

## THE ISSUES

The issues here are fundamental: freedom of speech, freedom of expression, and academic freedom. The case is precedent-setting, and will help determine whether anyone engaged in vital public discussion about the actions of their government can be criminalized merely for their ideas, in fundamental violation of the United States Constitution. This is a “test case” for how far the government can reach, unopposed, into our homes and public institutions to silence free speech, thought, and inquiry.

## THE CASE

In May 2004, the Joint Terrorism Task Force illegally detained artist and SUNY Buffalo professor Steven Kurtz of Critical Art Ensemble (CAE). They seized documents, computers, and materials used in four of CAE’s projects, including scientific equipment for testing genetically altered food. All of the projects had been exhibited or were scheduled for exhibition in cultural institutions such as the Massachusetts Museum of Contemporary Art and the London Museum of Natural History. All of the materials are safe, legal and commonly used for science education in universities and high schools. The NY State Commissioner of Public Health determined that none of the materials posed any sort of risk to people or the environment. Nevertheless, today Steven Kurtz faces a possible 20 years in prison in a politically-motivated prosecution that threatens all Americans’ Constitutional rights.

## CRITICAL ART ENSEMBLE

CAE is a collective of internationally acclaimed artists who work in public, educational, academic and art contexts. Their writings have been translated into 18 languages, and their work has been covered by most major art journals, including *Artforum*, *Kunstforum* and *The Drama Review*, which dedicated a special section to CAE in 2001. For almost two decades CAE has produced and exhibited art that examines questions surrounding information, communications, and bio technologies. In participatory theater events, CAE publicly and legally perform basic scientific processes to explain and demystify them. Audiences of all ages who participate in CAE events walk away with a clearer understanding of the issues surrounding genetically altered foods, reproductive technologies and bio-warfare. CAE’s projects are recognized by artists, scientists, and institutions worldwide as thorough, investigative, educative and safe. The materials they use are strictly non-hazardous, can be legally obtained by anyone, and are commonly used in undergraduate and high school biology labs.

## WHAT YOU CAN DO TO HELP

Without the efforts of thousands of people who raised the money to pay the legal bills and created the media surrounding the case, Steve Kurtz would probably be in jail today awaiting trial. You can help us defeat the DoJ’s abuse of power in this precedent-setting case and safeguard our Constitutional rights by:

**1) Donating to the CAE Trial Fund.** Currently the CAE Defense Committee, in consultation with the defense attorneys, estimates we are at least \$60,000 short of being able to pay for Dr. Kurtz’s defense lawyers through trial. To donate:

Via PayPal - please visit: [caedefensefund.org/donate](http://caedefensefund.org/donate)

By check - please make payable to “CAE Trial Fund” and mail to:

CAE Trial Fund

c/o Hallwalls Contemporary Arts Center

341 Delaware Ave, Buffalo NY, 14202

**2) Publicizing this case in any way you can.** Visit [caedefensefund.org/support](http://caedefensefund.org/support) to download a banner for your website, a flyer like this to hand out, and for information about getting a copy of *Strange Culture*, Lynn Hershman Leeson’s award-winning documentary about the case, to show in your community. The CAE Defense committee can help facilitate teach-ins, fundraisers, and other events by providing speakers and information.

**3) Publicizing this case via the news media.** We are still hoping for a rigorous investigative story into the motivations and unspoken politics behind the DoJ’s determination to prosecute this “case.”

**4) Offering expert testimony.** We need curators, contemporary art historians, and theorists to testify to the cultural legitimacy of CAE’s work. We also need scientists in the fields of biology, microbiology, and molecular biology to offer expert testimony, particularly in the areas of laboratory procedures and microbiology safety issues.

**5) Helping mobilize support for a large demonstration and consciousness-raising projects in Buffalo, NY, during the trial.**

**6) Joining our low-frequency email list so we can let you know about developments in the case and how you can help!** Subscribe by sending an email to: [CAE\\_Defense-subscribe@yahoogroups.com](mailto:CAE_Defense-subscribe@yahoogroups.com), or visit: [groups.yahoo.com/group/CAE\\_Defense](http://groups.yahoo.com/group/CAE_Defense)

FOR MORE INFORMATION:

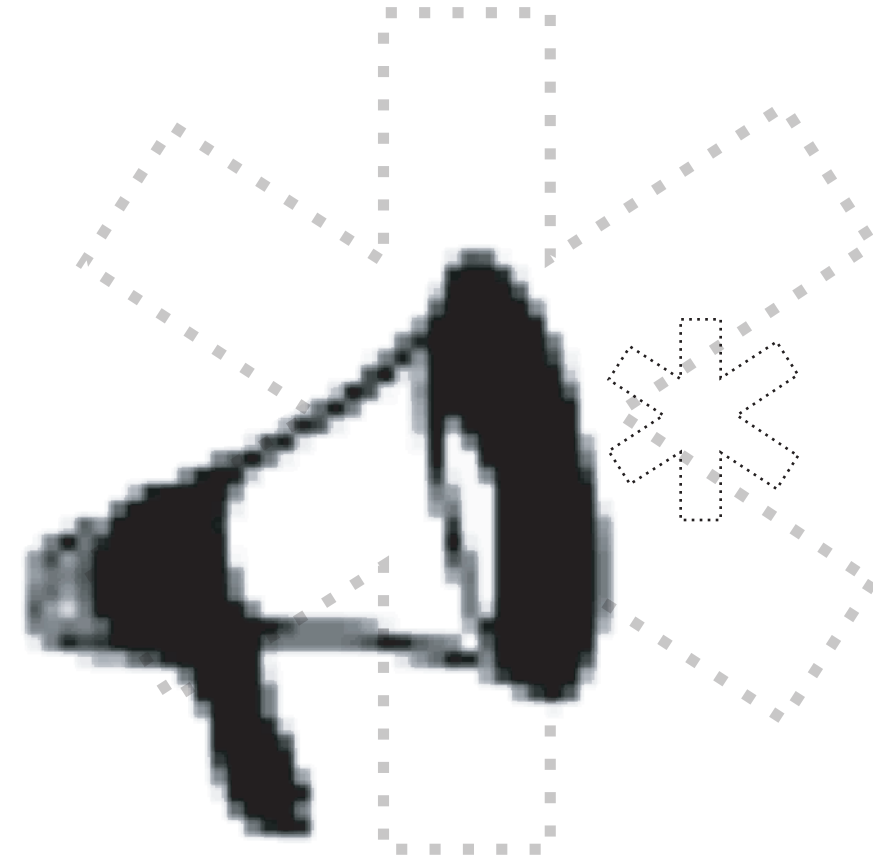
[www.caedefensefund.org](http://www.caedefensefund.org)

To Donate to the CAE Trial Fund:

[caedefensefund.org/donate.html](http://caedefensefund.org/donate.html)

Contact: [media@caedefensefund.org](mailto:media@caedefensefund.org)

critical art is under attack  
**defend civil liberties**



Your help is needed to fight the criminalization of art and free speech.

Turn over to see how you can help

[www.caedefensefund.org](http://www.caedefensefund.org)

BACKGROUND TO THE CASE

In May 2004, Steve Kurtz and his wife Hope were preparing an art project about genetically modified agriculture for the Massachusetts Museum of Contemporary Art, when Hope died of heart failure. Police who responded to Kurtz’s distressed 911 call deemed their art materials suspicious and called the FBI. As part of their internationally exhibited art practice, the Kurtzes sometimes worked with biological specimens and had a small home lab and several petri dishes containing three harmless bacteria cultures. As Kurtz explained, the materials had been safely displayed in museums and galleries throughout Europe and North America with absolutely no risk to the public. The next day, however, Kurtz was illegally detained for 22 hours by agents from the FBI and Joint Terrorism Task Force on suspicion of “bioterrorism.” Meanwhile, agents from numerous federal law enforcement agencies – including five regional branches of the FBI, the Joint Terrorism Task Force, Homeland Security, the Department of Defense, and the Buffalo Police, Fire Department, and state Marshall’s office – raided Kurtz’s home at gunpoint in Hazmat suits, seizing art materials, books, computers, manuscripts, his cat, and even his wife’s body from the county coroner for further analysis. A week later, only after the Commissioner of Public Health for New York State had tested samples and announced that nothing in the home posed any sort of public or environmental health or safety risk, was Kurtz allowed to return home and to recover his wife’s body. To this day, the FBI has refused to return most of the tens of thousands of dollars worth of impounded materials, including the manuscript for a book Kurtz was working on.

ARTIST FACES POSSIBLE 20 YEAR SENTENCE UNDER USA PATRIOT ACT

On June 29, 2004, a federal Grand Jury charged Kurtz, not with “bioterrorism,” as listed on the Joint Terrorism Task Force’s original search warrant and subpoenas, but with 2 counts each of federal criminal “mail fraud” and “wire fraud.” Although these are a far cry from the charges originally sought by the District Attorney, under the USA PATRIOT Act they, too, now carry a possible sentence of up to 20 years in prison. Also indicted was Dr. Robert Ferrell, Professor of Genetics at the University of Pittsburgh’s Graduate School of Public Health, and a collaborator on several of CAE’s projects. The charges concern technicalities of how Ferrell helped Kurtz obtain \$256 worth of harmless bacteria for one of CAE’s art projects. The laws under which the indictments were obtained (Title 18, United States Code, sections 1341 and 1343) are normally used against those defrauding others of money or property, as in telemarketing schemes. Because these laws are written so broadly, they have historically been used selectively against political dissidents, beginning with Marcus Garvey. In October 2007, Dr. Ferrell, who suffers from incurable lymphoma and has suffered three strokes since his indictment, pleaded "guilty" to lesser charges rather than face a prolonged trial.



