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8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
9 **OF THE STATE OF CALIFORNIA**

10 In the Matter of the Claim of:

11 **John Stoll**

12 Claim No. G550759

**Proposed Decision**

**(Penal Code §§ 4900 et seq.)**

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14 Pursuant to California Code of Regulations, Title 2, § 617.6 and upon agreement of the  
15 parties, a hearing on the written record was held by Kyle Hedum, Hearing Officer, who was assigned  
16 to hear this matter by the Executive Officer of the Victim Compensation and Government Claims  
17 Board (Board).

18 Linda Starr, Attorney at Law, represented claimant John Stoll (Stoll).

19 Maggie Krell, Deputy Attorney General, represented the California Department of Justice,  
20 Office of the Attorney General (AG).

21 **Procedural History**

22 On November 8, 1984, the Kern County District Attorney filed a second amended and  
23 consolidated information charging Stoll, Grant S., Margie G., and Timothy P. with 31 counts of  
24 lewd and lascivious conduct with a child. Stoll was charged in 20 of these counts. The named  
25 victims were his son, Jed, and neighborhood children, Christopher, Catherine, Allen, Donnie,  
26 Eddie, Victor, and Jeremy.<sup>1</sup>

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<sup>1</sup> Catherine and Jeremy were victims of Stoll's co-defendants.

1 Following a joint trial with the three co-defendants, Stoll was convicted on January 17,  
2 1985, of seventeen counts of child molestation against six child victims: Jed, Allen, Donnie,  
3 Eddie, Victor, and Christopher. The court sentenced him to 40 years in state prison.

4 In an unpublished decision, on November 27, 1985, the Fifth District Court of Appeal  
5 upheld the convictions. The California Supreme Court denied review in Stoll's case, but granted  
6 review in the cases of two of his three co-defendants (Margie G. and Timothy P.). The California  
7 Supreme Court reversed the convictions of claimant's co-defendants based upon improper  
8 exclusion of defense expert testimony.

9 On April 30, 2004, the Kern County Superior Court granted Stoll's petition for writ of  
10 habeas corpus and reversed his convictions on due process grounds, finding that the testimony  
11 against Stoll was procured by improper interview techniques and was therefore unreliable. As a  
12 result of the court's reversal and the District Attorney's decision not to refile charges against  
13 him, Stoll was released from prison on May 4, 2004. On November 4, 2004, Stoll filed this  
14 timely Penal Code section 4900 claim, contending that he was unlawfully incarcerated for 7,265  
15 days.

### 16 **Evidence and Arguments Presented**

17 Five of the former victims recanted their trial testimony at Stoll's habeas corpus  
18 evidentiary hearing. Donald testified that Stoll did not molest him and he did not see Stoll  
19 molest anyone else. He described how on multiple occasions he was placed alone in a room  
20 with a child protective services worker and a Kern County Sheriff's Department officer. The  
21 authorities told him they knew he had been molested and asked him to confirm what they  
22 claimed other children said had been done to him.

23 Allen testified at Stoll's habeas corpus evidentiary hearing that he had no memory of being  
24 molested by Stoll or of seeing Stoll molest anyone else. In a 2003 declaration, Allen stated that he  
25 could not stand by his trial testimony because he has no memory of being molested. He remembered  
26 being questioned and feeling pressure to say things that were consistent with the other kids'  
27 testimony regarding abuse.

28 Christopher testified at Stoll's habeas corpus evidentiary hearing that Stoll never molested him  
29 and that he never saw Stoll molest anyone else. He testified that a child protective services social

1 worker, a Kern County Sheriff, and his stepfather, who was in the Sheriff's Reserve, pressured him  
2 into testifying falsely as a child. A woman investigator told him that other children had been molested  
3 and promised him ice cream "when I was done telling them what they wanted to hear." They  
4 questioned him repeatedly until he finally went along with the questioners during the third or fourth  
5 interview.

6 Victor testified at Stoll's habeas corpus evidentiary hearing that Stoll did not molest him and  
7 that he never saw Stoll molest anyone. The investigators asked Victor if Stoll had ever sexually  
8 molested him. When Victor said no, the investigators challenged him and told him that other kids had  
9 seen it happen. The interviewer described specific acts of molestation and asked Victor to agree that  
10 those acts had occurred. Victor repeatedly denied these things had ever happened. The  
11 interviewers persisted in questioning Victor, rewording and repeating questions, until he said what he  
12 thought they wanted to hear:

13 Ed testified at Stoll's habeas corpus evidentiary hearing that he was interviewed several  
14 times. The interviewers repeatedly asked Ed about specific acts of molestation, and when he denied  
15 knowing anything about those acts, they provided him with detailed descriptions of sexual encounters  
16 and asked him to agree they had occurred. The interviewers persisted in their questioning even  
17 though Ed repeatedly denied knowing anything about these allegations. He said they told him his  
18 best friend, Victor, "saw something happen to me involving Mr. Stoll and that they knew that I had  
19 saw stuff happen to other children." He testified that he was crying, upset and embarrassed, and he  
20 eventually relented and said that something had happened because, like the other children, he felt  
21 "pressured and scared." When Ed finally told the investigators what they wanted to hear, they  
22 pressured him into testifying to the same false account.

