

Jeffrey Vernon Merkey  
1058 East 50 South  
Lindon, Utah 84042  
Telephone: (801)427-3547  
Facsimile: (801)427-3547  
Plaintiff

FILED  
U.S. DISTRICT COURT

2005 OCT 21 A 11: 53

DISTRICT OF UTAH

BY:   
DEPUTY CLERK

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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JEFFREY VERNON MERKEY  
Plaintiff,

**PLAINTIFF JEFFREY VERNON  
MERKEY'S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR ORDER  
TO SHOW CAUSE**

vs.

Case No: 2:05-cv-521 DAK

Honorable Dale A. Kimball  
Honorable Magistrate Samuel Alba

AL PETROFSKY a.k.a. SCOFACFS.ORG

Defendant.

---

Plaintiff Jeffrey Vernon Merkey respectfully submits this memorandum in Support of his Motion for Order to Show Cause against Alan P. Petrofsky for actively violating orders relative to the sealing of documents filed in this matter.

**NATURE OF THIS ACTION**

1. This is a federal civil rights action pursuant to 42 U.S.C. § 1983 and § 1988, and the

federal constitutional provisions and statutes referred to herein, by Jeffrey Vernon Merkey ("Merkey") against the named Defendants (sometimes hereinafter collectively referred to as "Defendants").

3. The damages Plaintiff seeks from Defendants are the proximate, direct and consequential result of Defendants' willful, and/or malicious, and/or intentional, and/or reckless and/or deliberately indifferent actions and/or omissions, individually or in concert with others, which violated Plaintiffs' federal constitutional and statutory rights including – but not limited to – their conduct in:

A. Unlawfully depriving, and conspiring to deprive, Plaintiff of his well-established federal constitutional and statutory rights to freely associate, to exercise his religious beliefs and practices, to enjoy his rights to privacy, and his rights to enjoy the due process and equal protection of law and the equal application of the law, without intrusion or interference, his freedom of speech, and his right of expressive association by conspiring to murder and/or threatening to murder Plaintiff, enlisting and/or soliciting others to murder plaintiff, intentionally inflicting emotional distress upon Plaintiff and advocating through public Internet postings and websites that Plaintiff commit suicide, in stealing Plaintiff's identity on the public Internet and posting comments and emails which defame him, in engaging in slander of title of Plaintiff's intellectual property, and in publicly defaming Plaintiff and tortiously interfering in Plaintiffs career and business and cultural relationships;

B. Unlawfully harassing, intimidating, threatening, and otherwise substantially burdening the Plaintiff in the exercise their fundamental religious beliefs, freedom of speech, and the right of expressive association, by conspiring to murder and/or threatening to murder Plaintiff, enlisting and/or soliciting others to murder plaintiff, intentionally inflicting emotional distress upon plaintiff and advocating through public Internet postings and websites that Plaintiff commit suicide; and in stealing Plaintiff's identity on the public Internet and posting comments and emails which defame him, in engaging in slander of title of Plaintiff's intellectual property, in publicly defaming Plaintiff and tortiously interfering in Plaintiffs career and business and cultural relationships;

3. Plaintiffs assert that Defendants' conduct challenged herein, has and/or continues to deprive Plaintiffs of their well-established federal constitutional and statutory rights to: (1) freedom of speech; (2) assembly; (3) anti-establishment of religion; (4) free exercise of religion; (5) privacy; (6) due process, and (8) equal protection of the laws, all guaranteed under the First Amendment, and/or Fourth Amendment, and/or Fifth and/or Fourteenth Amendment to the United States Constitution, and/or the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §2000cc et seq., PL 106274, and/or 42 U.S.C. §1996a, and/or Religious Freedom Restoration Act, 42 U.S.C. §2000bb-1 et seq.; and that each of the Defendants is personally and/or officially liable to the Plaintiffs for their malicious, and/or intentional, and/or deliberately indifferent violations and deprivations of Plaintiffs' federal constitutional and statutory rights under both Federal and Utah State Law.

4. Plaintiffs reserve their right to also assert additional, pendent claims against Defendants for violating Plaintiffs' rights under the Constitution and Laws of the State of Utah.

### **STATEMENT OF FACTS**

1. On April 21, 2005 this action was filed with the Court late in the afternoon on this date. During filing, Exhibit 2 filed with the original complaint was filed under seal and contained a cover sheet which clearly stated, "Filed Under Seal" as required by the Local Rules.
2. The Court Clerk stated that sealed exhibits could not be filed with a Verified Petition and over-labeled the words "Exhibit 2 - Filed under Seal" for the Exhibit 2 cover sheet with whiteout, and accepted the filing, and instructed plaintiff to submit an order to Judge Kimball to place the exhibit under seal.
3. Plaintiff asked the clerk for an envelope to place Exhibit 2 into and to notify the docket clerk not to scan Exhibit 2 until the order could be submitted.
4. Plaintiff promptly contacted the Law Clerk in Judge Kimball's Court the following morning and stated that Exhibit 2 should be placed under Seal. An order was prepared and promptly signed by the Court, unfortunately, the Docket clerk scanned Exhibit 2, despite Plaintiff's request it not be scanned, and placed it onto the PACER

system for a short period of time on June 22, 2005. Judge Kimball's Law Clerk, Susie Hindley, informed Plaintiff that the Court clerks were in error if they stated a sealed Exhibit could not be filed with a Verified Petition. Although Plaintiff did not place the Exhibit into an envelope, he did ask for one, and the cover sheet plainly stated the document was "Filed under Seal".

5. During the short period of time the Exhibit was placed onto the PACER system it was downloaded by Groklaw, SCOFACRS.ORG and several other individuals who subsequently distributed the document on the public Internet.
6. An Individual named Al Petrofsky posted the document to LWN.NET and allowed it to be mirrored onto a Server in Czechoslovakia and LWN.NET members distributed thousands of copies across the public Internet after the Court had sealed the Exhibit. (Exhibit 1).
7. These individuals and websites had access to PACER and had notice the document had been sealed but continued to distribute it and post comments. Al Petrofsky sent an email to the Court stating he knew the document was sealed and boldly stated he would continue to send it to others unless he was personally served with the sealing order.
8. To date, all websites within the jurisdiction of the United States have removed this document from the internet with the exception of Alan P. Petrofsky.

9. On August 30, 2005, Plaintiff served Alan P. Petrofsky with a waiver of service, a copy of the complaint, a summons in this matter issued by the Clerk of the Court, and a copy of the order sealing exhibit 2, and notice of said order. Alan Petrofsky accepted service of these documents and signed and returned a certified mail receipt 7004 2890 0004 7701 7536 which is attached at (Exhibit 2.)
  
10. On or about September 8, 2005 Plaintiff contacted Novell attorney Jim Lundberg by telephone regarding the matter of Alan P. Petrofsky's distribution of the settlement agreement. During the conversation, Mr. Lundberg relayed he "had no objection" to Plaintiff serving subpoenas on the parties and that Novell management "was considering their actions regarding Mr. Petrofsky's conduct". Plaintiff contacted Mr. Petrofsky via telephone and left a message Novell was considering actions in the matter.
  
