

Special Report

No one is safe from Ashcroft's enforcers

Bio-artist and geneticist indicted on charges of mail and wire fraud

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July 2, 2004—First he lost his wife, had his home, work, car and cat seized, then underwent 22 hours of interrogation and now Steven Kurtz, a founder of the internationally acclaimed Critical Art Ensemble and a University at Buffalo art professor, finds himself and Robert Ferrell, chairman of the University of Pittsburgh's Human Genetics Department, indicted Tuesday by a federal grand jury in Buffalo, NY, on charges of mail and wire fraud.

Kurtz, who uses biologicals in his unconventional art exhibits and demonstrations as a way of educating people about scientific issues, such as genetically modified food, and Ferrell, a respected geneticist, are accused of having illegally obtained relatively harmless bacteria—the types of bacteria often used by students in high school laboratory experiments.

Their crimes, according to U.S. Attorney Michael Battle, were that Ferrell used his account with American Type Culture Collection (ATCC) of Washington, DC, to order the materials for Kurtz, who as a private citizen was ineligible to order them himself, and passed them to Kurtz.

By their actions, the indictment alleges that the two professors defrauded both the University of Pittsburgh and ATCC that sold Ferrell the bacteria. Ferrell is alleged to have defrauded his university because he gave Kurtz the microbes worth about \$256 for free and didn't follow the university's written rules for handling and transporting such materials.

The indictment further alleges that ATCC is also a victim because Ferrell didn't follow its [material transfer agreement](#), which requires that shipped material only be used for research purposes in the recipient's laboratory.

If convicted, Kurtz and Ferrell could face up to 20 years each in prison.

Kurtz's attorney, Paul Cambria, said, "There was very obviously no criminal intent. The intent was to educate and enlighten."

Cambria suggested that the pursuit of such a minor case at the federal level was profoundly absurd. "If the University of Pittsburgh feels that there was a contract breach, then their remedy is to sue Steve for \$256 in a civil court."

Federal prosecutors are still attempting to cast the issue as one of public health and safety. In a public press conference called after the indictments were handed up, Battle and Assistant US Attorney William Hochul repeatedly alluded to "dangerous" and "bio-hazardous material," even though the charges have nothing to do with such issues, and scientists universally regard the materials in question as safe.

Supporters believe the attempt to cast the \$256 technicality as a public health and safety issue is a face-saving measure by the government, which has already expended an enormous amount of time and money in their fruitless pursuit of this case.

The 46-year old Kurtz's troubles began in the early morning hours of May 10, when he awoke to find his wife, Hope, 45, beside him, unresponsive and he called 911. When paramedics arrived, Mrs. Kurtz was beyond help. An autopsy later determined that she died from cardiac arrest.

The paramedics noticed laboratory equipment and petri dishes in the Kurtz home and notified local authorities who, in turn, called in the FBI's Joint Terrorism Task Force. Kurtz was spirited out of his home and questioned for 22 hours. The house, his cat and car were seized. Biological samples for testing were taken from his home, along with his work, his papers, books from his library and his computer.

A week later, when the samples proved harmless and there was no evidence his wife's death was a result of anything in the house, her body, the house, car and cat were released to him. (See [Federal Prosecutors Seek to Indict Art Professor as 'Bioterrorist'](#))

Instead of apologizing to Kurtz, federal prosecutors summoned him and up to 11 others, most associated with CAE, to appear before a grand jury. Initially, it was thought that they might try to indict him as a national security threat under a USA PATRIOT Act provision that prohibits the possession of "any biological agent, toxin or delivery system . . . not reasonably justified by a prophylactic, protective, bona fide research or other peaceful purpose."

The laws under which the indictments were obtained—Title 18, United States Code, sections 1341 and 1343, covering mail and wire fraud—are normally used against those defrauding others of money or property, as in telemarketing schemes.

Outraged by the government's behavior, and now the indictments, the international art, scientific and academic communities have rallied to Kurtz and Ferrell. They have set up a [CAE Defense Fund](#) and have held rallies in Buffalo, San Francisco and Vienna, with more to come. A benefit will be held in London on July 9.

Supporters say the attempt to distort the nature of these biological agents or the intentions of Kurtz and Ferrell can only be understood as intimidation of artists and scientists whose ideas do not find favor with Attorney General John Ashcroft's Department of Justice. Many observers here and abroad see this case as part of an unmistakable pattern of the U.S. government's exploitation of alarm over "terrorism" to harass anyone who, in the post-9/11 world, expresses dissent.