

22 Caher, supra note 2, at 8.
23 See Tom Perrotta et al., Few Qualms About Judges’ Skills, But Low Marks for Diversity,
N.Y. L.J., Jan. 3, 2007, at 1, 9; Caher, supra note 2, at 8.
24 See id.
25 See id.
26 See Perrotta et al., supra note 23, at 9.