

## THE STANDARDS OF INJUSTICE

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### INTRODUCTION

The State can do no wrong.<sup>1</sup>

This statement has been considered as one of the cornerstones of the State's immunity from suit, which effectively prevents any financial liability from being imposed on the part of the State. The concept of this justification, which has bestowed upon the State near total invulnerability, historically began with the English monarchy and has continued to the present.<sup>2</sup>

It is not often that one finds the State shedding the mantle of invulnerability, either by reason of benevolence or guilt, and admitting its mistake and allowing its citizens, who were the victims of the State's mistake or injustice, to be compensated for the wrong committed. And even when the State does shed the mantle of invulnerability, one can expect it to formulate a stringent standard outlining the derogation of immunity. The standards established would necessarily require the affected constituents to carefully scrutinize the parameters involved to avail of the benefits of the derogation.

Such an opportunity presents itself in the form of Republic Act (R.A.) No. 7309, entitled "An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes." R.A. 7309, which became effective on April 13, 1992, is the first legislative measure of its kind in this country, allowing compensation to victims of unjust imprisonment and violent crimes.

The timeliness of R.A. 7309 may be appreciated by considering the transition which the country is experiencing as it emerges from the social

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<sup>1</sup> *Santos v. Santos*, 92 Phil. 281, 283 (1952).

<sup>2</sup> Jacinto Jimenez, *State Immunity from Suit*, 35 *ATENEO L.J.* 27, 31 (1991).

conditions created by Martial Law. These social conditions are best described by the eminent historian Renato Constantino, "[w]e are living in a society where killings, salvagings, tortures, and other brutal violations of the Bill of Rights and the United Nations Declaration of Human Rights have become part of the lives of thousands upon thousands of Filipinos."<sup>3</sup> From this picture, one can comprehend the true worth of this law. R.A. 7309 is a symbol of a challenge, a challenge directed upon the State to turn its back from these horrors and uphold the ideals of human rights.

The Aquino Administration made strides in recognizing human rights, by establishing civil liberties in the Freedom Constitution and by signing the International Convention on Civil and Political Rights and the Optional Protocol. The Aquino Administration patiently labored to rectify the government's image as a human rights violator, and these efforts were aptly reflected by Memorandum Order (M.O.) No. 20. The Memorandum mandates the education of arresting and investigating officers or personnel on human rights. M.O. No. 20 targeted military personnel, police officers, and other arresting officers -- especially those in charge of detention and convicted prisoners -- to undertake a study of human rights as an integral aspect of their education and training in government.<sup>4</sup> This was quite unlike the Marcos regime, which gave police officers a free reign in conducting arrests and detention, following no rules except their whims.

With the precedents established, the challenges facing succeeding administrations are twofold. The first is consistency in the implementation of justice. "[J]ustice begun with due process in the courts, is not carried into the prisons...our legal system, supposedly fair in every way, becomes inconsistent in this respect." The need to extend justice in all the quadrants of the legal system is paramount to establish a sincere effort on the part of the government to completely turn away from the practices engendered by the Marcos regime. Thus, justice must permeate not only during trial, but also, after imprisonment. The second challenge is expressed in this manner, "[y]ou cannot have a right unless it can be claimed or demanded or insisted upon, indeed claimed effectively or enforceable, ... rights thus are performative -- dependent, their operative reality being their claimability; a right one could not claim, demand, ask to enjoy or exercise would not merely be 'imperfect' -- it would be a vacuous attribute."

<sup>3</sup> RENATO CONSTANTINO, *CIVIL LIBERTIES, HUMAN RIGHTS: THE LARGER FOCUS* 1 (1988).

<sup>4</sup> Education of Arresting and Investigating Personnel on Human Rights, Memorandum Order No. 20, sec. 1.

(emphasis supplied) The fulfillment of a statute's operative reality is an important aspect of the efficacy of the statute in a given social condition. This point finalizes the last challenge to the government.

Much is expected from R.A. 7309 considering the efforts already undertaken by the past administration before its enactment. This note attempts to probe the efficacy of R.A. 7309, specifically the standards established for victims of unjust imprisonment, using the criteria of consistency and operative reality, as abovementioned, in answering and fulfilling the legislative purpose for which R.A. 7309 was enacted.

## I. REPUBLIC ACT NO. 7309

### A. Legislative History

R.A. 7309 was the enactment of Senate Bill (S.B.) No. 1141, which in turn was a combination of several minor Senate Bills touching on different areas of human rights.

- a) S.B. No. 366 - An Act Providing for a Compensation Scheme for the Victims of Unjust Imprisonment;
- b) S.B. No. 367- An Act Providing for a Victim Compensation Program to Indemnify Victims of Violent Crimes and for Other Purposes; and
- c) S.B. No. 904 - An Act to Provide Compensation to Victims of Violent Crimes, Establishing a Victim Compensation Fund and for Other Purposes.

All three bills are united in one aspect - compensation.

The Senate Bills were geared for the remuneration of victims of injustice. Among the three bills, it is S.B. No. 366, on unjust imprisonment, which is the focus of this note.