11. At no time has Plaintiff posted the Novell Settlement agreements to the internet, distributed it outside of Court proceedings, or filed the document outside of Court seal. What references were made to the agreement were done so under privilege and as outlined in the settlement language which allowed the agreement to be used in litigation in State or Federal Courts in support of Plaintiff's or Novell's claims.
  
12. As early as October 13, 2005, Novell, from its Internet websites posted comments that Plaintiff's code "was subject to legal issues". This code was written following the settlement agreement and release of all obligations and the release to use all intangible knowledge possessed by Plaintiff. These public statements posted on

Novell's Internet Websites by Novell employees and agents and their false allegations are in direct violation to the terms of the settlement agreement. (Exhibit 3.)

13. On September 16, 2005, Al Petrofsky sent a letter titled "Vexation of Novell's Name by Jeffrey Vernon Merkey". Mr. Petrofsky make sweeping allegations in his letter accusing Plaintiff of violating the agreement by filing it in Federal Court under seal. Petrofsky also has posted responses labeled "confidential" on his website SCOFACFS.ORG. The intent of the letter was clearly to inflame and enrage Novell, and contains false, libelous, and defamatory statements regarding Plaintiff. Plaintiff denies the statements attributed to him by Petrofsky in so much as they were mis characterized by him. (Exhibit 4.)

14. On September 23, 2005, Novell responded to Petrofsky's letter. During the conversation with Lundberg by Plaintiff, Al Petrofsky was mentioned by name to Lundberg, despite his claims to the contrary. Novell carefully chose the wording of the response and used quotes related to specific language. Novell stated in our conversations "it did not object" to Plaintiff serving subpoenas in the matter. The statement was mis characterized by Petrofsky. Novell made it clear to Mr. Petrofsky in its response the agreement was confidential. (Exhibit 5)

15. Petrofsky sent another response on September 28, 2005 demanding Novell file for injunctive relief against Plaintiff and take Plaintiff back to State Court for filing the Federal Action in US District Court, under claims Plaintiff has been distributing the

settlement agreement on the internet, along with threats from Petrofsky that if Novell did not comply with his demands, he would violate the orders of the Federal Court and begin distributing the settlement agreement on the internet on October 17, 2005. Plaintiff has not distributed the agreement outside of Court seal, nor has ever disclosed the terms of the agreement on the public Internet. Plaintiff states he viewed Petrofsky's demands as incomprehensible. (Exhibit 6)

16. On October 19, 2005, Al Petrofsky, in deference to the Courts orders, and with malicious intent, premeditation, and in reckless disregard for the rights of Novell, Plaintiff, and the parties to the agreement, posted the settlement agreement to the public internet from his website SCOFACRS.ORG. (Exhibit 7).

## **ARGUMENT**

Novell has consistently used the confidentiality of the agreement and its terms to allude baseless allegations Plaintiff is on some way hampered by the Settlement in public statements to the industry as an anti-competitive means to oppress Plaintiff and to create a false and misleading impression that Plaintiff's work product is "tainted". These statements continue, despite Novell's obligations under the agreement to cease in making public comments on the litigation or Plaintiff's work product. Based on the terms of the agreement, there are no "IP Issues" with Plaintiff's work product. As early as October 13, 2005, Novell, from its Internet websites posted comments that Plaintiff's code "was subject to legal issues". This code was written following the settlement agreement and release of all obligations and the release to use all intangible



knowledge possessed by Plaintiff. These statements by Novell employees and false allegations are in direct violation to the terms of the settlement agreement. Plaintiff has hundreds of such examples. Novell has consistently used the confidentiality provision of the agreement to make baseless claims that Plaintiff is violating the agreement by exercising his rights rights to make statements that his IP is unconcerned with Novell's 10 year old claims which were settled. Novell's continued statements can only be characterized as an oppressive attempt to suppress Plaintiff and to mobilize its employees and the industry to continue to make baseless claims as an anti-competitive use of the Courts to oppress Plaintiff and smear him in the industry. If Novell feels Plaintiff's use of "intangible knowledge" to produce Intellectual Property impinges its rights, then it should seek enforcement in State Court rather than resorting to libel, defamation, and slander of title of Plaintiff's IP.

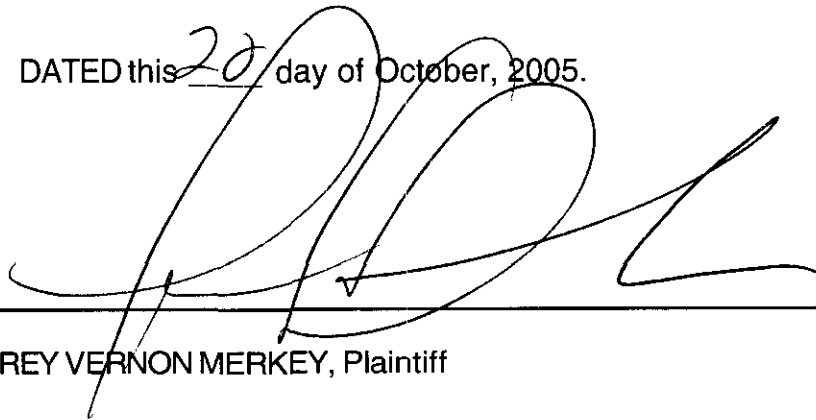
Given that the Mr. Petrofsky has been served with Notice of the Courts Order sealing the Novell/TRG Settlement agreement, and is blatantly violating the Courts orders, and misusing the PACER system to distribute sealed documents to the general public, Plaintiff moves for an order to show cause against Mr. Petrofsky for such sanctions as the Court deems appropriate under the circumstances.

Mr. Petrofsky has made statements and engaged in conduct which can only be characterized as "cavalier". His stated intent is to harass Plaintiff and Novell into re-opening the Novell litigation by baiting and threatening Novell. The only logical conclusion is Petrofsky is doing so for purposed of self-aggrandizement and as a "publicity stunt" to increase his public profile.

**CONCLUSION**

For the forgoing reasons, Plaintiff respectfully moves the Court to Issue and order to Show Cause to be served on Alan P. Petrofsky for knowingly, maliciously, and willfully violating the Courts orders and distributing sealed Court exhibits contrary to orders issued by this Court.

DATED this 20 day of October, 2005.

A large, stylized handwritten signature in black ink, appearing to read 'J. Merkey', is written over a horizontal line. The signature is highly cursive and loops around itself.

