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COMMENTARY

Esmonde: Kurtz's case provides view of Big Brother

By **Donn Esmonde**
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He is another casualty of 9/11. No building collapsed around Steven Kurtz. No airplane struck his place of work. Kurtz is not that kind of casualty.

He is a casualty of the way the world changed. Kurtz is an art professor at UB. He uses harmless bacteria in his work, which is displayed in public galleries. He is hardly a household name. But what happened to Kurtz matters to all of us. It matters to anyone who cares about the Constitution that protects us. It matters to all people who value — or take for granted — the right to say, to write, to read whatever they want.

The feds are going after Kurtz, charging him with mail fraud for buying \$200 worth of bacteria cultures in 2004 from University of Pittsburgh researcher Robert Ferrell. Kurtz was detained in a hotel room. His books, computers, e-mails and files were confiscated. The searches and seizures were greased by the USA Patriot Act.

Kurtz's story is a caution. It is a reminder that the fight for freedom is not always waged in distant lands, but sometimes inside our borders. It is a reminder that the rights we take for granted can slip through our fingers.

A federal judge next week can end a prosecution that morphed into a persecution. By dismissing a small offense that morphed into a big deal, Judge Richard Arcara can cut Big Brother down to size.

Kurtz is not a threat. The longer the government treats him as one, the less sense it makes.

“This is a test case for how intrusive the government can be under the new laws,” said Ed Cardoni, head of Hallwalls Contemporary Arts Center, who helped to raise \$250,000 for Kurtz's defense. “There is a rush to sacrifice many of our constitutional rights and err on the side of security.”

Kurtz was caught in the post-9/11 gears. He fell into the crack between security and paranoia — a crack that widened after planes hit the Twin Towers.

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Maybe you are reading this and thinking it is not a problem. It is not a problem because you do not, like Kurtz, order bacteria through the mail. You do not, like Kurtz, write articles criticizing the government's stockpile of biological weapons. You do not think you have anything to worry about. Think again.

Cardoni said that until the ACLU stepped in, prosecutors wanted to find bookstores that stocked Kurtz's writings. The next step was finding out who bought his books.

George Orwell, meet Steven Kurtz. I do not want government in my bedroom. I do not want government in my bookstore, either.

Authorities at first had reason for alarm. First responders called by Kurtz after his wife's death entered a house with its windows covered by aluminum foil. There was bacteria growing in petri dishes, a woman's corpse and books on the creation of biological weapons.

I can understand why — in the post- 9/11 world of anthrax scares and terrorist threats — that the next call was to the FBI.

I cannot understand why, four years later, Kurtz still is under the gun. Authorities soon learned that the bacteria was harmless, that Kurtz used it in his art and that his wife died of natural causes. Kurtz was — revealingly — not charged with bioterrorism, but with a minor offense. If Kurtz had a George W. Bush bumper sticker on his car, instead of anti-government diatribes on his bookshelf, the case might have been dropped long ago.

Maybe these things take on a life of their own. Maybe working for the Justice Department means never having to say you're sorry. But the longer this case drags on, the more the government looks not like the protector, but the threat.

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