Sec. 3 of S.B. No. 366, based on the Innocent Man's Law of California, was the precursor of Sec. 3 (a) of R.A. 7309; the latter law provides:

*Who may file claims* - the following may file claims for compensation before the Board:

- a) any person who was *unjustly accused, convicted, and imprisoned* but subsequently released by virtue of a judgment of acquittal; (emphasis supplied)

As S.B. No. 366 evolved to R.A. 7309, the standards of the earlier Senate Bill were transformed. A more stringent standard became apparent in R.A. 7309 with the insertion of the qualifying word "unjust" before the phrase "...accused, convicted and imprisoned...." As will be discussed later, the change of standards will have a considerable impact upon the interpretation of the statute by the judicial and administrative bodies in applying the law.

### B. Legislative Purpose

Senator Neptali Gonzales, the author of S.B. No. 366, in his sponsorship speech, defines the purpose of the measure:

For some time now, a good number of our countrymen, accused and imprisoned for crimes they did not commit, have been crying for justice. After a long and brutalizing imprisonment, they were set free only to face an uncertain future. Family honors have been ruined, reputations blemished, husbands separated from wives and children - only because of the slow if not paralyzing judicial process... [o]nce they go free it is only just that society repay them for they have to pick up the pieces of a broken life.<sup>5</sup> (emphasis supplied)

The legislative purpose of the enactment was further emphasized by Senator Lina, co-author of the ensuing law, during an interpellation between him and Senator Saguisag, wherein Senator Lina declared that:

The spirit that permeates this proposed legislation, Mr. President, based on the sponsorship speech of the Senate President (Senator Gonzales), when he sponsored this measure, is that *society must repay its members when the government commits acts, whether deliberate and with malice or without malice, which results in the deprivation of life, liberty, and property.*<sup>6</sup> (emphasis supplied)

From the declarations of the above legislators, R.A. 7309 was designed to favor the individual who has been deprived of liberty by the government, regardless of the existence of malice on the part of the agents of the latter.<sup>7</sup>

<sup>5</sup> Delivered by Senator Gonzales on December 5, 1991.

<sup>6</sup> Senate Interpellation, February 1, 1992.

<sup>7</sup> Malice cannot be imputed to the State as an entity.

The favorable legislative purpose may however be frustrated, wittingly or unwittingly, by several modes -- judicial and administrative -- in the application of the statute. These modes of frustration are well viewed and exemplified in the case of Felicitio Basbacio.

## II. THE BASBACIO CASE<sup>8</sup>

The case of Felicitio Basbacio plays a pivotal role in discussing the efficacy of R.A. 7309 for three reasons. First, it was a pioneer case which tested the standards of the law on compensation for unjust imprisonment. Second, the case highlighted the judicial interpretation given to the different elements required by law. Last, the Basbacio case offers an insight into the manner in which the administrative arm of the government, specifically the Board of Claims (BOC), applies the law.

### A. Facts

It was a peaceful rural atmosphere that embraced Sitio Palo, municipality of Rapu-rapu, Albay on the night of June 26, 1988. The victims, Federico and Florida Boyon with their five (5) children were in their house at about 8:00 in the evening. Federico was folding his clothes near the front door when successive gunshots erupted from outside of the house, piercing the calm of night. Federico gave out a cry and fell to the floor. The front door burst open, and in the doorway stood the accused Wilfredo Balderrama, holding a "short" gun, and to his left in the shadows, stood Felicitio Basbacio.

Florida and the five children were in a state of shock to see the intruders. It was at this moment that Balderrama shot Florida, hitting her on the left shoulder below the neck. After which, Balderrama began to spray bullets around the house, hitting one of the children, Tirso. During the whole episode, Basbacio did nothing but stand beside Balderrama.

After the shooting, the suspects fled. Federico died on the spot. The wounded were later brought to Ziga Memorial Hospital.

As a consequence of the incident, on September 7, 1988, three separate informations for murder and two counts of frustrated murder were

filed against Balderrama and Basbacio with the Regional Trial Court (RTC) of Legaspi City.

On January 15, 1990, the RTC in a joint decision found Balderrama and Basbacio guilty as charged. Basbacio was incarcerated on June 1, 1990 in the New Bilibid Prison. Both accused appealed the decision, however it was only Basbacio who filed an appeal brief, Balderrama was nowhere to be found.

On June 22, 1992, the Court of Appeals acquitted Basbacio saying:

Much more than the mere presence at the crime scene at the moment of the commission of the crime by another is required by law as basis for conviction and total curtailment of freedom, plus a lifetime stigma of being branded as a killer. Proof beyond reasonable doubt is called for, and that degree of proof does not exist in this case. The appellant was not a co-conspirator in the commission of the crimes for which he has been convicted in this case.<sup>9</sup>

Upon being acquitted, Basbacio had spent 25 months in prison. Basbacio filed a claim with the BOC for compensation under Sec. 3 (a) of R.A. 7309. The BOC denied his application in this manner:

The circumstances of your sudden unexplained appearance at 8:00 in the evening at the dwelling of the Boyon family, with whom you had a "festering" dispute over land, together with your son-in-law, Wilfredo Balderrama, who began to successively fire at the victims, while not enough to sustain a finding of your guilt beyond reasonable doubt warrant a finding of your probable guilt of the crimes charged. The accusation against you therefore cannot be considered as unjust within the meaning of Section 3 (a) of R.A. 7309.<sup>10</sup>

Disappointed with the BOC's denial, Basbacio appealed the questioned decision, to then Secretary Franklin Drilon of the Department of Justice. On March 11, 1993, Secretary Drilon sustained the decision of the BOC, denying Basbacio's application for compensation.

Seeking further relief, Basbacio brought the assailed decision to the Supreme Court.

