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9 Attorneys for Defendant
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11 UNITED STATES DISTRICT COURT
12 CENTAL DISTRICT OF CALIFORNIA
13
14

15 UNITED STATES,) Case No. CR-08-582-GW
16)
Plaintiff,) MOTION IN LIMINE TO EXCLUDE
17) EVIDENCE- SUICIDE/DEATH OF
vs.) M.T.M.
18)
LORI DREW,)
19)
Defendant)
20)

21
22 Comes now defendant, Lori Drew, together with counsel, and
23 moves this honorable Court in limine for an order excluding from
24 evidence the suicide/death of M.T.M. Said motion is based on the
25 attached points and authorities.

26 Dated: Nov. 2, 2008 s./ H. Dean Steward

27 H. Dean Steward
Orin Kerr
28 Counsel for Defendant
Lori Drew

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3 **POINTS AND AUTHORITIES**
4

5 I. INTRODUCTION
6

7 The government must concede that their entire motivation
8 for bringing the instant indictment is an attempt to punish Lori
9 Drew for the death of M.T.M. As tragic as that death was, it was
10 and is unrelated to the Computer Fraud and Abuse Act charges
11 brought herein, and as set forth below, should be excluded from
12 this trial.
13

14 II. EVIDENCE OF THE SUICIDE/DEATH OF M.T.M. SHOULD BE EXCLUDED
15 BECAUSE IT IS IRRELEVANT- NOT AN ELEMENT OF THE CRIMES CHARGED
16

17 Because the parties have heavily litigated issues directly
18 related to 18 USC section 1030(a)(2)(C), the elements are clear
19 and well known:

- 20 ♦ intentionally accessing a computer
21 ♦ without authorization or exceeds authorization
22 ♦ and obtains information
23 ♦ from a protected computer
24 ♦ involving interstate or foreign commerce
25 ♦ [the (c)(2)(B)(ii) portion]- offense was committed
26 in furtherance of any crime or tortious act
27
28

1 Nowhere in that section (or any portion of section 1030) is
2 there an element close to or approaching the fact of the suicide
3 of M.T.M.
4

5 Evidence is not relevant if there is no connection between
6 the evidence and the issues of the case or material facts at
7 issue. U.S. v. Westbrook 125 F.3d 996 (7th Cir. 1997). The
8 suicide of M.T.M. is simply irrelevant under Federal Rules of
9 Evidence 402 and 403.
10

11 III. EVIDENCE OF THE SUICIDE/DEATH SHOULD BE EXCLUDED BECAUSE IT
12 IS HIGHLY CHARGED EMOTIONALLY, AND IS HIGHLY PREJUDICIAL

13 Any relevance of this evidence must be weighed against the
14 potential for serious prejudice. Federal Rules of Evidence 403.
15 The Rule 403 weighing process- that of balancing the probative
16 value of the proffered evidence against its potential for unfair
17 prejudice or confusion of issues- is primarily for the district
18 court to perform. U.S. v. Layton 767 F.2d 549, 553 (9th Cir.
19 1985); U.S. v. Rincon 28 F.3d 921, 925 (9th Cir. 1994), cert
20 denied 513 U.S. 1029 (1994).
21

22 It is important to remember that defendant is charged under
23 the Computer Fraud and Abuse Act. A death of any kind is not an
24 element of the offense, nor should it be presented to the trier
25 of fact. It is highly prejudicial and inflammatory. The
26 government will seek to admit the suicide/death for the sole
27 purpose of seeking sympathy, pity, and perhaps even outrage.
28

1 They will then attempt to parlay these emotions into a
2 conviction, contra to clear case law precedent and fundamental
3 fairness.

4
5 In U.S. v. Bradley 5 F.3d 1317 (9th Cir. 1994), the
6 defendant was charged with felon in possession of a firearm. The
7 prosecution successfully entered into evidence a separate
8 homicide. The Ninth Circuit reversed the conviction, finding
9 that the homicide was of "dubious value". Id. at p. 1321:

10
11 "Our review of the record leads us to conclude
12 that the trial judge abused his discretion in admitting
13 the evidence of the ... homicide."

14 Id. at p. 1320

15 The Ninth Circuit has been very cautious in the area of the
16 admission of inflammatory evidence with marginal or no
17 connection to the issues in the case. U.S. v. Bland 908 F.2d 471
18 (9th Cir. 1990), (details of murder inadmissible); U.S. v. Layton
19 supra, (unduly prejudicial tape recordings of multiple suicides,
20 conviction reversed); U.S. v. Ellis 147 F.3d 1131, 1136 (9th Cir.
21 1998), (defendant charged with receiving and concealing stolen
22 explosives- trial court allowed evidence of the destructive
23 capability of the stolen explosives- reversed: evidence was
24 "unfairly prejudicial and had virtually no probative value to
25 the actual charges Ellis faced." [emphasis added]). Accord: U.S.
26 v. Merriweather 78 F.3d 1070 (6th Cir. 1996), (taped
27
28

1 conversations relating to uncharged conspiracy were more
2 substantially prejudicial than probative and should not have
3 been admitted, conviction reversed).

4
5 Certainly, few events could arouse sympathy, passion and
6 sorrow as rapidly and as deeply as the death of a teenager,
7 under *any* circumstances. Here, there is the added pathos of a
8 suicide, and a young life cut short.

9
10 These concerns, however, are not at issue in this case.
11 They are not elements of the charged offenses. They should not
12 come before the trier of fact.

13 IV. CONCLUSION- THIS CASE IS NOT ABOUT WHAT HAPPENED TO M.T.M.

14
15 As set out in previous defense motions, this case revolves
16 around the use of section 1030. The government, in its zeal to
17 punish Lori Drew, has here attempted a startling expansion of
18 the prosecution's ability to use section 1030 to charge
19 virtually any computer user, should they be so inclined. This is
20 an expansion of section 1030's criminal reach *beyond anything*
21 *ever intended by Congress* in enacting section 1030.

22
23 As part of a one-two punch, the government will try to not
24 only expand 1030's reach in dramatic and unprecedented fashion,
25 but will also try obtain a conviction on emotionally charged and

26 /

27 /

1 highly prejudicial evidence. This suicide/death evidence is just
2 not relevant to these charges.

3 For all the above reasons, the M.T.M. suicide/death must be
4 excluded from trial.
5

6 Dated: Nov. 2, 2008

s./ H. Dean Steward

7 H. Dean Steward
8 Orin Kerr
9 Counsel for Defendant
Lori Drew

1 **CERTIFICATE OF SERVICE**

2 IT IS HEREBY CERTIFIED THAT:

3 I, H. Dean Steward, am a citizen of the United States, and am at
4 least 18 years of age. My business address is 107 Avenida
5 Miramar, Ste. C, San Clemente, CA 92672.

6 I am not a party to the above entitled action. I have
7 caused, on Nov. 2, 2008, service of the defendant's:

8 **Motion in Limine**

9 On the following parties, electronically, by filing the foregoing
10 with the Clerk of the District Court using its ECF system, which
11 electronically notifies counsel for that party:

12 **AUSA MARK KRAUSE**

13
14 I declare under penalty of perjury that the foregoing is true
15 and correct.

16 Executed on Nov. 2, 2008 at San Clemente, California.

17 s./ H. Dean Steward

18 H. Dean Steward
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