

1 Thomas A. Mesereau, Jr. (SBN 91182)
Susan C. Yu (SBN 195640)
2 COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 Century Park East, 7TH Floor
3 Los Angeles, California 90067
Tel: (310) 284-3120; Fax: (310) 284-3133

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 19 2005

4 Robert M. Sanger (SBN 58214)
5 SANGER & SWYSEN
233 E. Carrillo St., Suite C
6 Santa Barbara, CA 93101
Tel: (805) 962-4887; Fax: (805) 963-7311

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

7 Brian Oxman (SBN 072172)
8 OXMAN & JAROSCAK
14126 East Rosecrans
9 Santa Fe Springs, California 90670
Tel: (562) 921-5058; Fax: (562) 921-2298

** Unsealed pursuant
to 6/16/05 Court
order*

10 Attorneys for Defendant
11 MICHAEL JOE JACKSON

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF SANTA BARBARA, SANTA MARIA DIVISION

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 MICHAEL JOE JACKSON

19 Defendant.

) CASE NO. 1133603

) REQUEST FOR ATTENDANCE OF OUT-
) OF-STATE WITNESS (PEN. CODE § 1334);
) DECLARATION OF SUSAN C. YU IN
) SUPPORT THEREOF

) [CERTIFICATE OF REQUESTING STATE FOR
) ATTENDANCE OF WITNESS LOCATED
) OUTSIDE CALIFORNIA CONCURRENTLY
) FILED HEREWITH]

) HEARING : NOT REQUIRED

) DATE: N/A

) TIME: N/A

) Place: Dept. SM-2

FILED UNDER SEAL & BY FAX

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TO THE HONORABLE JUDGE RODNEY S. MELVILLE:

Defendant Michael Joe Jackson ("Mr. Jackson"), by and through his counsel, hereby requests this Court to issue a Certificate of Requesting State for Attendance of Witness Located Outside California to enable the defense to call David LeGrand as a witness at his forthcoming trial. Mr. LeGrand is a material witness whose testimony is essential to Mr. Jackson's defense.

This Request is made pursuant to the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, codified at Penal Code Sections 1334 through 1334.6, and is based on the attached memorandum of points and authorities and the declaration of Susan C. Yu.

DATED: January 18, 2005

Respectfully submitted,

Thomas A. Mesereau, Jr.
Susan C. Yu
COLLINS, MESEREAU, REDDOCK & YU

Robert M. Sanger
SANGER & SWYSEN

Brian Oxman
OXMAN & JAROSCAK

By:



Susan C. Yu
Attorneys for Mr. MICHAEL J. JACKSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 The indictment imagines ten counts against Mr. Jackson: one count of conspiracy to
5 commit false imprisonment, child abduction and extortion (Count 1); four counts of lewd
6 conduct upon a child (Counts 2, 3, 4 and 5); one count of attempt to commit a lewd act
7 upon a child (Count 6); and four counts of administering alcohol to a minor to assist in
8 commission of a felony (Counts 7, 8, 9 and 10). (Yu Decl., ¶ 2.)

9 The indictment further imagines a conspiracy among Mr. Jackson, five named but
10 unindicted individuals, and other "uncharged" and "unknown" alleged co-conspirators to
11 commit child abduction, false imprisonment and extortion. Twenty-eight overt acts in
12 furtherance of this imaginary conspiracy are alleged. (Yu Decl., ¶ 3.)

13 Mr. Jackson has pled not guilty to all counts. He vehemently denies the false
14 allegations planted in the indictment and maintains his complete innocence. (Yu Decl., ¶
15 4.)

16 Mr. David LeGrand resides and practices law in the State of Nevada. His business
17 address is Hale Lane, 2300 West Sahara Avenue, Eighth Floor, Box 8, Las Vegas, Nevada
18 89102. Mr. LeGrand is an attorney who represented Mr. Jackson during the period in
19 which the charged crimes allegedly occurred. (Yu Decl., ¶ 5.)

20 Mr. LeGrand is a material witness in this case because he can testify to the issue of
21 Mr. Jackson's innocence to the charged crimes, particularly the alleged conspiratorial acts.
22 Mr. LeGrand is intimately familiar with Mr. Jackson's business affairs and the activities of
23 the alleged unindicted co-conspirators during the relevant time period. As Mr. Jackson's
24 lawyer, Mr. LeGrand participated in the significant events surrounding the Bashir
25 documentary and is familiar with the activities of various Prosecution's witnesses. (Yu
26 Decl., ¶ 6.)