<sup>9</sup> CA G.R. CR Nos. 09361-63.

<sup>10</sup> Board of Claims Memorandum, December 17, 1992.

<sup>8</sup> *Basbacio v. Department of Justice*, 238 SCRA 5 (1994).

sence of a specific requirement for a "declaration of innocence" as a prerequisite for compensation. Thus, "when the law is clear there is no room for interpretation."<sup>17</sup> Basbacio's counsel further elucidates on this point regarding the provision, that any person who was unjustly accused, convicted, and imprisoned but subsequently released by virtue of a judgment of acquittal "should be construed in its plain and simple terms because the words are unquestionably plain and simple."<sup>18</sup> Assuming *arguendo* that the "declaration of innocence" was needed, Basbacio contends that the constitutional presumption of innocence should favor him in this regard.

At this point, *Basbacio* brings to light the burdensome consequence of such a ruling imposed by the Board of Claims, where the law must be taken to mean that a claimant must be practically proclaimed innocent by the court and such determination be stated in the decision. Thus, *Basbacio* notes, the mere fact of acquittal, as in this case, should be sufficient to comply with the dictates of the law.

*b. Interpretation should be favorable to the beneficiaries of the law*

Basbacio claimed that the Supreme Court should opt for the liberal construction of the statute, assuming *arguendo* that an interpretation was needed, the construction should be in favor of those beneficiaries intended by the law. Basbacio cited the following decisions of the Court following the policy of a favorable interpretation for beneficiaries - *Ceña v. Civil Service Commission*, 211 SCRA 179; *Santiago v. Commission*, 199 SCRA 125, 133; *Franklin Baker Co. of the Philippines v. Social Security System*, 7 SCRA 836; and *A.L. Ammen Transportation Co., Inc. v. Borja*, 5 SCRA 1088.

### 3. SUPREME COURT DECISION

The Supreme Court was swift in dismissing Basbacio's claim. The Court raised several points against the probability of awarding the claim.

*a. Faulty Interpretation*

The Court held that the interpretation endeavored by Basbacio would wreak havoc in the application of R.A. 7309, for it would require that every time an accused is acquitted on appeal he must be given compensation on

<sup>17</sup> *Veroy v. Layague*, 210 SCRA 97 (1992).

<sup>18</sup> Basbacio Memorandum, April 4, 1994, at 6.

the theory that he was unjustly convicted by the trial court. Such interpretation, the Supreme Court exclaims, is faulty - that would leave out the qualifying word "unjustly." The word "unjust" qualifies accusation, conviction, and imprisonment. So, it is not the fact of being accused and convicted which the law contemplates, but the fact that one is unjustly accused, convicted, and subsequently imprisoned.

*b. The prior need for the claimant to be unjustly accused*

The Court agreed with the Department of Justice and the Board of Claims, that there must exist prior to the elements of unjust conviction and imprisonment, the fact of an unjust accusation. Under Rule 112, sec. 4,<sup>19</sup> the question for the prosecution in filing a case in court is not whether the accused is guilty beyond reasonable doubt, but only whether "there is reasonable ground to believe that a crime has been committed and the accused is probably guilty thereof."<sup>20</sup> The existence of a preliminary investigation showing probable guilt on the part of the accused, brings credibility, making an unjust accusation highly improbable. Therefore, an accusation based on probable guilt is not an unjust accusation and a conviction based on such a degree of proof is not necessarily an unjust judgment but only an erroneous one.<sup>21</sup> The Boyons did not unjustly accuse Felicito Basbacio of a crime, for as the facts show, Basbacio was present during the crime, thereby raising the issue of probable guilt on his part.<sup>22</sup> This circumstance makes the accusation justified.

*c. It is the manner of conviction and not the fact of innocence which establishes unjust imprisonment*

The Court was of the opinion that, in order to establish unjust imprisonment, the prior requisite of unjust conviction must be present, and it is not the fact of innocence which is at issue but the fact of unjust conviction. The acquittal of the accused because he did not commit the crime

<sup>19</sup> Rules of Court, Rule 112, sec. 4; "If the investigating fiscal finds cause to hold the respondent for trial, he shall prepare the resolution and corresponding information. He shall certify under oath that he has examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him, and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend dismissal of the complaint."

<sup>20</sup> *Basbacio*, 238 SCRA at 13.

<sup>21</sup> *Basbacio*, 238 SCRA at 12.

does not necessarily mean that he is entitled to compensation for having been the victim of an "unjust conviction." Unjust conviction, the Court said, has the same meaning as in Article 204 of the Revised Penal Code<sup>23</sup> knowingly rendering an unjust judgment:

In order that a judge may be held liable for knowingly rendering an unjust judgment, it must be shown beyond doubt that the judgment is unjust as is contrary to law or is not supported by the evidence, and the same was made with conscious and deliberate intent to do an injustice....

