

Attorney (Name and Address): <b>JULIANA B. HUMPHREY</b> Department of the Public Defender 233 "A" Street, Ste. 500 San Diego, CA 92101	Telephone No.: (619) 338-4622	For Court Use Only								
Attorney for (Name): <b>JACK HENRY LEWIS, JR.</b>										
Name of Court, Judicial District and Address: <b>SUPERIOR COURT OF THE STATE OF CALIFORNIA          IN AND FOR THE COUNTY OF SAN DIEGO          220 WEST BROADWAY, SAN DIEGO, CA 92101</b>										
Title of Case: The People of the State of California v. <b>JACK HENRY LEWIS, JR.</b>										
<input checked="" type="checkbox"/> <b>SUBPOENA DUCES TECUM</b>	CASE NUMBER: SCD194558									
THE PEOPLE OF THE STATE OF CALIFORNIA, TO: <table style="float: right; margin-left: 20px;"> <tr> <td style="padding-right: 10px;">Custodian of Records:</td> <td>California Dept. of Corrections and Rehabilitation [CDCR]</td> </tr> <tr> <td></td> <td>Lincoln Plaza North</td> </tr> <tr> <td></td> <td>400 Q Street</td> </tr> <tr> <td></td> <td>Sacramento, CA 95814</td> </tr> </table>			Custodian of Records:	California Dept. of Corrections and Rehabilitation [CDCR]		Lincoln Plaza North		400 Q Street		Sacramento, CA 95814
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	400 Q Street									
	Sacramento, CA 95814									
Date: February 23, 2007      Time: 9:00 a.m.      Department 37 Address: 220 WEST BROADWAY, SAN DIEGO, CALIFORNIA 92101										
1. You are <b>NOT</b> required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561.										
2. If you have any questions about the time or date on which you are to produce these records or you want to be certain about whether your presence is required, contact the following person before November 24, 2006:  <table style="width: 100%;"> <tr> <td style="width: 50%;">a. Name: Juliana B. Humphrey</td> <td style="width: 50%;">b. Telephone Number: (619) 338-4622</td> </tr> </table>			a. Name: Juliana B. Humphrey	b. Telephone Number: (619) 338-4622						
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3. <b>WITNESS FEES:</b> You may be entitled to witness fees, mileage or both, in the discretion of the court. Contact the person named in Item 2 if you have any questions.										
<b>DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY BE ISSUED FOR YOUR ARREST IF YOU FAIL TO APPEAR.</b>										
FOR COURT USE ONLY	Dated: _____	_____ Signature of Person Issuing Subpoena								

**SUBPOENA DUCES TECUM**

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): JULIANA B. HUMPHREY Department of the Public Defender 233 "A" Street, San Diego, CA 92101  ATTORNEY FOR JACK HENRY LEWIS, JR. TELEPHONE NO.: (619) 338-4622  BAR #: 132966	COURT USE ONLY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
<input checked="" type="checkbox"/> CENTRAL COURT, 220 W. BROADWAY, SAN DIEGO, CA 92101-3409 <input type="checkbox"/> FAMILY COURT BUILDING, 1501-55, SIXTH, SAN DIEGO, CA 92101-1946 <input type="checkbox"/> NORTH COUNTY BRANCH, 325 S. MELROSE, VISTA, CA 92083-5627 <input type="checkbox"/> EAST COUNTY COURT, 250 E. MAIN, EL CAJON, CA 92020-3913 <input type="checkbox"/> SOUTH BAY COURT, 500 THIRD, CHULA VISTA, CA 91910-5694	
PLAINTIFF  THE PEOPLE OF THE STATE OF CALIFORNIA	JUDGE: <u>Hon. John Einhorn</u>
DEFENDANT  JACK HENRY LEWIS, JR.	DEPT: <u>37</u>
<b>AFFIDAVIT FOR SUBPOENA DUCES TECUM</b> (CCP 1985-1998, 2018-2021; Evid. C. 1560-1566, et seq.)	CASE NUMBER: SCD194558
I, JULIANA B. HUMPHREY, am the attorney of record for JACK HENRY LEWIS, JR., defendant in the above-entitled case and that said case has been set for trial as follows:	
a. Date: February 23, 2007                      Time: 9:00a.m.                      Dept: 37  b. Address: 220 West Broadway, San Diego, California, 92101-3409	

*It is alleged that the Custodian of Records for the CDCR has possession of the following documents, matters, and things:*

**All documents identifying the names, California Department of Corrections numbers, dates of judgment, dates of offense, and the counties of commitment, for each person received by you during the time period of January 1, 2001, through December 31, 2005, upon a first degree murder convictions. All documents evidencing the sentence received by each person described above for the first degree murder convictions. All probation reports prepared for all persons convicted of first as described above and who were committed to your [CDCR] custody. [See attached "Definitions" and "Instructions" attached to this SDT.]**