27 The Defense estimates that Mr. LeGrand will be required to testify for

1 approximately 3 to 5 court days. Depending on the duration of the jury selection and the
2 Prosecution's case in chief, the Defense could commence its case in chief on as early as
3 April 1, 2005. Accordingly Mr. LeGrand should be required to appear for his testimony on
4 this date. (Yu Decl., ¶ 7.)

5 II.

6 **THIS COURT MAY ISSUE A CERTIFICATE RECOMMENDING THAT A COURT**
7 **IN THE STATE OF NEVADA ISSUE A SUBPOENA COMPELLING MR. DAVID**
8 **LEGRAND, A MATERIAL WITNESS IN THIS CASE, TO APPEAR AND TESTIFY**

9 The presence of out-of-state witnesses can be secured through procedures outlined
10 in the Uniform Act to Secure the Attendance of Witnesses from Without A State in
11 Criminal Proceedings ("Uniform Act"). (Pen. Code §§ 1334-1334.6; also see Vannier v.
12 Superior Court, 32 Cal.App.3d 163, 170-173 (1982); People v. Superior Court (Jans), 224
13 Cal.App.3d 1405, 1408-1412 (1990). The purpose of the Uniform Act is to make a
14 uniform law throughout the states that adopt it, so that procurement of witnesses beyond
15 state borders is possible.¹ (Pen. Code § 1334.6.)

16 The provisions of the Uniform Act do not constitute the power to subpoena the out-
17 of-state witness. Rather, they are merely a procedure to request that the other state's court
18 issue a subpoena. (People v. DuBose, 10 Cal.App.3d 544, 549 (1970); People v.
19 Cavanaugh, 69 Cal.2d 262, 265-266 (1968).) In order for the Uniform Act to apply, the
20 person who is located in another state and whose presence in court is desired, must be a
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22
23 ¹ Also, if a person comes into California to attend and testify in an action pursuant to
24 proceedings under the Uniform Act, the witness is not subject to arrest or service of civil
25 or criminal process in connection with matters that arose before his or her appearance in
26 the matter. (Pen. Code §§ 1334.4, 1334.5; Vannier v. Superior Court, *supra*, 32 Cal.2d at
27 170-173.) This statutory immunity originally arose from public policy considerations to
encourage voluntary appearances in cases where the witness otherwise would not appear
due to fear of arrest or service of process. (Murrey v. Murrey, 216 Cal. 707, 710 (1932);
Mattison v. Lichlyter, 162 Cal.App.2d 60, 63 (1958); Velkov v. Superior Court, 40 Cal.2d
289, 292 (1953).)

1 material witness in the case. (Pen. Code § 1334.2, 1334.3; People v. Cavanaugh, *supra*, 69
2 Cal.2d at 266; People v. Newville, 220 Cal.App.3d 267, 274 (1963).)

3 A motion is made to the judge in the court in which the action is pending to request
4 the presence of the witness. (Pen. Code § 1334.3.) Upon a showing that the witness is
5 material, the judge of the court in which the action is pending may issue a certificate
6 under the seal of the court stating the facts showing that the witness is material, and the
7 number of days the witness will be required to appear. (Id.) This certificate is then
8 forwarded to a judge of a court of record in the county of the state in which the witness is
9 located. (Id.)

10 Pursuant to California Penal Code Section 1334.3, the witness, at the time the trial
11 subpoena is served on him, shall be tendered the sum of ten cents (\$ 0.10) for each mile
12 necessarily traveled (if he elects surface travel) or the minimum round trip scheduled
13 airlines fare plus twenty cents (\$ 0.20) a mile for necessary surface travel at either end of
14 the flight if the witness elects air travel, and except as provided in subdivision (b) of
15 Section 1334.3,² a per diem of twenty dollars (\$ 20) for each day that he is required to
16 travel and attend as a witness. Further, the witness shall be reimbursed for any additional
17 expenses which the Court finds reasonable and necessary.

18 In this case, Mr. LeGrand is a material witness whose presence is essential to ensure
19 Mr. Jackson a fair trial. Mr. LeGrand is intimately familiar with the events surrounding
20 the alleged crimes in the Indictment, particularly the conspiratorial acts, and can testify to
21 Mr. Jackson's complete innocence. Accordingly, the requested Certificate should issue.