To hold a judge liable for the rendition of manifestly [sic] unjust judgment by reason of inexcusable negligence or ignorance, it must be shown, according to Groizard, that although he has acted without malice, he failed to observe in the performance of his duty, that diligence, prudence, and care which the law is entitled to exact in the rendering of any public service....<sup>24</sup>

The Court has explicitly ruled that unjust accusation be given an interpretation equal to Article 204 of the Revised Penal Code which requires that one must establish proof of the malicious intent on the part of the judge in rendering the questioned judgment or a showing of the negligence on the part of the judge in arriving at a decision.

d. *Presumption of Innocence is a mere evidentiary tool*

The last point which the Court raised against *Basbacio's* claim is that the presumption of innocence has never been intended as an evidence of innocence of the accused, but the presumption exists only to shift the burden of proof that the accused is guilty to the prosecution. "If accusation is not synonymous with guilt, so is the presumption of innocence not a proof thereof."<sup>25</sup> The Court further notes, that although a person may not be held criminally liable, not because he is completely innocent but because of reasonable doubt, while the evidence against him does not satisfy the quantum of proof for his criminal conviction, it may nonetheless be sufficient to sustain a civil action for damages.<sup>26</sup>

<sup>22</sup> *Id.*

<sup>23</sup> Revised Penal Code, art. 204: "Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision, shall be punished by *prision mayor* and perpetual absolute disqualification."

<sup>24</sup> *Basbacio*, 238 SCRA at 12.

<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.* at 10.

The *Basbacio* case shifted the purpose of the law. The interpretation given by the Court on the standards prior to compensation has increased the burden of proof on the victims of unjust imprisonment. And as was mentioned earlier, such strict interpretation given by the judiciary may serve as one mode of frustrating the legislative intent regarding R. A. 7309.

### III. THE BOARD OF CLAIMS

After a discussion on the legislative history and purpose, and an insight to the judicial interpretation of the law, it is apt to delve into the process of executive implementation of Sec. 3 (a) of R.A. 7309 - the final mode by which legislative intent is frustrated.

#### 1. STATUTORY POWERS

The Board of Claims created under R.A. 7309 is composed of a Chairman and two (2) members duly appointed by the Secretary of Justice. The Board is mandated by law to meet at least once a week or as often as may be necessary upon call by the Chairman.<sup>27</sup> The Board possesses the following powers and functions:

- 1 to receive, process, investigate, and evaluate applications for claims under this Act;
- 2 to conduct an independent administrative hearing and resolve applications for claims;
- 3 to deputize and co-ordinate with appropriate government agencies in order to effectively implement its functions; and
- 4 to promulgate and amend rules and regulations in order to carry out the objectives of this Act.<sup>28</sup>

#### 2. COMPLIANCE WITH THE LAW

As an established doctrine, the source of an administrative agency's power lies in the statutes under which they claim to act.<sup>29</sup> And the powers and functions of an administrative agency is measured and limited by the law creating them or granting their powers -- to those conferred expressly

<sup>27</sup> R.A. 7309, Sec.1.

<sup>28</sup> R.A. 7309, Sec.2.

<sup>29</sup> *Hijo Plantation, Inc. v. Central Bank*, 164 SCRA 192 (1958); *Tayag Rural Bank v. Central Bank* 146 SCRA 120 (1986); *Radio Communication of the Philippines v. Santiago* 59 SCRA 493 (1974).

or by necessary or fair implication.<sup>30</sup> Despite the strength of these established doctrines, the BOC often finds itself straying from the path laid before it and constructing its own standard for unjust imprisonment.

From 1992 to 1994 the BOC denied 51% of the total applications for compensation on unjust imprisonment.<sup>31</sup> It is noticeable that, of the 51% which has been denied, 48% were based on the ground that "the accused was acquitted for reasonable doubt."<sup>32</sup> Under R.A. 7309, the qualifications for compensation on unjust imprisonment are: unjust accusation, conviction, and imprisonment.<sup>33</sup> Notwithstanding the rule that an administrative agency's power is confined to the parameters dictated by law, the BOC still thought it proper to deny 48% of the application for unjust imprisonment, based on the non-existent ground of "acquittal by reason of reasonable doubt."

Another recurring instance where the BOC overstepped the legislative fiat is when the BOC undertook to determine the existence of the innocence of claimants. As exemplified by the BOC's *Basbacio* memorandum:

The circumstances of your sudden unexplained appearance at 8:00 in the evening at the dwelling of the Boyon family, with whom you had a "festering" dispute over land, together with your son-in-law, Wilfredo Balderrama, who began to successively fire at the victims, *while not enough to sustain a finding of your guilt beyond reasonable doubt warrant a finding of your probable guilt of the crime charged.*<sup>34</sup> (emphasis supplied)

The BOC ventured to determine the existence of *Basbacio*'s innocence notwithstanding the prior determination of the Court of Appeals. The BOC dismissed *Basbacio*'s claim on the ground of his reasonable guilt despite the limits imposed by sec. 3(a) of R.A. 7309 on the BOC to simply receive, process, investigate, and evaluate applications for claims.

<sup>30</sup> *Guerzon v. CA*, 164 SCRA 182 (1988); *Sy v. Central Bank*, 70 SCRA 570 (1970); *Makati Stock Exchange, Inc. v. SEC*, 16 SCRA 623 (1965).

<sup>31</sup> Board of Claims Summary Report, April 17, 1995.

<sup>32</sup> *Id.*

<sup>33</sup> R.A. 7309, sec. 3(a).

<sup>34</sup> *Supra*, note 18.

#### IV. CONSISTENCY AND THE OPERATIVE REALITY OF REPUBLIC ACT NO. 7309

The standards provided by law for compensation to victims of unjust imprisonment has been established by the legislature, interpreted by the courts, and applied by the administrative body tasked to implement it. As the law passes from one governmental body to another, the observance of the integrity of the legislative purpose for enacting the law is in question - whether the law has been consistently interpreted and applied as originally envisioned by the legislators. Can the victims effectively claim the right given to them by law or is the right given them simply a vacuous attribute?