A “CRIME” WITHOUT A VICTIM

Having wasted millions of taxpayer dollars and failing to produce any evidence of “bioterrorism,” the government is now claiming that Ferrell used his contract through the University of Pittsburgh to purchase the samples from American Type Culture Collection (ATCC), which he gave to Kurtz, thereby “defrauding” the University and ATCC. If true, this would constitute a minor contract discrepancy concerning \$256 of harmless materials, to be settled between the parties involved. But neither the University of Pittsburgh, nor ATCC, nor any state authorities, have brought any complaint against Ferrell or Kurtz! In fact, scientists frequently share materials in this manner because such academic collaboration is necessary for research.

A POLITICALLY MOTIVATED PROSECUTION

This is the first time in the history of the federal courts that the Department of Justice has ever tried to prosecute the alleged breaking of a material transfer agreement as federal mail fraud. The interpretation of wire and mail fraud being used by the federal government in this case is so radical as to make incorrectly filling in a manufacturer’s warranty into a federal crime. Furthermore, the Department of Justice is going far outside its own guidelines as clearly stated in its *Prosecution Policy Relating to Mail Fraud and Wire Fraud*: “Prosecutions of fraud ordinarily should not be undertaken if the scheme employed consists of some isolated transactions between individuals, involving minor loss to the victims, in which case the parties should be left to settle their differences by civil or criminal litigation in the state courts.”

According to affidavits obtained by Kurtz’s lawyer, government agents misled a judge to obtain search warrants for Kurtz’s home. The judge was never told of Kurtz’s complete, cooperative and easily verifiable explanation about the harmless bacteria he used for his artwork, or that this material had been frequently exhibited in museums and art galleries with no risk to the public, or of the fact that Kurtz tasted the *Serratia* in one of the petri dishes in front of an officer to prove it was harmless. Also, in a blatant and illegal use of racial profiling, the judge was told of Kurtz’s possession of a photograph with Arabic writing beside it, but

not of the photograph’s context: an invitation to an art exhibition at the Massachusetts Museum of Contemporary Art! The photograph, by The Atlas Group, was one of several exhibited pieces pictured on the invitation.

DANGEROUS PRECEDENT

If the DoJ wins this case, it will mean that any discrepancy in a *civil* contract that involves the Internet or mail (such as incorrectly filling in and mailing a warranty card) could be prosecuted as a *federal* crime, *punishable by up to 20 years in prison*. The government’s power of selective prosecution would be almost unlimited. This would give the DoJ the means to truly enforce its scheme of “preemptive justice.”

“It’s really going to have a chilling impact on the type of work people are going to do in this arena, and other arenas as well,” noted Stephen Halpern, a SUNY Buffalo law professor who specializes in Constitutional law. Professors and staff from the University of California system express similar fears. “We are both extremely concerned and disturbed that the prosecution of the CAE members and research colleagues is continuing.... We see here a pattern of behavior that leads to the curtailing of academic freedom, freedom of artistic expression, freedom of interdisciplinary investigation... freedom of knowledge accumulation and reflection, and freedom of bona fide and peaceful research.”

“Kurtz’s materials are politically, not physically, dangerous,” said Mary-Claire King, the University of Washington geneticist who first proved the existence of a gene for hereditary breast cancer. “They [Steve Kurtz and the CAE] recreate [scientific] ideas using their own way of imaging, and then say, ‘Maybe you’d like to look at it this way.’ To me, that’s teaching. It does not seem to me to threaten homeland security. In fact, I would be threatened to live in a homeland in which that was perceived to be a threat.”

CAE was using the bacteria concerned in a project commissioned by the London-based Arts Catalyst and produced in consultation with scientists from the Harvard-Sussex project, which critiques the history of germ warfare programs, including the Bush Administration’s earmarking of billions of dollars to erect high-security laboratories around the country. Like CAE, many eminent scientists view these programs as a recipe for catastrophe. “I’m concerned about them from the standpoint of science, safety, security, public health and economics,” writes Dr. Richard Ebright, lab director at Rutgers University’s Waksman Institute of Microbiology and a Howard Hughes Medical Institute investigator. “They lose on all counts.” (www.nytimes.com/2004/06/29/science/29cont.html)