23 Jed, age six in 1984, also testified at Stoll's habeas corpus evidentiary hearing. Jed  
24 maintained his assertion that his father had molested him when he was a young boy. However, Jed  
25 recalls nothing at all about the earlier interviews with law enforcement and child protective services.  
26 He does not remember how many times he was interviewed. He does not remember what was said  
27 at the interviews. He does not know against whom he testified. He does not know which children he  
28 named as participants.  
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1 The Office of the Attorney General completed a critical evaluation of Kern County's child abuse  
2 investigation techniques in September of 1986, arising from a Grand Jury request from Kern County.  
3 The evaluation focused on the period from June 20, 1984 through August 13, 1985. The evaluation  
4 concluded that most of the people involved in child abuse investigations were inexperienced and had  
5 little specialized training. The report noted that in specific cases victims were interviewed numerous  
6 times, while California Peace Officer Standards & Training guidelines caution that if possible, the victim  
7 should only be interviewed once. The report noted that sheriff's deputies typically asked questions of  
8 children in a demanding or threatening manner and did not question the children's statements to gain  
9 new information. Deputies and child protection services social workers also told victims the statements  
10 of other victims, which could have influenced victim's responses and affected individual specific  
11 memories of events.

12 In granting Stoll's habeas petition, the Court found as follows:

- 13 • Some of the children were interviewed with questions that were leading and suggestive.
- 14 • Some of the children were told what other children had supposedly already said.
- 15 • Another interviewing technique was the use of repetition, either repeating questions  
16 within an interview or conducting repeat interviews with the same child.
- 17 • The review of the records reveals that the interviewers used reinforcement. As  
18 discussed above, some of the children were interviewed more than once. The use of  
19 multiple interviews constituted another form of indirect reinforcement in the Stoll  
20 case.
- 21 • Another improper technique was the use of authority, i.e., telling the child what the  
22 interviewer or other authority figures believe about the facts in the case.

23 Maggie Bruck, PhD, Professor of Psychiatry, submitted a report in support of Stoll's claim  
24 entitled "Individual Differences in the Persistence of False Memories." This report specifically focuses  
25 on Jed's allegations that Stoll sexually abused him. The report notes that five of the six adults who  
26 made allegations of abuse as children claim that they never believed the allegations or always  
27 questioned them. The only adult that did not recant his earlier testimony was Jed. Doctor Bruck  
28 theorizes that the five adults who recanted spent the previous twenty years in an environment that did  
29 not promote or foster the retention of the false allegations of sexual abuse. Jed, however, lived with his

1 mother after Stoll's conviction. Since Jed's mother was divorced from Stoll and the relationship was  
2 less than amicable. Jed's false belief that he was sexually abused may have been reinforced and  
3 ultimately that false belief became a genuine belief.

4 Despite the victims' claims that they had been sexually abused, none were taken to a medical  
5 provider for a medical examination to see if they had been harmed, had contracted any sexually  
6 transmitted diseases, or to collect evidence. No explanation was given by law enforcement or child  
7 protective services for this course of action. The only evidence presented against Stoll at trial was the  
8 victims' statements that each was sexually molested by Stoll.

9 Before his arrest, Stoll owned and managed a contracting business. He built custom homes  
10 and apartment complexes and employed 20 people. Prior to the start of this business, Stoll had been a  
11 supervisor at a Bakersfield gas plant.

#### 12 Findings

13 A preponderance of the evidence supports the following findings:

- 14 1. Stoll was convicted on January 17, 1985, and was sentenced to 40 years state  
15 prison.
- 16 2. Stoll was released from custody on May 4, 2004.
- 17 3. Donald's habeas corpus testimony is deemed to be credible.
- 18 4. Allen's habeas corpus testimony is deemed to be credible.
- 19 5. Christopher's habeas corpus testimony is deemed to be credible.
- 20 6. Victor's habeas corpus testimony is deemed to be credible.
- 21 7. Ed's habeas corpus testimony is deemed to be credible.
- 22 8. Jed's genuine belief before, during, and after trial that Stoll molested him is  
23 found not to be supported by facts.
- 24 9. Stoll suffered pecuniary injury as a result of his erroneous conviction and  
25 subsequent incarceration.
- 26 9. Stoll was incarcerated for a period of 7,047 days subsequent to his conviction.