This portion of the note will delve into the reason why the judicial interpretation and the administrative application operated to frustrate the intention of the legislature on R.A. 7309, specifically in the *Basbacio* case.

##### A. Unjust Accusation

##### 1. THE STANDARD AND ITS APPLICATION

Accusation is the formal charge against a person, to the effect that he is guilty of a punishable offense.<sup>35</sup> Indeed, accusation is the equivalent in the common-law jurisdiction of the information or the indictment or presentment.<sup>36</sup> It is therefore the unfounded charge upon an individual of a punishable offense by another which R.A. 7309 prescribes as one of the pre-requisites for compensation for unjust imprisonment. As the Supreme Court enunciated, "sec. 3(a) does not refer solely to an unjust conviction as a result of which the accused is unjustly imprisoned, but, in addition to an unjust accusation."<sup>37</sup>

Under Philippine jurisdiction, the term "unjust accusation" would be equivalent to malicious prosecution -- "[g]enerally denounced [sic] as *falsa* or malicious prosecution, [it] refers to unfounded criminal actions...the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action

<sup>35</sup> BLACK'S LAW DICTIONARY 38.

<sup>36</sup> BOUVIER'S LAW DICTIONARY 122.

<sup>37</sup> *Basbacio*, 238 SCRA at 12.

or probable cause."<sup>38</sup> As an established rule,<sup>39</sup> an action for damages arising from malicious prosecution is anchored on the provisions of Art. 21,<sup>40</sup> 2217,<sup>41</sup> and 2219 (8)<sup>42</sup> of the New Civil Code.

Jurisprudence has culled the following elements of malicious prosecution:

1. the fact of the prosecution and the further fact that the defendant was himself the prosecutor and the action finally terminated with an acquittal;
2. that in bringing the action, the prosecutor acted without probable cause; and
3. the prosecutor was actuated or impelled by legal malice, that is by improper or sinister motive.<sup>43</sup>

The elements have been clearly established, now it is only a matter of application.

In *People v. Daguiotan*,<sup>44</sup> the accused Innocentes, Melchor, Edgar, Nenita, Ricky, and Richard Daguiotan were bested by the victim, Vincent Brown, in buying a parcel of land, which incidentally was being planted on by the Daguiotans. After his successful purchase, Brown allowed the Daguiotans to harvest the crops they planted on the land on the condition that they vacate the land afterwards. The Daguiotans refused to vacate the land despite Brown's request for them to vacate.

On November 19, 1988, Brown and two companions went to the disputed land to plant coconut seedlings. It was at this point where he was confronted by Innocentes and Nenita Daguiotan for renegeing on his prom-

<sup>38</sup> *Equitable Banking Co. v. Intermediate Appellate Court*, 133 SCRA 136, 138.

<sup>39</sup> *Ponce v. Court of Appeals*, 208 SCRA 377, 387.

<sup>40</sup> "Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damages."

<sup>41</sup> "Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission."

<sup>42</sup> "Moral damages may be recovered in the following analogous cases:  
(8) Malicious Prosecution."

<sup>43</sup> *Ponce*, 208 SCRA at 388.

<sup>44</sup> 233 SCRA 368 (1994).

ise that he would first file a complaint in court before ejecting them. After Brown told them off, Innocentes attacked Brown with a bolo and Nenita called her 4 children saying, "[c]ome on, come here, let us carry our plan to kill Mr. Brown."<sup>45</sup> Brown was hacked with a bolo and speared. Brown died at the scene.

An information for murder was filed against the Daguiotans. The trial court of Palawan convicted all of the accused. However, after a prompt appeal to the Supreme Court, the Court acquitted Nenita and the four children saying, "[w]e therefore agree with the Solicitor General that conspiracy was not established and that the guilt of Nenita and her four children was not proven beyond reasonable doubt."<sup>46</sup>

After their acquittal, Nenita and the four children applied to the BOC for compensation. The BOC approved the application. The Daguiotans were given compensation despite the fact that no unjust accusation existed in their case. The prosecution had an iota of probable cause to accuse Nenita and the children. Probable cause is "such reasons, supported by facts and circumstances, as will [sic] warrant a cautious man in the belief that his actions, and the means taken in prosecuting it, are legally right and proper."<sup>47</sup>

Nenita and her children were present at the time of the murder, the prosecution had therefore a reasonable belief to include them in the case. Furthermore, the Daguiotan's did not establish the fact that the prosecution was without probable cause nor did they establish the fact that the institution of the case was motivated with malice, as required by law. Despite the lack of the necessary standard mandated by law the Daguiotans enjoyed the benefits of R.A. 7309.

The opposite result was evident in *People v. Camba*.<sup>48</sup> Prompted by a confidential telephone call, a buy-bust operation was conducted by the Navotas Police Anti-Narcotic Unit in the vicinity of M. Naval and Liongson St., San Roque, Navotas, Metro Manila. Upon reaching the area, the policemen arrested the accused, Camba, who was standing near the corner of said streets at that given moment.

<sup>45</sup> *Id.* at 371.

<sup>46</sup> *Id.* at 373.

<sup>47</sup> *Corro v. Lising*, 137 SCRA 541, 547.

<sup>48</sup> 238 SCRA 281 (1994).