JEFFREY VERNON MERKEY, Plaintiff

CERIFICATE OF SERVICE/MAILING

I certify that a true and correct copy of JEFFREY VERNON MERKEY'S MOTION FOR ORDER TO SHOW CAUSE AND MEMORANDUM IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE AGAINST ALAN P. PETROFSKY in the styled action of 2:05CV521DAK filed in the US District Court, District of Utah, Central Division was mailed to all Parties or delivered by hand or Faxed to:

Alan P. Petrofsky  
3618 Alameda  
Apt 5  
Menlo Park, CA 94025

Margaret Plane  
355 North 300 West  
Salt Lake City, UT 84103

Kurt Opsahl  
Matt Zimmerman  
Corynne McSherry  
454 Shotwell Street  
San Francisco, CA 94110

  
\_\_\_\_\_  
JEFFREY VERNON MERKEY Plaintiff

# Exhibit 1

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

**JEFFREY VERNON MERKEY,**

**Plaintiff,**

**v.**

**BRUCE PERENS, et al.,**

**Defendants.**

**ORDER**

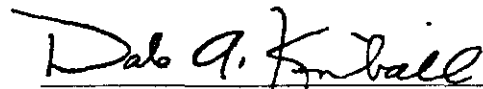
**Case No. 2:05-CV-521K**

**Judge Dale A. Kimball**

---

Plaintiff filed a Verified Complaint in this matter on June 21, 2005, including a confidential settlement agreement as Exhibit 2 to the Verified Complaint. Plaintiff notified the court that he intended to file this exhibit under seal. However, because it was not filed according to the court's rules regarding sealed documents, the exhibit was scanned into the court's public electronic docket. Pursuant to paragraph 6 of the settlement agreement, the parties agreed that the settlement agreement was confidential. Therefore, the court hereby seals Exhibit 2 of the Verified Complaint in this matter and directs the Clerk of Court to remove the exhibit from the court's electronic docket.

DATED this 22<sup>nd</sup> day of June, 2005.

  
\_\_\_\_\_  
DALE A. KIMBALL  
United States District Judge

# Exhibit 2

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)                  ALAN P PETROFSKY</p> <p>C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>Alan Petrofsky                  3615 Alameda                  Apt 5                  Menlo Park, CA 94025</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> I.C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number                  (Transfer from service label)</p>	<p>7004 2896 0004 7701-7536</p>

# Exhibit 3



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**Subject:**

**Author:**

**Date:**

 [nwfs under sles](#)


Jan Jung

Wed, 28 Sep 2005  
12:57:52 UTC

└─  [Re: nwfs under sles](#)

David Mair


Wed, 28 Sep 2005  
15:45:17 UTC

└─  [Antw: Re: nwfs under sles](#)

Jan Jung

Thu, 29 Sep 2005  
11:17:33 UTC



└─  [Re: Re: nwfs under sles](#)

Roger Thomas, DevNet SysOp  
22

Sat, 01 Oct 2005  
21:47:18 UTC

└─  [Re: Re: nwfs under sles](#)

jmerkey@utah-nac.org

Thu, 13 Oct 2005  
03:57:53 UTC

└─ [Re: Re: nwfs under sles](#)

Roger Thomas, DevNet SysOp  
22

Thu, 13 Oct 2005  
20:30:02 UTC

└─ [Re: Antw: Re: nwfs under sles](#)

David Mair

Thu, 29 Sep 2005  
15:39:56 UTC

└─ [Re: nwfs under sles](#)

David Mair

Wed, 28 Sep 2005  
15:01:06 UTC

 [\\$BEA8@M-\\$j\\$^\\$7\\$?!# \(B](#)

info@bndksh.com

Tue, 27 Sep 2005  
16:54:39 UTC

 [\\$BEA8@M-\\$j\\$^\\$7\\$?!# \(B](#)

info@bndksh.com

Tue, 27 Sep 2005  
16:54:28 UTC

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**Forum/Group:** novell.devsup.storage

**Subject:** Re: Re: nwfs under sles

**Author:** Roger Thomas, DevNet SysOp 22

**Date:** Sat, 01 Oct 2005 21:47:18 UTC

Timpanogas's code had a range of legal issues that resulting in a court case between themselves and Novell which should be considered old history. The one thing I do remember about their code base was that it missed support for key features like compression.

Roger

"Jan Jung" wrote in message news:h3Q\_e.3608\$J.T.3506@prv-forum2.provo.novell.com...

> could you name a third party which has a nwfs-driver for linux ? searching for it doesnt give good results.

>

> just found drivers from "timpanogas" ... a project which was free, but now stoped and the old drivers dont work with actual kernels.

>

> or any other ideas ???

>

> what we need :

>





> Access over SAN (fiberchannel) from a Linux-machine to an netware-nwfs-volume.

>

> Linux, because of BackupSoftwareLicense for it.

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<u>Subject:</u>	<u>Author:</u>	<u>Date:</u>
 <a href="#">nwfs under sles</a>	Jan Jung	Wed, 28 Sep 2005 12:57:52 UTC
└─ <a href="#">Re: nwfs under sles</a>	David Mair	Wed, 28 Sep 2005 15:45:17 UTC
└─ <a href="#">Antw: Re: nwfs under sles</a>	Jan Jung	Thu, 29 Sep 2005 11:17:33 UTC
└─ <a href="#">Re: Re: nwfs under sles</a>	Roger Thomas, DevNet SysOp 22	Sat, 01 Oct 2005 21:47:18 UTC
➔ └─ <a href="#">Re: Re: nwfs under sles</a>	jmerkey@utah-nac.org	Thu, 13 Oct 2005 03:57:53 UTC
└─ <a href="#">Re: Antw: Re: nwfs under sles</a>	David Mair	Thu, 29 Sep 2005 15:39:56 UTC
└─ <a href="#">Re: nwfs under sles</a>	David Mair	Wed, 28 Sep 2005 15:01:06 UTC
 <a href="#">\$BEA8@M-\$j\$^\$7\$?!# (B</a>	info@bndksh.com	Tue, 27 Sep 2005 16:54:39 UTC
 <a href="#">\$BEA8@M-\$j\$^\$7\$?!# (B</a>	info@bndksh.com	Tue, 27 Sep 2005 16:54:28 UTC
 <a href="#">\$B:FEY\$N3NG'%Z!&lt;%8 (B</a>	info@aabjdie.com	Tue, 27 Sep 2005 16:46:28 UTC

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**Forum/Group:** novell.devsup.storage  
**Subject:** Re: Re: nwfs under sles  
**Author:**  
**Date:** Thu, 13 Oct 2005 03:57:53 UTC

> Timpanogas's code had a range of legal issues that resulting in a court case between  
 > themselves and Novell which should be considered old history.

This statement is false ad is a violation of the Novell/TRG settlement. Don't make such comments. There were never any issues with this code. In fact, there were never any issues with any code in the lawsuit.

The one thing I  
 > do remember about their code base was that it missed support for key features  
 > like compression.

Compression is patented by Novell. You can mount and copy the files and Novell provides offline utilities to decompress them. That's the only feature that was missing. I gave the open source code back to Novell on forge.novell.com but they have not been maintaining it. It's there code now so they should update it if people really need it.

