

SUNY Buffalo art: It's not bio-terror, but is it illegal anyway?

By Al Matthews
CNN Headline News

(CNN) -- SUNY Buffalo art professor Steven Kurtz, his publisher, and their scientific and artistic colleagues are embroiled in court proceedings that began as a full federal bio-terrorism investigation, and ended up as charges of wire and mail fraud.

Kurtz was arraigned Thursday in Buffalo, New York. He entered a plea of not guilty on all counts. University of Pittsburgh scientist Robert Ferrell, chairman of the Human Genetics Department, faces the same charges but was not present to enter a plea, citing illness.

Neither prosecution nor defense attorneys returned my calls seeking comment. All attorney statements in this article are extracted from other press. Kurtz and Ferrell are charged with fraudulently obtaining bacteria from the American Type Culture Collection. Kurtz's attorney, Paul Cambria, Jr., says the burden is on the government to prove criminal intent. He calls the federal indictment for a \$256 transaction "a stretch."

Kurtz and the rest of the Critical Art Ensemble are artists whose work often includes biological organisms. One exhibit seized by the government, for example, would allow gallery-goers to test for common genetic modifications in food. CAE exhibits often also include a Web site and a book.

Make no mistake: CAE is radical at least in gesture. The group explores issues such "contestational biology," i.e. science in the interest of activism, such as releasing harmless but visibly mutant houseflies near a chemical or nuclear facility, for example. You can imagine the effect.

Which raises the specter of politically motivated prosecution. The New York chapter of the ACLU fired off a letter to the U.S. district attorney, suggesting that pursuit of the case because of Kurtz's views would be clearly unconstitutional. NYCLU has not received a reply.

The U.S. district attorney prosecuting the case, William Hochul, has specifically stated that he has no intention of squelching artistic freedom, and that the charges about fraud.

Hochul recently contacted Kurtz's publisher, Autonomedia, to warn that his subpoena of all editorial and business records related to CAE remains active. The self-described radical small press has retained pro bono counsel. One worry is that turning over readership records could raise first amendment issues. Their deadline for compliance is July 13. [NYCLU now reports that Mr. Hochul has notified the publisher that it no longer needs to comply with the subpoena.]

Still, what began as a Patriot Act bio-terrorism investigation now has nothing to do with bio-terror, as far as the attorneys are concerned. The organisms cited in the indictment are *Bacillus atrophaeus* and *Serratia marcescens*; the former a tracer organism in modeling the dispersion of true terror weapons; the latter popularly described as turning damp communion wafers red.

The indictment says both require handling appropriate to BioSafety Level One. According to CDC documents, it means:

washing one's hands after use; wearing a laboratory coat; gloves recommended (but not required, evidently).

The case has sparked international interest as well as protest. It's hard to argue with the desire to fend off a potential biological attack, but there remains an abiding public interest in personal expression. This is one of the cases where the boundaries are being decided in our name, and on our behalf. It pays to pay attention.

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