The trial court convicted Camba for violating the Dangerous Drugs Act<sup>49</sup> based on the sole testimony of Pat. Rizalito Francisco, who acted as poseur-buyer in the aforementioned operations. Camba appealed the decision to the Supreme Court which in turn acquitted him. The High Court made this important pronouncement regarding Camba's acquittal:

The alleged poseur-buyer, Pat. Rizalito Francisco, unwittingly admitted on cross-examination that he did not actually know if the appellant was selling marijuana when he arrested him. Thus:

Q: That is why you are not so serious when you gave your written statement to Pat. Emmanuel Buhisan in filing this complaint in court?

A: No, sir.

Q: Because you are not so serious in the filing of this complaint because you are a new member of the Navotas Police, on 30 January 1989, you don't even know whether the accused was actually selling marijuana when you arrested him?

A: No, sir.

The answer 'no sir' could not have been due to a misinterpretation of the question. If it were, the prosecution should have clarified the matter on re-direct. It did not.<sup>50</sup>

After his acquittal, Camba applied for compensation under R.A. 7309. The BOC denied his application.

The *Camba* case is illustrative of the definite absence of probable cause for the arrest of the accused. The filing of the case was rooted on the lack of knowledge of the arresting officer of the involvement of the accused in the crime. It is therefore proper to deduce that the prosecution did not have that reasonable belief to come to a conclusion which a reasonable man might possess, that the accused was probably guilty of the crime. Since the admission was made by Pat. Francisco during the trial, his admission is to be considered as part of judicial admissions<sup>51</sup> necessitating no further proof of the fact.

<sup>49</sup> Republic Act No. 6424.

<sup>50</sup> *Id.* at 286.

<sup>51</sup> Rule 130, Sec. 4. "An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made."

The malicious nature of the prosecution was touched upon by Camba when he accused the police officers of demanding P6,000.00 from him so that the case against him might be dropped. The Court noticed this fact and had this to say, "...it is incomprehensible that despite the appellant's serious accusations that the members of the arresting team not only took from him P350.00, which they divided among themselves, plus his Seiko wrist watch which was returned only three months later, and also demanded P6,000.00 in exchange for the dropping of the case against him, none of the policemen involved were called to the witness stand to rebut the charges."<sup>52</sup> The accuracy of this observation is bolstered by the fact that the prosecution never clarified the matter of admission on re-direct.

The cases of *Daguinotan*, *Camba*, and *Basbacio* taken together, highlight the inconsistency of the BOC in applying the standard of unjust accusation. The case of *Basbacio* and *Daguinotan* are factually similar, yet the former was denied and the other approved. The only dissimilarity between the two cases is that in *Daguinotan*, the co-accused was a woman and a mother. Even then, gender should not play a role in the application of the law.

The amorphous standard of unjust accusation has been further emphasized in the case of *Camba*, when the High Court itself hammered on the lack of probable cause on the part of the prosecution. Despite such pronouncement, the BOC still denied the claim.

## 2. THE NECESSITY OF THE STANDARD

S.B. No. 366 was enacted for the benefit of those who were unjustly imprisoned. If the two terms are taken apart, "unjust" would be synonymous with "unlawful".<sup>53</sup> Imprisonment would mean the deprivation of a man's liberty. The primary purpose of S.B. No. 366 was to benefit those individuals who have been deprived of their liberty, with or without malice on the part of the agent's of the government. From this vantage point, the element of unjust accusation is non-existent. The purpose of the law is to benefit victims of unjust imprisonment, not victims of unjust accusations. This was echoed by Senator Lina, a co-author of the Bill, "that society must repay its members when the government commits acts,

<sup>52</sup> *Camba*, 232 SCRA at 289.

<sup>53</sup> *Stine v. Shenke*, 186 N.E.2d 168.



whether *deliberate and with malice or without malice, which results in the deprivation of life, liberty, and property.*<sup>54</sup>(emphasis supplied)

If one imposes upon the claimant the burden of proving unjust accusation, and such burden is compounded with the task of further proving the fact of unjust conviction and imprisonment, the purpose of the statute can be easily defeated by imposing a standard too strict for any complainant to fulfill. What transpires in such a situation is that the element overshadows the whole purpose of the law, which in turn frustrates the operative reality of the law by preventing the intended beneficiaries from claiming their right. In sum, focus must not be unduly placed on the fact of unjust accusation but on unjust imprisonment.

There is a divergence of viewpoint in another jurisdiction. In the United States, unjust accusation or even the existence of a probable cause is not even a condition *a priori* to compensation. In a case where the accused, Collyer was imprisoned for shop-lifting, and later released the Supreme Court of the United States had this to say, "probable cause is no defense in actions for false imprisonment."<sup>55</sup> The same pronouncement was made in another case where an individual was apprehended by the police based upon probable guilt upon seeing him holding the stolen hub caps. In acquitting the accused, the Court of the United States said, "the defendant acted upon probable cause, which as above stated, does not defeat, but only serves to reduce the amount of the plaintiff's recovery."<sup>56</sup> And finally, in a case where a couple was arrested upon being sighted to be driving a stolen car and later released, the U.S. Court citing 22 Am. Jur. 356, Sec. 4 said:

It is not necessary that the wrongful act which results in detention or restraint be under color of any legal or judicial proceeding, nor do lack of malice, the presence of good faith, or the presence of probable cause for the imprisonment affect the existence of the wrong when the detention is unlawful.<sup>57</sup>

The U.S. Court in the same case further stated the unavailability of probable cause as a defense against unlawful imprisonment :

<sup>54</sup> Interpellation, *supra* note 6.