Jeff

>  
 > Roger  
 >  
 > "Jan Jung" wrote in message  
 > news:h3Q\_e.3608\$jt.3506@prv-forum2.provo.novell.com...  
 > > could you name a third party which has a nwfs-driver for linux ?  
 > searching for it doesnt give good results.  
 > >  
 > > just found drivers from "timpanogas" ... a project which was free, but

now stoped and the old drivers dont work with  
> actual kernels.  
>>  
>> or any other ideas ???  
>>  
>> what we need :  
>>  
>> Access over SAN (fiberchannel) from a Linux-machine to an  
network-nwfs-volume.  
>>  
>> Linux, because of BackupSoftwareLicense for it.  
>  
>

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# Exhibit 4

Below is the text of the signed letter whose imaged pages can be found at <http://scofacts.org/Merkey-other-2005-09-16-letter.pdf> (that file, like this one, does not include any of the exhibits).  
For more information, including most of the material in the exhibits, see <http://scofacts.org/merkey>.

---

Alan P. Petrofsky  
3618 Alameda Apt 5  
Menlo Park CA 94025

September 16, 2005

BY CERTIFIED MAIL, ARTICLE NUMBER 7005 1160 0004 0082 1054

Jim F. Lundberg  
Novell, Inc.  
Legal Department  
1800 S Novell Pl  
Provo UT 84606

Re: Vexation in Novell's name by Jeffrey Vernon Merkey

Dear Mr. Lundberg:

Over the past few months, Jeffrey Vernon Merkey ("Merkey"), a former Chief Scientist at Novell, has been making many statements -- on his website, on internet discussion boards, in email, in voicemail, and in submissions to a federal court -- that could charitably be described as delusional.

Interspersed with his more fanciful lies, he has also made several less-easily disproven statements about activities of the Novell legal department. I write to request Novell's confirmation or denial of these statements.

Additionally, Merkey has been making public statements about a 1998 settlement agreement to which Novell was a party and which was originally confidential. I also seek to learn Novell's current position on the confidentiality of that agreement.

I. BACKGROUND ABOUT MERKEY VS. PERENS ET AL., AND THE  
1998 NOVELL ET AL. SETTLEMENT AGREEMENT

On June 21, 2005, Merkey filed, in The United States District Court, District of Utah, a complaint ("the Complaint") captioned Merkey vs. Perens et al., case 2:05-CV-521-DAK. The Complaint makes fascinating accusations of murderousness and terrorism by a variety of defendants. A copy of the Complaint and its exhibits are attached to this letter as Exhibit A. I was added to the list of defendants in an amended complaint filed on July 20, but I have not been served with process.

The second exhibit to the Complaint is a copy of a settlement agreement ("the Agreement") entered into on August 18, 1998, by, between, and among Novell, Inc., Jeffrey V. Merkey, Darren Major, Larry Angus, and Timpanogas Research Group, Inc.. The agreement settles two cases: Novell vs. Timpanogas Research Group et al., 97-0400339 in Utah County; and Merkey vs. Novell, 2:98-cv-311 in the District of Utah.

---

Letter from Petrofsky to Lundberg                      September 16, 2005                      Page 2

On June 22, the day after the Complaint was filed, Judge Dale Kimball entered an order, a copy of which is attached to this letter as

Exhibit B. Here is the entire text of that order:

Plaintiff filed a Verified Complaint in this matter on June 21, 2005, including a confidential settlement agreement as Exhibit 2 to the Verified Complaint. Plaintiff notified the court that he intended to file this exhibit under seal. However, because it was not filed according to the court's rules regarding sealed documents, the exhibit was scanned into the court's public electronic docket. Pursuant to paragraph 6 of the settlement agreement, the parties agreed that the settlement agreement was confidential. Therefore, the court hereby seals Exhibit 2 of the Verified Complaint in this matter and directs the Clerk of Court to remove the exhibit from the court's electronic docket.

Earlier that day, I and at least one other person had obtained copies of the Complaint's exhibits from the court's internet docket-access website, <http://ecf.utd.uscourts.gov>. I had then made the exhibits, including the Agreement, freely available to the public over the internet.

The statements in the Agreement, endorsed by Novell in 1998, indicate that Novell considered the Agreement's confidentiality to be valuable to Novell, at least at that time. Based on those statements, I ceased distributing the Agreement on June 23, as a courtesy to Novell. I informed you of that decision in an email message I sent that day, which can be found on page 4 of the email collection that is attached as Exhibit C to this letter.

In contrast to the confusion about the sealing of one of the Complaint's exhibits, it has always been clear that the Complaint itself is not sealed, and Merkey has never requested that it be sealed. In fact, he has distributed the Complaint directly to the public through his own website, [www.merkeylaw.com](http://www.merkeylaw.com) (see Exhibit D to this letter). The Complaint contains several statements about the Agreement, including the following on page 29:

93. Novell further stated in the permanent injunction which was a part of the settlement agreement, Merkey was not allowed to possess [sic] 10 year old source code of NetWare or Wolf Mountain or use it in exchange for the right to use all "intangible" knowledge in his possession, whether considered a Novell trade secret or not. Since there was little value in antiquated and unused source code from Netware products which are no longer in use in Novell's relevant markets, Merkey viewed the permanent injunction as moot, since he had not possessed Novell source code unlawfully, and the State Court had issued a specific finding that "no Novell source was used by Merkey" during or following the trade secret litigation.

94. The affect [sic] of this language was to in affect [sic] grant to Merkey the unfettered right to use patents, trade secrets, and the sum total of Novell's vast body of intellectual property in any projects he wished and endeavored to create.

---

Letter from Petrofsky to Lundberg

September 16, 2005

Page 3

95. This agreement nullified the preliminary injunction and represented a 180 degree shift in Novell's position regarding its professed concerns over protecting its trade secrets. This was particularly true given the fact Novell was facing at the time a multi-billion dollar Sexual Harassment action in Federal Court and possible criminal indictment of its executives and Board of Directors for their actions in the trade secret litigation in setting up dozens of Novell employees to commit perjury in State Court in a futile attempt to prove its merit less [sic] claims.

These and other statements in the Complaint, and numerous other public statements by Merkey over the past few months, appear to be flagrant breaches of the confidentiality provisions in paragraphs 3 and 6 of the Agreement, and in particular of clauses 6(b) and 6(d). I notice that in paragraph 7 of the Agreement, the parties agreed that such breaches by Merkey would result in liquidated damages of One Hundred

Thousand Dollars (\$100,000).

## II. MERKEY'S CLAIMS TO BE A HARBINGER OF NOVELL'S WRATH

On August 23, 2005, Merkey submitted a sworn affidavit in support of a motion for leave to conduct expedited discovery. A copy of the affidavit and the first of its four exhibits are attached to this letter as Exhibit E. In paragraph 4 on page 2 of the affidavit, Merkey states that Exhibit 1 of the affidavit contains emails he sent to Pamela Jones, one of the defendants. At page 4 of Exhibit 1, in an email dated October 28, 2004, 12:49 pm, Merkey states:

I am not a jerk or an asshole, but you are creating a huge mess that just may end up back in court with Novell (with you getting hit with Subpoena Deus [sic] Tecum Requests left and right). They just sent me a threat to reopen the litigation because of this stupid article

At page 3 of Exhibit 1 to the affidavit, in an email dated January 25, 2005, Merkey states:

Novell has authorized me to serve your ISP and associates at OSRM with a Subpeona [sic] AT YOUR COST AND EXPESNE [sic] if you fail to comply with this request and force us to locate you for service.