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## Determination of Issues

Penal Code section 4903 establishes the requirements for a successful claim for an erroneously convicted felon. A person convicted and imprisoned for a felony may submit to the Board for pecuniary injury sustained through his erroneous conviction and imprisonment (Penal Code, § 4900.) The claim must be filed within six months after judgment of acquittal or discharge, granting of a pardon, or release from imprisonment (Pen. Code, § 4901.) Stoll's claim was timely.

The claimant must prove: 1) that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him; 2) that he did not by any act or omission on his part, either intentionally or negligently, contribute to the bringing about of the arrest or conviction for the crime; and 3) that he sustained a pecuniary injury through his erroneous conviction and imprisonment (Pen. Code, § 4903.) If the claimant meets his burden of proof, the Board shall recommend to the legislature that an appropriation of \$100.00 be made for each day of incarceration served subsequent to the claimant's conviction (Pen. Code, § 4904.)

The claimant has the burden of proving his innocence by a preponderance of the evidence. (*Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7.)

In reaching its determination of the merits of the claim, the Board may consider the following, but the following will not be deemed sufficient evidence to warrant the Board's recommendation that the claimant be indemnified in the absence of substantial independent corroborating evidence that the claimant is innocent of the crime charged: (1) claimant's mere denial of commission of the crime for which he was convicted; (2) reversal of the judgment of conviction on appeal; (3) acquittal of claimant on retrial; or (4) the failure of the prosecuting authority to retry claimant for the crime. (Cal. Code Regs., tit. 2, § 641.)<sup>2</sup>

Testimony of witnesses claimant had an opportunity to cross-examine and evidence to which claimant had an opportunity to object, admitted in prior proceedings relating to the claimant and the crime with which he was charged, may be considered by the Board as substantive evidence. The Board may also consider any information that it may deem relevant to the issue before it. (Reg., § 641.)

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<sup>2</sup> All citations to regulations are to California Code of Regulations, title 2.

1 The AG acknowledged that of the six victims who testified against Stoll at trial, four testified at  
2 the habeas proceeding that the molestations never occurred; one could not remember the  
3 molestations occurring; and only Jed maintained that the molestations happened.

4 Stoll points out the following regarding Jed's testimony:

- 5 • Jed was subject to the same manipulative, improper interview techniques as  
6 the other children.
- 7 • At trial, Jed described sexual acts involving children who now state the abuse  
8 never happened and who recall with detail being coerced into making false  
9 reports.
- 10 • At trial Jed admitted to eight separate lies in his trial and preliminary hearing  
11 testimony. In addition, his preliminary hearing and trial testimony are rife with  
12 inconsistencies. At the 1984 trial Jed himself conceded that he had lied  
13 numerous times at both the trial and the preliminary hearing.
- 14 • At the habeas corpus proceeding, Jed was only able to testify as to his broad,  
15 general beliefs that his 1984 testimony was true and accurate; that no one  
16 influenced his statements of abuse; and that his father molested him.

17 The AG has recommended that the claim be granted. The AG recognized that objectionable  
18 interview techniques used in this case provide the backdrop to the ambiguous and conflicting  
19 testimony offered in this case. While the improper techniques used by the interviewers do not  
20 necessarily mean that Stoll is innocent, the unreliable testimony, which these techniques produced,  
21 has made it very difficult to determine the truth. However, the fact that Ed, Victor, Chris, and Donald  
22 are all insistent that nothing happened and that they were forced to lie, weighs in Stoll's favor. None  
23 of these young men had anything to gain by testifying at the habeas corpus proceeding and each  
24 made it clear that he was testifying to clear his conscience.

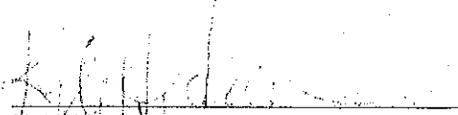
25 After careful evaluation of all of the evidence, it is determined that Stoll has proven by a  
26 preponderance of the evidence that the crimes with which he was charged were not committed by  
27 him; that he did not by any act or omission on his part, either intentionally or negligently, contribute to  
28 the bringing about of his arrest or conviction for those crimes; and that he sustained a pecuniary  
29 injury through his erroneous conviction and imprisonment. Stoll is thereby entitled to compensation in

1 the amount of \$100.00 per day from date of conviction, i.e., January 17, 1985, through May 4, 2004  
2 a period of 7,047 days.

3 Order

4 John Stoll's claim under Penal Code sections 4900 *et seq.* is granted. A recommendation  
5 shall be made to the legislature that an appropriation be made in the amount of \$100 per day for  
6 7,047 days of incarceration subsequent to conviction.

7 Date: May 17, 2006

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9 Kyle Hedum  
10 Hearing Officer  
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