<sup>55</sup> *Collyer v. S.H. Krass Co.*, 54 P.2d 20, 23.

<sup>56</sup> *Hill v. Henry*, 82 S.E.2d 35, 37.

<sup>57</sup> *Swafford v. Vermillion*, 261 P.2d 187, 190.

According to the great weight of authority, the want of probable cause is not an essential element of the action for false imprisonment, and the presence of probable cause for the imprisonment is not generally a defense to the action.<sup>58</sup>

From these cases, the fact that each of the accused were present in the scene of the crime or were in possession of the objects of the crime, it can be gleaned that the absence of probable cause, cured either through a preliminary investigation or other means, *does not totally prevent the institution of a claim for unjust imprisonment.* Neither should the existence of probable cause legitimize false accusations barring recovery for unjust imprisonment.

Considering the jurisprudence in the United States and the interpretation of the Supreme Court of the Philippines, coupled with the inconsistent application by the BOC of the law, one underlying fact is common -- the fact that unlawful imprisonment must stand on its own merits and must not be made dependent on any other consideration, not even unjust accusation.

### B. Unjust Conviction

#### 1. ARTICLES 204 AND 205 OF THE REVISED PENAL CODE

As a second pre-requisite for compensation under R.A. 7309, the phrase unjust conviction has been interpreted by the Supreme Court to be similar to art. 204 of the Revised Penal Code.<sup>59</sup> An unjust judgment or conviction is one which is contrary to law or is not supported by evidence, or both.<sup>60</sup> In order to establish the existence of unjust conviction it is necessary to show that: 1) the judgment is unjust and 2) the judge knew it was unjust.<sup>61</sup> In order "that a judge may be held liable for knowingly rendering an unjust judgment it must be shown beyond reasonable doubt that the judgment is unjust in the sense that it is contrary to law or is not supported by the evidence, and that the same was made with conscious and deliberate intent to do an injustice."<sup>62</sup> The gravity of the offense pe-

<sup>58</sup> *Id.* at 191.

<sup>59</sup> *Supra* note 23.

<sup>60</sup> LUIS B. REYES, COMMENTARIES ON THE REVISED PENAL CODE 317 (1993).

<sup>61</sup> AMBROSIO PADILLA, REVISED PENAL CODE 593 (1989).

<sup>62</sup> *Sta. Maria v. Ubay*, 87 SCRA 179, 189 (1978); *Pabalan v. Guevarra*, 74 SCRA 53, 58 (1976).

nalized under the Revised Penal Code is strictly confined to the parameter mentioned, "and it is only when there are extrinsic circumstances or facts indicative of serious malfeasance or misfeasance in the rendering of the questioned order or decision, may such disqualification be perhaps justified."<sup>63</sup>

The difficulty of establishing the offense of unjust imprisonment has been stressed in this manner, "that a mere error of judgment cannot serve as a basis for a charge of knowingly rendering an unjust judgment, where there is no proof or even allegation of bad faith or ill motive or improper consideration...."<sup>64</sup> Judges cannot be subjected to civil, criminal, or administrative liability -- for any of the official acts, no matter how erroneous, as long as they act in good faith.<sup>65</sup> Indeed, commentators agree on the difficulty of establishing a case based on article 204, "the article (204) is not easy to enforce in view of the word 'knowingly' which requires that the rendering of the unjust decision be with the knowledge that it is such. The difficulty of proving that element has deterred the prosecution of many corrupt and undeserving judges."<sup>66</sup> (emphasis supplied)

Aside from the interpretation that unjust conviction is equivalent to maliciously rendering an unjust judgment, the High Court indirectly included article 205 of the Revised Penal Code,<sup>67</sup> which refers to negligently rendering an unjust judgment, as a necessary element of unjust conviction. The indirect inclusion occurred when the Court defined unjust conviction in the *Basbacio* case by citing the case of *In Re Climaco*, which incidentally touched on both the malicious and negligent aspects of rendering an unjust judgment. The pertinent portion quoted was:

...to hold a judge liable for the rendition of manifestly unjust judgment by reason of inexcusable negligence or ignorance...he [the judge] must have acted without malice, he failed to observe, in the performance of his duty, that diligence, prudence, and care which the law is entitled to exact in the rendering of any public service.<sup>68</sup> (emphasis supplied)

<sup>63</sup> PADILLA, *supra* note 61 at 593.

<sup>64</sup> *Yaranon v. Judge Rubio*, 66 SCRA 67, 69 (1975).

<sup>65</sup> *Valdez v. Valera*, 81 SCRA 246, 250 (1978).

<sup>66</sup> PADILLA, *supra* note 61 at 593.

<sup>67</sup> "Any judge who, by reason of inexcusable negligence or ignorance, shall render a manifestly unjust judgment in any case submitted to him for decision shall be punished by *arresto mayor* and temporary special disqualification."

<sup>68</sup> *Basbacio*, 238 SCRA at 12.

An unjust judgment committed through inexcusable negligence occurs, "when the judge allows his clerk or stenographer to make the decision and he signs it without examining the pleadings, understanding the issues, or considering the evidence submitted by the parties, in sum an unjust judgment may also be rendered by the judge due to his ignorance of the law either substantive or procedural."<sup>69</sup>

The immensity of the requirement facing the claimant in presenting substantial proof that the judge maliciously or knowingly rendered an unjust judgment is made more difficult with the inclusion of article 205, which refers to cases of inexcusable negligence on the part of the judge in rendering judgment. At this point the claimant must fight tooth and nail just to be compensated for a wrong committed against him, further frustrating a right created in favor of a victim of unjust imprisonment.