Attached as Exhibit F is a copy of my letter to Merkey, dated September 6, 2005, regarding his request that I waive service of a summons. On September 9, he sent me a voicemail reply. A copy of that voicemail is on a Compact Disc attached as Exhibit G. For your convenience, I have also attached a transcript of it as Exhibit H. In the voicemail, Merkey states:

Listen here, you little twerp ...

... And Novell's coming after you. They met with me yesterday, and you're in a lot of trouble, my friend.

---

Letter from Petrofsky to Lundberg

September 16, 2005

Page 4

## III. REQUESTS FOR CLARIFICATION

If Novell has actually enlisted Merkey to be making these statements on its behalf, then I would appreciate written confirmation of that, and I would also like to humbly suggest that Novell find a different messenger who comes across as a bit less deranged. On the other hand, if Merkey's statements about Novell are fabrications, then I believe a statement to that effect would be helpful to everyone.

In particular, I would appreciate a written response to this letter that states:

1. Whether or not any Novell representatives met with Merkey on September 8, 2005.
2. Whether or not Novell is "coming after" me.
3. Whether or not Novell has "authorized" Merkey to serve any subpoenas.
4. Whether or not Novell has any plans (or is aware of any plans by some Higher Authority) to "hit" anyone with "Subpoena Deus Tecum Requests".

I would also like to know whether or not Novell will be seeking "immediate injunctive relief" to enforce the confidentiality-keeping obligations of the Agreement's other parties. (Pursuant to paragraphs 3 and 6 of the Agreement, Novell is entitled to such relief, in addition to the other remedies provided by the Agreement.) If, by October 17, 2005, I have not received notice that Novell has filed a

motion for an injunction against Merkey, then I will conclude that Novell no longer considers the Agreement's confidentiality (to the extent that any confidentiality still exists) to be of value to Novell, and that there is therefore no point in me continuing to omit the Agreement from my website as a courtesy to Novell.

I thank you for your attention to this matter.

Yours truly,

Alan P. Petrofsky

cc: Michael A. Jacobs, Morrison & Foerster LLP,  
425 Market Street, San Francisco, California,  
by hand delivery;  
Pamela Jones, Groklaw.com c/o Domains by Proxy, Inc.,  
15111 N Hayden Rd Ste 160 PMB 353, Scottsdale AZ 85260,  
by Certified Mail, article number 7005 1160 0004 0082 1061;  
Jeffrey Vernon Merkey,  
1058 E 50 S, Lindon UT 84042,  
by Certified Mail, article number 7005 1160 0004 0082 1078.

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\$Id: Merkey-other-2005-09-16-letter.html,v 1.4 2005/09/23 21:19:51 al Exp \$



# Exhibit 5

Date: Fri, 23 Sep 2005 10:41:16 -0600  
From: "Jim Lundberg" <JFLUNDBERG@novell.com>  
To: "Alan Petrofsky" <al@petrofsky.org>  
Subject: Your Letter of September 16, 2005

Dear Mr. Petrofsky,

I am in receipt of your letter dated September 16, 2005. Unfortunately, I was out of the office traveling on business last week and early this week and just received your letter yesterday. In an effort to provide you with an expedited response, I am sending this to your email address and will also include a copy by U.S. Mail.

In response to your specific questions:

1- To the best of my knowledge, no Novell representative met with Mr. Merkey on September 8, 2005. Although Mr. Merkey has contacted me by phone on several occasions, at no time did we discuss your name.

2- To the best of my knowledge, Novell has never considered "coming after" you.

3- Novell did not "authorize" Mr. Merkey to do anything on Novell's behalf, let alone "serve any subpoena."

4- While Novell is still considering possible recourse for what Novell believes is a breach by Mr. Merkey of the Settlement Agreement, Novell still considers the Settlement Agreement to be highly confidential and strongly disagrees with many of the allegations in Mr. Merkey's Complaint.

Please contact me if you have additional questions concerning the matter.

Sincerely,

Jim F. Lundberg  
Associate General Counsel

...

# Exhibit 6

Date: Wed, 28 Sep 2005 15:51:43 -0700  
From: Al Petrofsky <Al@Petrofsky.org>  
To: Jim F Lundberg <JFLundberg@Novell.com>  
Subject: Confidentiality of the 1998 Novell/Merkey Settlement Agreement

Alan P. Petrofsky  
Al@Petrofsky.org  
3618 Alameda Apt 5  
Menlo Park CA 94025

September 28, 2005

BY EMAIL AND BY U.S. MAIL

Jim F. Lundberg  
JFLundberg@Novell.com  
Legal Department, F331  
Novell, Inc.  
1800 S Novell Pl  
Provo UT 84606

Re: Confidentiality of the 1998 Novell/Merkey Settlement Agreement

Dear Mr. Lundberg:

I have received your letter dated September 23, 2005.

Thank you for confirming the falsity of some of the ridiculous statements by Jeffrey Vernon Merkey (hereinafter "Merkey") about Novell's recent activities.

Regarding Merkey's numerous and flagrant breaches of the 1998 Settlement Agreement's confidentiality provisions, I wrote in my September 16 letter that:

I would also like to know whether or not Novell will be seeking "immediate injunctive relief" to enforce the confidentiality-keeping obligations of the Agreement's other parties. (Pursuant to paragraphs 3 and 6 of the Agreement, Novell is entitled to such relief, in addition to the other remedies provided by the Agreement.) IF, by October 17, 2005, I have not received notice that Novell has filed a motion for an injunction against Merkey, then I will conclude that Novell no longer considers the Agreement's confidentiality (to the extent that any confidentiality still exists) to be of value to Novell, and that there is therefore no point in me continuing to omit the Agreement from my website as a courtesy to Novell.

In your response, you wrote:

While Novell is still considering possible recourse for what Novell believes is a breach by Mr. Merkey of the Settlement Agreement, Novell still considers the Settlement Agreement to be highly confidential and strongly disagrees with many of the allegations in Mr. Merkey's Complaint.

While I appreciate any information you may wish to provide to me about Novell's positions, I feel I had best reiterate that, on this point, I will ultimately be drawing my conclusions about Novell's intent by

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Letter from Petrofsky to Lundberg                      September 28, 2005                      Page 2

looking to Novell's actions in court, rather than to the statements in your letter.

Let me further elaborate:

In June, I made some public statements about the Settlement

Agreement. I find some discomfort in the current situation, in which members of the public are not able to verify the accuracy of my statements by simply going to my website and reading the agreement for themselves.

I have, of course, never been under any obligation to try to keep the agreement confidential. Nevertheless, as I wrote to you in my June 23 email, I removed the agreement from the scofacts.org website as a courtesy to the agreement's three extant non-Merkey parties:

In consideration of the apparent desire by Novell, Darren Major, and Larry Angus that the terms of the agreement not become widely known, I have ceased distributing the settlement agreement that was entered into between and among them and Jeffrey Merkey and Timpanogas Research Group on August 18, 1998

Soon thereafter, I decided, based on their history with Merkey, that I really had no desire to do any favors for Mr. Major or Mr. Angus. Thus, for over three months, I have been keeping the agreement off my website solely as a favor to Novell.