*The above documents, matters, and things are material to the proper presentation of the case and good cause exists for the production of the above-described documents, matters, and things for the following reasons:*

**These records are necessary for the preparation and presentation of evidence during a pretrial motion to dismiss the death penalty in this case because the California death penalty statute fails to meet the constitutionally mandated narrowing function. Specifically, the probation reports regarding first and second degree murder convictions should contain facts sufficient to illustrate that the "special circumstances" scheme of Penal Code section 190.2 in fact and in practice does not perform its purported constitutionally mandated narrowing function.**

I, therefore, request the Court to issue a Subpoena Duces Tecum.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on: January 12, 2007

\_\_\_\_\_  
(Signature)



STEVEN J. CARROLL  
PUBLIC DEFENDER

## County of San Diego

DEPARTMENT OF THE PUBLIC DEFENDER

January 12, 2007

Custodian of Records  
CDCR  
c/o Office of Legal Affairs  
1515 S Street  
Sacramento, CA 95814

Dear Custodian of Records:

You have been served by this office with a Subpoena Duces Tecum (SDT) which requires that the custodian of records for your business, or designee, or other qualified witness, appear in court at the time specified in the SDT and produce the business records described.

You may comply with the SDT, without the necessity of appearing in court, if you follow the instructions set forth below. Strict compliance with these instructions is necessary in order to make the subpoenaed records admissible in court and avoid the necessity of a personal appearance by your custodian of records or other qualified witness:

1. Make a complete set of photo copies of the records described in the SDT;
2. Complete the "Declaration of Custodian of Records" form which is included with this letter. Be sure that the appropriate boxes are checked and that the CITY, DATE, and SIGNATURE lines are completed at the bottom of the form;
3. Place the copy of the records and the ORIGINAL of the "Declaration of Custodian of Records" form in a sealed envelope with the following on the outside of the envelope:

CASE TITLE: PEOPLE v. JACK HENRY LEWIS, JR.

CASE NUMBER: SCD194558

WITNESS: Custodian of Records  
CDCR  
c/o Office of Legal Affairs  
1515 S Street  
Sacramento, CA 95814

DATE FOR RETURN OF SUBPOENA: **February 23, 2007**

**CENTRAL OFFICE**  
233 "A" Street, Suite 500  
San Diego, CA 92101-4009  
(619) 338-4700  
FAX (619) 338-4811

**NORTH COUNTY BRANCH**  
400 S. Melrose Drive, Suite 200  
Vista, CA 92083-6627  
(760) 945-4000  
FAX (760) 726-1308

**SOUTH BAY BRANCH**  
765 Third Avenue, Suite 100  
Chula Vista, CA 91910-5842  
(619) 498-2001  
FAX (619) 498-2039

**EAST COUNTY BRANCH**  
250 E. Main Street, Sixth Fl.  
El Cajon, CA 92020  
(619) 579-3316  
FAX (720) 441-4744

4. Place the sealed envelope prepared in step 3 inside a second sealed envelope addressed as follows:

**CLERK OF THE SUPERIOR COURT  
Department 37  
220 W. Broadway  
San Diego, CA 92101**

5. Mail, or otherwise deliver to the court, the package prepared in steps 3 and 4.

**CAUTION: YOU MUST COMPLY EXACTLY WITH THE FOREGOING INSTRUCTION WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THE SDT, UNLESS YOU MAKE OTHER ARRANGMENTS WITH THE ATTORNEY WHO ISSUED THE SDT, OR ELSE APPEAR IN COURT WITH THE SUBPOENAED RECORDS ON THE DATE AND TIME INDICATED ON THE SDT. YOUR FAILURE IN ANY WAY TO RESPOND TO THE SDT MAY RESULT IN THE ISSUANCE OF A WARRANT FOR YOUR ARREST AND/OR YOUR BEING FOUND IN CONTEMPT OF COURT.**

We genuinely appreciate your cooperation in providing the subpoenaed records. We will gladly extend the time within which you must comply with the SDT for a reasonable period and consistent with the time to hear the motion relating to these materials.

If you have any questions regarding the SDT or how to comply with it, please do not hesitate to call me at the Department of the Public Defender (338-4622). If I do not answer, please leave a message on my voicemail stating your name, the name of your business, and the title of the case on the SDT, I will return your phone call at the earliest opportunity.

Sincerely,

JULIANA B. HUMPHREY  
Deputy Public Defender

**DECLARATION OF CUSTODIAN OF RECORDS**

I, \_\_\_\_\_, declare that I am the Custodian of Records or other qualified witness for: California Dept. of Corrections and Rehabilitation [CDCR] and I have the authority to certify the records of the business described in the Subpoena Duces Tecum issued on January 12, 2007, by the Department of the Public Defender of the County of San Diego in the case of People v. JACK HENRY LEWIS, JR. .

