On the Commonwealth Court of Appeals

By : RAFAEL HERNANDEZ COLON

Volume: 33 | No: 16
Page : 25
Issued : 04/28/2005

In Puerto Rico, as in so many other places today, we are beleaguered by government gone wrong. A few days ago, a very perceptive legislator said to me, we don't have shared governance, we have divided governance and this, a matter of attitude, makes a big difference in handling government on a day-to-day basis. I won't go into that problem, which affects our executive and legislative branches, in this column. I wish to focus on shared government going right because when things go wrong we tend to despair and we are unable to see the light at the end of the tunnel. However, there is hope and it can be garnered from the experience with the Court of Appeals.

During most of the 20th century, Puerto Rico didn't have an intermediate Court of Appeals. Up to the 1950s, the small amount of litigation that existed permitted the existence of a right of appeal to our Supreme Court. On account of increasing litigation during the late '50s, this right was reduced to cases involving constitutional issues. The other cases—that is 98% of the cases presented—were attended to at the discretion of the Supreme Court. This meant the Supreme Court could dispose of them by summary denial. And, that it did, in the broad majority of revisions brought before it. By the late 1980s, the Supreme Court only accepted 11% of the cases brought before it. The other 89% were dismissed with three small words that had a disturbing impact upon the legal profession: *No ha lugar*, that is, the Supreme Court won't go into this matter.

As a lawyer and professor of civil procedure, I felt this wasn't right because in order to assure justice a citizen should have at least two opportunities at bat within the judicial system. Once before a trial court and another before an appeals court that will review whatever mistakes are made by the trial court. In theory, our system offered such an opportunity. But when we reviewed the actual number of cases that were accepted by the Supreme Court, this wasn't the case in practice.

So, during my last term as governor, I took it upon myself to initiate an amendment to the Judiciary Law of 1952, providing for the creation of an intermediate Court of Appeals; a court to which the litigant would have the right to appeal his or her case; a court that would have to consider the mistakes that had been made by the trial court; and a court that would have to write an opinion on the issues raised by the appealing party.

The Supreme Court didn't take kindly to my proposal. They claimed they, in fact, reviewed all the cases before turning them down. But I felt that, even if this was the case, justice wasn't well-served by summary dismissal of 89% of the cases. Citizens needed to be told why their case didn't prosper. The law must not only be applied but explained so that the losing party has the minor satisfaction of knowing that its

arguments were heard and the reason why they didn't prosper. Furthermore, others in the future would better understand the rules they must abide by.

It was also apparent to me that the increased supervision by the Court of Appeals of the justice meted out at the trial court level would prompt trial judges to study their cases more in depth and manage them more carefully. Even before the opposition of the Supreme Court, I pushed on with the bill I had introduced before the Legislature to create the intermediate Court of Appeals.

I signed the bill into law July 13, 1992, and proceeded to appoint the best 16 judges I could find to the other court. Most of them were *populares*, others were statehooders, *independentistas*, or nonaffiliated. Not one of them was appointed on political merits. They were good jurists, all of them. I didn't seek to strike a partisan balance on the intermediate Court of Appeals. Whatever balance came out by a selection on the merits was frosting on the cake.

The existence of the court was brief. The New Progressive Party (NPP) repealed the law that had created the court when they came into power. They couldn't get rid of the judges because of a constitutional prohibition, and these went on to other judicial tasks. In its almost one-year existence, the court, however, did a first-rate job in its revisionary role. The quality of the courts' opinions and the pace with which cases were handled accredited the idea with the bar. The NPP had no other alternative but to reinstate it one year later albeit with another name and duplicating the amount of judges so they could appoint them. All of the new judges appointed were members of the NPP.

During Sila Calderón's governorship, the original name of the court was restored and six more judgeships were created. As far I know, the judges appointed by Sila Calderón were all *populares*. So, the Court of Appeals is as divided in partisan terms as are the executive and legislative branches. Yet it works. These are the statistics.

During 2004, 4,303 cases were presented to the court, 82 more than the year before. It adjudicated 4,403—701 more than the year before. During that year, the parties took 1,261 cases from the Court of Appeals to the Supreme Court. That is, only 28.64% of the cases adjudicated by the Court of Appeals. This indicates a high degree of satisfaction by the litigants with the decisions of the court.

Of the cases taken before the Supreme Court from the Court of Appeals, 1,032 were resolved by the Supreme Court. In these cases, the Court of Appeals was reversed on only 92 occasions. That is only 2% of the cases. In 98% of the cases, the Court of Appeals was sustained.

This is government gone right after suffering the twists and turns of outrageous fortune. Let us congratulate Judge Dolores Rodríguez Oronoz who administers that court and the judges from all parties or from no parties that compose it. Albeit politically divided, their communality of purpose in serving justice has brought them together. They give us reason to hope that after all the posturing and bickering, when the chips are down, the Legislature will come along to working with our governor to attend to the public business.