I am willing to continue to do so, if Novell truly believes that there is value in preserving whatever may remain of the agreement's confidentiality. However, if Novell does not believe that there is remaining confidentiality that is valuable enough for Novell to bother availing itself of the mechanisms provided by the agreement for its enforcement, then I am not going to continue troubling myself on Novell's behalf.

If, by October 17, 2005, I have not received notice that Novell has filed a motion for an order enjoining Merkey from making any further breaches of his confidentiality obligations, then I will resume publishing the Settlement Agreement on the scofacts.org website.

Yours truly,

Alan P. Petrofsky

# Exhibit 7

(Back to [Scofacts Other Cases page](#))

## Jeff Merkey, Litigious Lunatic

Jeff Merkey launched the vexatious but humorously deranged [www.merkeylaw.com](http://www.merkeylaw.com) website on June 15, 2005, announcing that:

This site tracks the Federal Lawsuits filed in US District Court, District of Utah against Pamela Jones, Groklaw, Finchhaven, Pagan Savage, Merket.net, Slashdot, Bruce Perens, IP-Wars.net and John Does 1 - 200. This lawsuit is scheduled to be filed June 22, 2005. Pamela claims she is not an attorney, but she probably needs to get one. The lawsuit seeks 100 million dollars in damages for civil rights violations, defamation, and two dozen other torts from each defendant. PJ's offspring are also named in the complaint and her co-conspirators, as well as other sites who have perpetrated lies that Jeff Merkey works for SCO, etc. ad naseum.

Yes, 100 million dollars, "from each defendant", times 200+ defendants, equals ... over TWENTY BILLION DOLLARS! Four times the risibility of [SCO's demands!](#)

The complaint he ultimately filed, on June 21, left out the SCO-topping damages figure, but it contained enough references to SCO and to prominent anti-SCO site [groklaw.net](http://groklaw.net) that it was of interest to many SCO followers. For that reason, I (Al Petrofsky) placed a copy of it on this site. That, in turn, led to Merkey accusing me of aiding Communist Czechoslovakian enemies of the United States.

This litigation probably won't reveal much about SCO. Why is it here? Well ..., on June 22, because people were curious, I made the complaint and its exhibits available at a couple of [scofacts URLs](#) (for which I did not bother to add links from any other [scofacts page](#)), and I posted the URLs to the discussions of the case that were occurring on Yahoo.com and LWN.net. On June 23, I removed Exhibit 2, as a courtesy to Novell, Inc., Darren Major, and Larry Angus (see [the email](#)). On July 12, Merkey announced on [www.merkeylaw.com](http://www.merkeylaw.com) that I had "violated a Federal Court Order", that "This conduct amounts and borders on espionage, treason, and domestic terrorism", and that I would be added as a defendant in his suit. I then, on July 14, added [the email](#) to this site, to let people know what had actually transpired.

Merkey then added me as a defendant on July 20, and I filed a [memorandum](#) in the case on August 9. Because there's no "Scofactsfacts" to cover the case, I added this page on August 10, for the benefit of anyone who is interested in the case, or who is in danger of falling for Merkey's ability to appear sane for limited periods of time.

### 2005-10-20 UPDATE:

Merkey dropped his case on September 27. Although 98 days had passed since he had filed the case, no one had yet responded to his complaint, because he had never bothered to serve process upon any of the defendants. He had started to make a Rule 4(d)(2) request that would have obligated me to waive service of process, but he was apparently unwilling or unable to make the seventy-four cents cash outlay that would have been required to complete his request (see the [Other Communications](#) section). I had only been named as a defendant for the last 69 days of the case, but there was one defendant who was continuously named throughout all the amendments and partial dismissals: Pamela Jones of [groklaw.net](http://groklaw.net). Merkey's own filings state that, since before the case began, he had known of three addresses (in Hartsdale NY, White Plains NY, and Norwalk CT) at which he had some reason to believe Jones could be reached (see exhibits 2 and 3 to [his affidavit](#)). However, he never bothered to take ten seconds to look up [groklaw.net](http://groklaw.net)'s official correspondence address (in

Scottsdale AZ), nor did he ever attempt to send a summons or waiver request to any of the three addresses he already had. Instead, he moved for leave to send out subpoenas to various third parties commanding them to provide Merkey with even more Jones addresses. (The court had yet to rule on this motion when Merkey dropped the case.)

As mentioned above, on June 23 I removed from this site an old settlement agreement, which Merkey had filed a couple of days earlier as an exhibit to his complaint. On October 20, after determining that the removal had been pointless (see [my correspondence with Novell](#)), I restored the item. Below you can now find a complete set of the records in this case.

In 1998, the Fourth Judicial District Court of Utah found that Merkey "regularly exaggerates or lies in his comments to others about events happening around him. It is as though he is creating his own separate reality" (see [1998-01-30 ruling, p. 20](#), from the TRG case). From the nonsense Merkey has written this year in [his court papers](#), in [his email](#), and on [his merkeylaw.com website](#), it is apparent that in the last seven years there has been no improvement in the gulf between his words and reality.

Reading Merkey's ridiculous claims in this case, one might think that there was no danger of anyone ever mistaking Merkey for a rational human being, and certainly no danger of anyone thinking that statements by Merkey could ever be relied upon for any purpose other than entertainment. Unfortunately, however, people have really made such misjudgments, and have done so as recently as June 28, 2005. At a hearing on that date in [U.S. v. Mooney et al.](#), prosecutor Veda Travis actually saw fit to call Merkey as a witness for the United States. In an ultimately unsuccessful attempt to have James Mooney imprisoned for several months pending trial, Travis presented Merkey's testimony to the court as if it were evidence of something in the real world.

In the future, I hope that the information on this page will help people avoid making similar serious misjudgments about Merkey.

## **Merkey v. Perens et al**

JEFFREY VERNON MERKEY,  
Plaintiff,

vs.

BRUCE PERENS a.k.a OSRM (terminated 2005-07-20),  
PAMELA JONES a.k.a. GROKLAW.COM,  
GRENDDEL a.k.a. PAGANSAVAGE.COM (terminated 2005-08-16),  
MATT MERKEY a.k.a MERKEY.NET (terminated 2005-08-16),  
BRANDON SUIT a.k.a. MERKEY.NET (terminated 2005-08-16),  
JOHN SAGE a.k.a. FINCHHAVEN.COM (terminated 2005-08-16),  
MRBUTTLE a.k.a. IP-WARS.NET,  
SLASHDOT.ORG (terminated 2005-07-20),  
DOES 1 through 200,  
YAHOO SCOX members [atul666](#) and [saltydogmn](#) (apparently added 2005-07-20 and terminated 2005-08-23, but never recognized on the official docket)  
JEFF CAUSEY a.k.a. IP-WARS.NET (added 2005-07-20),  
and AL PETROFSKY a.k.a. SCOFACETS.ORG (added 2005-07-20),  
Defendants.

Electronic Frontier Foundation,  
American Civil Liberties Union of Utah Foundation,  
Amici.

