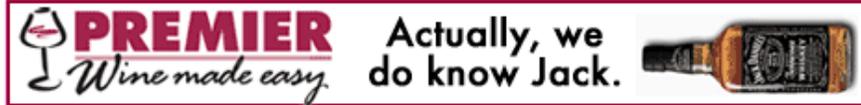


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JUDGE ASKED TO DISMISS FRAUD CHARGES AGAINST ARTIST

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Attorneys for Steven J. **Kurtz** have asked a federal judge to dismiss fraud charges that were lodged against the artist and art professor, following an FBI probe into his bacteria-based art work.

In an 81-page legal counterattack, defense lawyers accused prosecutors and federal agents of wrongly charging **Kurtz**, illegally questioning him and illegally searching his Buffalo home after the professor's wife died there last May. "We moved to have the case dismissed because, clearly, this is a real stretch by the government," said Paul J. Cambria, lead attorney for **Kurtz**. "There are all kinds of problems with the case, including the search of his home and the statements they took from him."

Kurtz, 46, a University at Buffalo professor, was accused last June of illegally scheming to obtain bacterial agents that he used in art exhibits sponsored by the Critical Art Ensemble. That group has protested policies of the federal government.

Robert Ferrell, 61, a researcher and professor at the University of Pittsburgh, also was accused of misusing his position to help **Kurtz** get the bacteria.

In court papers filed last week, Cambria said federal agents unfairly tried to characterize **Kurtz** as a "bioterrorist." He asked District Judge John T. Elfvig to dismiss the case for three main reasons:

No actual crime was committed. "This was a small amount of harmless bacteria that was going to be used in an art exhibit to make a political point," Cambria said. "If the company that sold the bacteria feels its conditions were violated, they can sue. That doesn't make it a federal crime."

Buffalo Police and federal agents illegally searched **Kurtz's** home, on College Street in Allentown, and his office computer at UB. Cambria said there was "no probable cause" for search warrants because police had no proof any crime had been committed.

Kurtz was questioned illegally, without being "fully advised" of his Miranda rights, by Buffalo Police and the Joint Terrorism Task Force of Western New York. Defense attorneys allege that **Kurtz** was illegally "detained" for more than a day after agents came to his home, one day after his wife, Hope, died May 11.

Prosecutors say they charged **Kurtz** and Ferrell because they blatantly committed mail and wire fraud, breaking regulations designed to keep bacterial agents from getting into the wrong hands. They have not charged either suspect with bioterrorism.

The indictments against **Kurtz** and Ferrell last June ignited protests from artists all over America and several other nations. Protesters -- including hundreds who gathered in downtown Buffalo -- accused the U.S. Justice Department of unfairly targeting **Kurtz** because he participated in art exhibits and wrote books that criticized the government.

"It's not an exaggeration to say artists all over the world are watching this case," Gregg Bordowitz, a Chicago artist and **Kurtz** friend, said last week. "To me, it's a test case on how far the government can go to repress artists and intellectuals."

Kurtz recalls events

Prosecutors said the legal issues raised by Cambria are not unusual in a criminal case. First Assistant U.S. Attorney Kathleen M. Mehlretter said the prosecution will continue. She said government agents and lawyers acted properly in the investigation.

"The government denies there was any illegal conduct by law enforcement," Mehlretter said. "A search warrant was legally obtained, charges were brought and the actions of law enforcement will be defended by our office."

In an affidavit, **Kurtz** said he was stressed because of his wife's death and felt he had no choice but to stay with the investigators and answer their questions.

"I was confronted by approximately eight armed agents and frisked. I was advised that I was not allowed to re-enter my home and that I needed to wait on the back stairs," **Kurtz** stated. "I felt

restrained by government agents and believed that I was not truly free to go anywhere without them . . . (One) of the government agents told me that I was in 'detention.' "

On the day after his wife's death, **Kurtz** said, agents accompanied him to a funeral home, to the airport to pick up a friend, to a drug store, a liquor store and to a restaurant. He said agents sat at a nearby table while he and his friend ate dinner. According to court papers, **Kurtz** and his friend -- Claire Pentecost, an artist -- spent that night in a hotel room paid for by the FBI, with agents sleeping in a nearby room.

Pentecost was a close friend to both **Kurtz** and his wife, and she flew into Buffalo because of Hope **Kurtz's** death, Cambria explained.

The defense papers offer the first glimpse of statements from a Buffalo Police detective and an agent with the terrorism task force, which led to the search warrant. Buffalo Detective Chris Dates said police were called to the home because the death of Mrs. **Kurtz** "appeared suspicious." Dates said he was surprised to find "an apparent biological laboratory" in the home and questioned **Kurtz** about it.

According to Dates, **Kurtz** explained he used bacteria in art shows, stating that it was harmless. To demonstrate, **Kurtz** stuck his finger into a petri dish of bacteria and then licked his finger.

Kurtz then gave Dates a printed invitation for one of his upcoming art shows, and the invitation had some Arabic writing and a depiction of an automobile on it, FBI Agent Michael R. Hickock said. The Arabic writing referred to "a past car bombing involving 25 pounds of TNT in the country of Morocco," Hickock said.

Cambria said federal agents used a series of harmless remarks and events to portray **Kurtz** as a dangerous "bioterrorist." The attorney said **Kurtz** is a nonviolent man who uses his art and writings to raise important questions about government.

Autopsy reviewed

Weeks after the death of Mrs. **Kurtz**, Buffalo Police said the death no longer appeared to be suspicious. They said an autopsy showed the 45-year-old woman apparently died of heart failure.

In an interview last week, Cambria said the FBI has since attempted to connect Mrs. **Kurtz's** death to the bacteria possessed by her husband.

"The original autopsy showed she died of natural, medical causes," Cambria said. "The FBI has just sent me a report showing they had U.S. military medical examiners review the autopsy, and they came to the same conclusion.

"The FBI tried to make a link between this bacteria and her death, and they fell flat."

Mehltretter declined to comment on Cambria's statements about the death.

William J. Hochul Jr., a terrorism prosecutor, took **Kurtz's** case after handling the "Lackawanna Six" case. Hochul said he won't discuss Cambria's claims until the government files its answers with the court Feb. 18.

UB spokeswoman Christine Vidal said **Kurtz** continues to teach art at the university. If convicted, **Kurtz** and Ferrell, a human genetics professor at the University of Pittsburgh, could face up to 20 years in prison.

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