- 1. The documents attached to this declaration are true and correct copies of the records of the business described in the Subpoena Duces Tecum and were prepared by the personnel of the business in the ordinary course of the business at or near the time of the act, condition, or event described therein.
- 2. The business made a thorough search for the records described in the Subpoena Duces Tecum and no such records could be found.

I declare under penalty of perjury that the foregoing is true and correct and that this

Declaration was executed at, \_\_\_\_\_, \_\_\_\_\_,  
(city) (state)

on \_\_\_\_\_, 2007  
(date)

\_\_\_\_\_  
SIGNATURE

## **DEFINITIONS**

The following definitions apply to the documents requested by subpoena:

1. "YOU" or "YOUR" shall mean and refer individually to the California Department of Corrections and its deputies, investigators, agents, employees, contractors, and other agents or representatives.

2. "PERSON" shall mean and include a natural person, firm, agency, association, organization, government office, or business or governmental organization of any type, nature, or description, including all employees or representatives of any such entity.

3. "AND" and "OR" have both conjunctive and disjunctive meanings; "all" and "any" means both "each" and "every"; the plural shall include the singular and vice versa.

4. "EVIDENCE" or any variance thereof, including, but not limited to, the term "EVIDENCING," when applied to the content of the document, shall be understood to apply if the document directly or indirectly mentions, discusses, constitutes, concerns, supports, contradicts, refers to or in any other way deals, in whole or in part, with the subject matter described in the Request in which the term appears.

5. "DOCUMENT" shall mean and refer to any "writing," as defined in Rule 1001 of the Federal Rules of Evidence, which is or ever has been in your actual or constructive possession, custody or control, or available or obtainable by you or of which you have knowledge, and includes without limitation any printed, typewritten or handwritten matter of whatever character, including without limitation any and all correspondence, files, memoranda reports, notes, logs, phone messages, laboratory analyses, laboratory records, drawings, maps, charts, business records, photographs, scientific reports, scientific analyses, physical evidence and/or investigative records.

"DOCUMENT" also includes any record of a communication, whether it is written or oral, or any recordation of physical and/or oral evidence, and includes without limitation motion picture recordings, video recordings and audio recordings.

"DOCUMENT" specifically includes, but is not limited to, all documents created, produced, received and/or maintained by you whether the document was the product of work conducted by you or was a document received by you from another person or agency.

6. "DATE(S) OF JUDGMENT" shall mean the date that sentence was pronounced by the committing court.

7. "FIRST DEGREE MURDER CONVICTION" shall mean conviction for a violation of California Penal Code section 187 and designated as murder in the first degree whether or not there is also a conviction for second degree murder and whether or not convicted by plea or trial by judge or jury; including but not limited to those convictions accompanied by one or more special circumstance findings pursuant to

California Penal Code section 190.2; and including but not limited to those who have received a sentence of death;\_but, specifically excluding those persons who have been convicted of murder in the second degree only pursuant to California Penal Code section 189.

8. "SENTENCE RECEIVED" shall mean the judgment imposed by the court for the first degree murder conviction.

9. "PROBATION REPORT" shall mean the document prepared by the Probation Department of the county of commitment or other agency designated by the court to prepare such a report for the court at the time of pronouncement of judgment relating to the commitment offense, and which was received by the Department of Corrections at or near the time of the Department's receipt of the person.

10. "THE COUNTY OF COMMITMENT" shall mean the county in which the person was convicted and in which judgment was pronounced whether or not it is the county where the offense occurred.

11. "RELATING TO" or any variant thereof shall be construed to include, in whole or in part, the term "comprising," "embodying," "containing," "reflecting," "constituting," "evidencing," "setting forth," "mentioning," "discussing," "describing," "identifying," "pertaining to," "referring to," or in any other manner "relating to."

13. "CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION" means and refers to any of its employees, agents, contractors, and representatives.

## **INSTRUCTIONS**

The following instructions apply to the documents requested by subpoena:

1. If any portion of any writing or tangible thing is representative to any request, the entire writing or tangible thing shall be produced. Writings and tangible things that in their original condition were stapled, clipped, or otherwise fastened together, or were placed in a file together, shall be produced in such form.

2. Copies of all photographs, motion picture recordings, audio recordings and/or video recordings shall be reproduced in the same form and format, except that motion picture recordings may be converted to a videotape format.

3. If you do not produce any document because of a claim of privilege, set forth the privilege claimed, the facts upon which you rely to support the claim of privilege, and identify all documents for which such privilege is claimed and the person or persons having custody thereof.