Case 2:05-CV-0521-DAK-SA, [United States District Court, District of Utah](#), Judge Dale A. Kimball,



Magistrate Judge Samuel Alba.

(Although Perens was dropped from the list of defendants on 2005-07-20, the official docket still has the caption as "Merkey v. Perens et al")

**Docket Synopsis** (links jump to entries in the full docket listing below):

- **Pleadings:** #1 Complaint; #4 Sealed exhibit; #7 Amended complaint; #16 Rule 41(a)(1)(i) notice (partial dismissal by plaintiff); #26 Second 41(a)(1)(i) notice; #24 Second amended complaint; #27 Third 41(a)(1)(i) notice; #27 Final 41(a)(1)(i) notice.
- **Motions:**
  - #8 Merkey, Expedited discovery; #6 Support memo; #10 Petrofsky's opposition; #11 Reply; #18 EFF's opp.; #9 Hearing notice; #20 Minutes & transcript; #25 Support affidavit.
  - #12 EFF, Amicus leave; #15 Merkey's opp.; #17 Granted.
- **Misc. Orders:** #2 Seal exhibit; #5 Magistrate referral, non-dispositive; #19 Magistrate referral, full R&R; #21 Admission PHV of Zimmerman for EFF; #22 of McSherry/EFF; #23 and of Opsahl/EFF; #29 Confirmation of voluntary dismissal.
- **Misc.:** #3 Docket Modification: exhibit sealed; #13 PHV Notice; #14 Docket Mod. re: 13.

Below is an unofficial docket listing with links to local copies of documents. (See also the official docket listing.) Except where noted, all pdf files in the listing below are byte-for-byte copies of official digital records obtained from the court (for a fee) through ecf.utd.uscourts.gov:

## 2005-06-21 #1 COMPLAINT

"VERIFIED COMPLAINT" [pdf] and Exhibits 1 & 2 [pdf].

Note: The court has ceased distributing these two original pdf files and now distributes a single file [pdf] that contains the complaint and exhibit 1, but not exhibit 2 (see docket item #3, and the Novell correspondence).

## 2005-06-22 #2 ORDER

"ORDER" [html] [pdf] (sealing Exhibit #2 of the Complaint)

## 2005-06-22 #3 Modification of Docket

Docket text: "Modification of Docket: Error: complaint contained sealed/protected information. Correction: Clerk removed the sealed/protected portion of the complaint per order no. 2 and re-attached redacted document image. re #1 Complaint."

## 2005-06-22 #4 \*\*\*SEALED DOCUMENT\*\*\*

Docket text: "\*\*\*SEALED DOCUMENT\*\* Exhibit #2 re #1 Complaint, filed by Plaintiff Jeff V Merkey."

Note: this can be found under docket item #1.

## 2005-07-20 #6 Memorandum

"PLAINTIFF JEFFREY VERNON MERKEY'S EX-PARTE MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO CONDUCT EXPEDITED DISCOVERY" [pdf]

## 2005-07-20 #7 AMENDED COMPLAINT

"AMMENDED [sic] COMPLAINT" [pdf]

## 2005-07-20 #8 EX-PARTE MOTION

"PLAINTIFF JEFFREY VERNON MERKEY'S EX-PARTE MOTION TO CONDUCT EXPEDITED DISCOVERY" [pdf]

## 2005-07-21 #5 ORDER REFERRING CASE

Docket text: "ORDER REFERRING CASE to Magistrate Judge Samuel Alba under 28:636 (b)(1)(A), Magistrate to hear and determine all nondispositive pretrial matters.. Signed by Judge Dale A. Kimball on 07/21/05."

## 2005-08-03 #9 NOTICE OF HEARING ON MOTION

Docket text: "NOTICE OF HEARING ON MOTION re: #8 MOTION to Expedite Discovery: Motion Hearing set for 8/17/2005 11:30 A.M. in Room 248 before Magistrate Judge Samuel Alba."

2005-08-09 #10 MEMORANDUM

"UNSERVED DEFENDANT ALAN P. PETROFSKY'S MEMORANDUM IN OPPOSITION TO PLAINTIFF JEFFREY VERNON MERKEY'S EX-PARTE MOTION TO CONDUCT EXPEDITED DISCOVERY" [html] [pdf]

2005-08-12 #11 REPLY

"REPLY TO PETROFSKY'S OPPOSITION TO MERKEY'S EX-PARTE MOTION TO CONDUCT EXPEDITED DISCOVERY" [pdf]

2005-08-15 #12 MOTION

"NOTICE OF EMERGENCY MOTION AND EMERGENCY MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN OPPOSITION TO PLAINTIFF'S EX PARTE MOTION TO CONDUCT EXPEDITED DISCOVERY" [html] [pdf] [unofficial pdf from EFF (sans exhibit)] (filed by EFF and ACLU)

2005-08-15 #13 NOTICE OF REQUIREMENTS

Letter [pdf]. Docket text: "NOTICE OF REQUIREMENTS for appearance phv mailed to attorney Kurt Opsahl, Matt Zimmerman, and Corynne McSherry, for Movant Electronic Frontier Foundation"

2005-08-16 #14 Modification of Docket

Letter [pdf] (duplicate of #13). Docket text: "Modification of Docket: Error: Document image did not successfully attach to docket #13. Correction: Attached document image to docket #13 and to this event for viewing. re #13 Notice PHV Requirements."

2005-08-16 #15 MEMORANDUM

"MEMORANDUM IN OPPOSITION TO ELECTRONIC FRONTIER FOUNDATION AND AMERICAN CIVIL LIBERTIES UNION OF UTAH MOTION FOR LEAVE TO FILE AMICUS BRIEF" [pdf] (filed by Merkey)

2005-08-16 #16 NOTICE

"PLAINTIFF JEFFREY VERNON MERKEY'S NOTICE OF DISMISSAL" [pdf] (re: Grendel, John Sage, Matt Merkey, and Brandon Suit)

2005-08-17 #17 ORDER

"PROPOSED [and adopted] ORDER GRANTING LEAVE TO ELECTRONIC FRONTIER FOUNDATION AND AMERICAN CIVIL LIBERTIES UNION OF UTAH TO FILE AMICUS BRIEF" [pdf] Signed by Judge Samuel Alba on 8/16/05.

2005-08-17 #18 Amicus Curiae BRIEF

"AMICUS BRIEF OF ELECTRONIC FRONTIER FOUNDATION AND AMERICAN CIVIL LIBERTIES UNION OF UTAH IN OPPOSITION TO PLAINTIFF'S EX PARTE MOTION TO CONDUCT EXPEDITED DISCOVERY" [html] [pdf] [unofficial pdf from EFF] (the brief refers to four attachments, which are missing from this docket item but can be found in item #12)

2005-08-17 #20 Minute Entry

Docket text: "Minute Entry for proceedings held before Judge Samuel Alba: The plaintiff was present, pro se. The Court noted the filings in the case to date. The Court addressed issues with regard to service of process upon the defendants and inquired as to what efforts have been made by the plaintiff. The Plaintiff made arguments to the Court in support of his Motion for Expedited Discovery. The Court requires additional information of the plaintiff and directs that such be filed in the form of an affidavit with exhibits filed in support thereof. The plaintiff's affidavit is to be filed with the Court no later than 8/23/05. Motion Hearing held on 8/17/2005 re #8 MOTION to Expedite Discovery filed by Jeff V Merkey,. (Court Reporter Laura Robinson.)"