## 2. APPLICATION

The existence of the standard is one area, the observance of the latter is another. Like the interpretation of unjust accusation, the interpretation given by the High Court on the qualifying phrase "unjust conviction" is so rigid, that it effectively eliminates almost all possibility of claims being approved. If the interpretation is followed to the letter, which is how it should be, no claim can pass the obstacle of unjust conviction. The strictness of the interpretation is further evidenced by the BOC's "neglect" in applying the standard interpreted by the Court, knowing fully well the consequence of a strict adherence to the interpretation. In *People v. Lagnas*,<sup>70</sup> Lagnas, the accused, and several individuals were convicted by the Regional Trial Court of Toledo City for the murder of Alejandro Arias. Upon appeal to the Supreme Court, Lagnas was acquitted by reason of the lack of credibility of the lone witness. Lagnas applied to the BOC for compensation and was granted, despite the inability of Lagnas to show that the judge knowingly rendered an unjust judgment against him.

In *People v. Osigan*,<sup>71</sup> the two accused, Osigan and Curato, were convicted by the trial court of Surigao del Sur for murder. Upon timely appeal to the Supreme Court, Curato was acquitted based on the testimony of two witnesses establishing a solid alibi for Curato. As in Lagnas, Curato

<sup>69</sup> PADILLA, *supra* note 61 at 596.

<sup>70</sup> 222 SCRA 745 (1993).

<sup>71</sup> 223 SCRA 742 (1993).

was not able to show substantial proof of the malicious intent of the trial court in convicting him, yet Curato was allowed compensation.

In *People v. Aranda*,<sup>72</sup> a tip from an informant alerted the police to a drug-buy in the corner of Reparo and Tinio Street, Kalookan City. Upon arriving at the said locality the policemen saw the accused Aranda, handing an aluminum foil to her co-accused, who was later identified as Benito Villanueva. At which time the police arrested both individuals. Aranda was convicted for violating the Dangerous Drugs Act. Aranda appealed to the Supreme Court, which reversed the decision of the trial court by reason of the inconsistency of the testimony of the three arresting officers, and because "the prosecution has failed to prove that appellant 'sold and delivered' the dangerous drugs to Villanueva."<sup>73</sup> The Aranda case is similar to *People v. Escalona*.<sup>74</sup> Both cases show the existence of probable cause on the part of the prosecution for instituting a criminal action against them, and the failure of both applicants to establish the elements required under articles 204 and 205 of the Revised Penal Code, yet the BOC still allowed them to be compensated.

The decisions promulgated by the BOC may signify either of two things: 1) that the BOC as the administrative agency charged to implement R.A. 7309, has no pre-conceived notion of the requirements established by law; or 2) the requirement of unjust conviction has been too strictly interpreted that if followed to the letter, none of the applicants may ever be compensated. Between the two choices, the latter option rings true.

### CONCLUSION AND RECOMMENDATION

Inconsistent is the best word to describe the standards for compensation on unjust imprisonment. Inconsistent is the Board of Claims in deciding the cases on compensation. It is also inconsistent in following its own statutory functions.

Inconsistent is the description of the interpretation given by the Supreme Court on the standards of R.A. 7309. The High Court made the

<sup>72</sup> 226 SCRA 562 (1993).

<sup>73</sup> *Id.* at 571.

<sup>74</sup> 227 SCRA 619 (1993).

standard for claiming compensation too strict, so as not to conform with the legislative purpose for its enactment. Like the BOC, the Court in attempting to fill in the missing element, commits an act which may unfortunately amount to judicial legislation

The obstacles created by the judiciary and the executive in preventing the effective application of R.A. 7309 may be cured by the expedient means of coordination. Coordination, as a solution, simply entails an acknowledgement by each branch of the role it has to play.

The first solution lies with the judiciary and the legislature. As a new law, R.A. 7309 ultimately touches on the judicial process of determining the innocence or guilt of the accused. The question of unjust imprisonment partakes of a judicial question to be answered competently by the judiciary, not the executive. Therefore, a finding of unjust imprisonment must be integrated into the judicial proceedings itself to dispense with the administrative determination of the same fact. This proposition is beneficial in two ways, first, there will be greater facility in the determination of the question of the integrity of the claim, since it is the same judge who tries the case and who possesses a greater appreciation of the nature of the case who will decide on the merits of the application. Second, with less bureaucracy, the claimants need only file for compensation with the BOC, through a certification from the trial court. This would lessen the time spent for administrative investigation and would achieve greater consistency in ruling on the subject matter.

The other solution to the present problem would be the coordination between the legislative and executive departments. The legislature must clearly outline and delineate the function of the Board of Claims. Since the determination of the claim will be on the shoulders of the judiciary, the legislature must necessarily lessen the role of the BOC, strictly limiting its function to the processing of claims.

When undue attention is given by the judiciary or the executive, to the fact of unjust accusation and conviction and not to the fact of unjust imprisonment, one can expect that the error in priority will surface in the interpretation and application of the law. And it is this glaring inconsistency which systematically prevents the victims from effectively enforcing their right.

In the end, considering the presence of this error in priority, there exists simply the consistency of the inconsistencies.