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24 ² Penal Code Section 1334.3(b) provides: "If the witness subpoenaed to attend and
25 testify in this state is at the time he or she is required to appear and testify an inmate of a
26 state prison, county jail, or other penal facility, the witness shall, while attending in this
27 state as a witness, be furnished food and lodging in the jail or other appropriate penal
28 facility in the county in which the witness is attending court, and food and lodging of that
penal facility shall be rendered in lieu of the per diem specified in subdivision (a).

1 The defense will then take appropriate steps to forward this Certificate to a Court in
2 Nevada, in the county in which Mr. LeGrand is located. (Yu Decl., ¶ 7.)

3 V.

4 CONCLUSION

5 For all of the foregoing reasons, Mr. Jackson respectfully requests that the Court
6 grant this motion and issue the requested Certificate.

7 DATED: January 18, 2005


Respectfully submitted,

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9 Thomas A. Mesereau, Jr.
Susan C. Yu
10 COLLINS, MESEREAU, REDDOCK & YU

11 Robert M. Sanger
SANGER & SWYSEN

12 Brian Oxman
13 OXMAN & JAROSCAK

14
15 By:


16 Susan C. Yu

Attorneys for Mr. MICHAEL J. JACKSON

DECLARATION OF SUSAN C. YU

I, Susan C. Yu, declare as follows:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Collins, Mesereau, Reddock & Yu, and co-counsel for Mr. Michael Jackson in this criminal proceeding. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, I could and would competently testify thereto under oath.

2. The indictment alleges ten counts against Mr. Jackson: one count of conspiracy to commit false imprisonment, child abduction and extortion (Count 1); four counts of lewd conduct upon a child (Counts 2, 3, 4 and 5); one count of attempt to commit a lewd act upon a child (Count 6); and four counts of administering alcohol to a minor to assist in commission of a felony (Counts 7, 8, 9 and 10).

3. The indictment further alleges a conspiracy among Mr. Jackson, five named but unindicted individuals, and other "uncharged" and "unknown" alleged co-conspirators to commit child abduction, false imprisonment and extortion. Twenty-eight overt acts in furtherance of this imaginary conspiracy are alleged.

4. Mr. Jackson has pled not guilty to all counts. He vehemently denies the false allegations planted in the indictment and maintains his complete innocence.

5. Mr. David LeGrand resides and practices law in the State of Nevada. His business address is Hale Lane, 2300 West Sahara Avenue, Eighth Floor, Box 8, Las Vegas, Nevada 89102. Mr. LeGrand is an attorney who represented Mr. Jackson during the period in which the charged crimes allegedly occurred.

6. Mr. LeGrand is a material witness in this case because he can testify to the issue of Mr. Jackson's innocence to the charged crimes, particularly the alleged conspiratorial acts. Mr. LeGrand is intimately familiar with Mr. Jackson's business affairs and the activities of the alleged unindicted co-conspirators during the relevant time period. As Mr. Jackson's lawyer, Mr. LeGrand participated in the significant events

1 surrounding the Bashir documentary and is familiar with the activities of various
2 Prosecution's witnesses.

3 7. The Defense estimates that Mr. LeGrand will be required to testify for
4 approximately 3 to 5 court days. Depending on the duration of the jury selection and the
5 Prosecution's case in chief, the Defense could commence its case in chief on as early as
6 April 1, 2005. Accordingly Mr. LeGrand should be required to appear for his testimony on
7 this date. Once the Certificate issues, the defense will take appropriate steps to forward it
8 to a Court in Nevada, in the county in which Mr. LeGrand is located.

9 8. Pursuant to California Penal Code Section 1334.3, I will cause Mr. LeGrand,
10 at the time the trial subpoena is served on him, to be tendered the sum of ten cents (\$
11 0.10) for each mile necessarily traveled (if he elects surface travel) or the minimum round
12 trip scheduled airlines fare plus twenty cents (\$ 0.20) a mile for necessary surface travel at
13 either end of the flight if the witness elects air travel, and except as provided in
14 subdivision (b) of Section 1334.3, a per diem of twenty dollars (\$ 20) for each day that he
15 is required to travel and attend as a witness. Further, I will cause Mr. LeGrand to be
16 reimbursed for any additional expenses which this Court finds reasonable and necessary.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct and that this declaration was executed on this 18th day of
19 January 2005, at Los Angeles, California.

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22 SUSAN C. YU
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