**Transcript:** "Motion for Expedited Discovery" [html] [unofficial pdf].

2005-08-18 (Unnumbered)

Docket text: "Judge Samuel Alba no longer assigned to case under (b)(1)(A). New order of reference to be docketed under (b)(1)(B)"

2005-08-18 #19 ORDER REFERRING CASE

Docket text: "ORDER REFERRING CASE to Magistrate Judge Samuel Alba under 28:636 (b)(1)(B), Magistrate to handle case up to and including R&R on all dispositive matters.. Signed by Judge Dale A. Kimball on 08/18/05" ("R&R" = Report and Recommendations. "28:636 (b)(1)(B)" = section 636(b)(1)(B) in Chapter 43 of title 28 of the United States Code.)

2005-08-18 #21 MOTION/ORDER

Motion and "ORDER OF ADMISSION" [pdf] (of Matthew J. Zimmerman, for EFF).

2005-08-18 #22 MOTION/ORDER

Motion and "ORDER OF ADMISSION" [pdf] (of Corynne McSherry, for EFF).

2005-08-18 #23 MOTION/ORDER

Motion and "ORDER OF ADMISSION" [pdf] (of Kurt B. Opsahl, for EFF).

2005-08-23 #24 2nd AMENDED COMPLAINT

"SECOND AMMENDED [sic] COMPLAINT" [pdf]

2005-08-23 #25 AFFIDAVIT

"AFFIDAVIT IN SUPPORT OF MERKEY'S EX-PARTE MOTION TO CONDUCT EXPEDITED DISCOVERY" [part 1 pdf] [part 2 pdf] (Part 1 comprises the affidavit, exhibits 1 to 3, and the first 26 pages of exhibit 4. Part 2 is the remaining 50 pages of exhibit 4, and the certificate of service.)

2005-08-23 #26 2nd NOTICE

"PLAINTIFF JEFFREY VERNON MERKEY'S SECOND NOTICE OF DISMISSAL" [pdf] (re: atul666 and saltydogmn)

2005-09-12 #27 3rd NOTICE

"PLAINTIFF JEFFREY VERNON MERKEY'S THIRD NOTICE OF DISMISSAL" [pdf] (re: Mrbuttle and Causey)

2005-09-27 #28 NOTICE

"PLAINTIFF JEFFREY VERNON MERKEY'S FINAL NOTICE OF DISMISSAL" [pdf]

2005-09-27 #29 ORDER

"PLAINTIFF JEFFREY VERNON MERKEY'S FINAL NOTICE OF DISMISSAL" [pdf] (stamped "SO ORDERED" and signed by Judge Kimball)

## Other Communications

- Merkeylaw.com: Merkey's lawsuit-related pronouncements appeared at Merkeylaw.com. The domain whois record shows that it was registered to Merkey's "Utah Native American Church" on 2005-06-14. Here are local archived copies of two pages that appeared there:
  - 2005-06-15: The initial homepage, announcing that he seeks billions of dollars in damages.
  - 2005-07-12: The announcement that Petrofsky, Causey, Yahoo, and LWN "have been added as defendants" (none of them had actually been added, but Petrofsky and Causey were added eight days later). Asserts that Petrofsky's conduct "amounts and borders on espionage, treason, and domestic terrorism".
- Merkey email: all email between Merkey and Petrofsky 2005-06-22 through 2005-09-29.
- 2005-08-25 "NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE FOR SUMMONS" [pdf] (a waiver form and a copy of the "SECOND AMMENDED [sic] COMPLAINT" were included with this)
- 2005-09-06 Letter re: "Waiver request for Merkey v. Jones et al." [html] [pdf] from Petrofsky.
- 2005-09-09 Voicemail "... Novell's coming after you ..." [transcript] [audio mp3], from Merkey.

- Novell Correspondence
  - 2005-09-16 [Letter re: "Vexation in Novell's name by Jeffrey Vernon Merkey" \[html\]](#) [\[pdf\]](#) from Petrofsky.
  - 2005-09-23 [Letter re: "Your Letter of September 16, 2005" \[email text\]](#) [\[letter pdf\]](#) from Lundberg.
  - 2005-09-28 [Letter re: "Confidentiality of the 1998 Novell/Merkey Settlement Agreement" \[email text\]](#) [\[letter pdf\]](#) from Petrofsky.

## Other Cases

### Novell v. Timpanogos Research Group et al., 97-0400339, Utah County

(note: "Timpanogas" was spelled with an "as" when TRG was incorporated, but it is spelled with an "os" on most of the court documents.)

The [docket listing \[pdf\]](#) for this trade secrets case goes on for over thirty pages. The case was ultimately settled before going to trial. The most significant ruling was [Judge Schofield's lengthy 1998-01-30 ruling \[html\]](#) [\[pdf\]](#) granting Novell's motion for a preliminary injunction. The appeals court declined to allow an interlocutory appeal of the injunction. The ruling includes several findings about Merkey's estrangement from reality. (It also contains interesting analysis of trade secrets law, and it is the first ruling by any state or federal court in the tenth circuit to adopt the doctrine of "inevitable disclosure", which is why the ruling was published, as 46 USPQ.2d 1197.) Merkey's initial response, made on the same day, was an amusing [letter about Schofield's "Mormon masters" \[pdf\]](#). Merkey later filed an Affidavit of Prejudice, which was the subject of [Judge Hansen's 1999-01-07 ruling \[pdf\]](#), which finds that Merkey's affidavit "fails to support any allegation of bias or prejudice with legal sufficiency".

### United States v. James Mooney et al., 2:05-cr-410, District of Utah

This is a federal drug felonies case regarding Mooney's peyote-related activities (much of the facts of which are uncontested) and whether or not such activities are indeed illegal for non-federally-recognized Indians. See [Judge Stewart's 2005-08-02 ruling \[pdf\]](#) for an account of the early developments in the case. Merkey testified against Mooney at his initial detention hearing on 2005-06-28 (see [the minutes \[html\]](#)). At the conclusion of the hearing, Magistrate Judge Alba ordered Mooney detained pending trial, but he also asked the defense to obtain more information for him about Mooney's history in state court, and he scheduled a hearing for one week later to consider reversing his detention decision. At that follow-up 2005-07-05 hearing, Alba reversed himself. The prosecution then appealed to Judge Stewart. Two days later, Stewart upheld Alba's second decision, and Mooney was released.

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[Scofacts](#) is not endorsed by the "SCO Group" Delaware corporation, nor by any of the registered owners of "SCO" trademarks.

\$Id: merkey.html,v 1.30 2005/10/20 14:02:02 al Exp \$

(Note: changes of note are noted on the [Changes](#) page.)