

1 H. Dean Steward SBN 85317
107 Avenida Miramar, Ste. C
2 San Clemente, CA 92672
949-481-4900
3 Fax: (949) 496-6753
deansteward@fea.net

4 Orin S. Kerr
5 Dist. of Columbia BN 980287
2000 H. Street NW
6 Washington, DC 20052
202-994-4775
7 Fax 202-994-5654
okerr@gwu.edu

8 Attorneys for Defendant
9 Lori Drew

10
11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES,

15 Plaintiff,

16 vs.

17 LORI DREW,

18 Defendant.

Case No. CR-08-582-GW

DEFENSE RESPONSE TO GOVERNMENT
EX PARTE APPLICATION TO DISMISS
COUNT 1

19
20 Comes now defendant, together with counsel, and responds to
21 the government's ex parte application seeking dismissal of count
22 one of the indictment.

23
24 The defense does not oppose the application or the relief
25 sought, but does believe that the count must be dismissed **with**
26 **prejudice**. Jeopardy had attached as the jury was sworn and heard
27 testimony. As defined in Serfass v. U.S. 420 U.S. 377 (1975) the
28

1 defendant "has been subjected to the risk of conviction", and
2 therefore jeopardy had attached. Under these circumstances,
3 dismissal of count one *must* be with prejudice.
4

5 Dated: 1-1-09

s./ H. Dean Steward

6
7 H. Dean Steward
8 Orin Kerr
9 Counsel for Defendant
10 Lori Drew
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2
3
4 IT IS HEREBY CERTIFIED THAT:

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

8 I am not a party to the above entitled action. I have caused,
9 on Jan. 1, 2009, service of the defendant's:

10 **DEFENSE RESPONSE TO GOVT EX PARTE APPLICATION**

11 On the following parties electronically by filing the foregoing
12 with the Clerk of the District Court using its ECF system, which
13 electronically notifies counsel for that party.
14

15 **AUSA MARK KRAUSE- LA**

16
17 I declare under penalty of perjury that the foregoing is true and
18 correct.

19 Executed on Jan. 1, 2009

20 H. Dean Steward

21 H. Dean Steward
22
23
24
25
26
27
28