

The FBI, the Arts, and a UB Professor: A Post-9/11 Scandal Over Artistic Freedoms

By Julie Perini

I've imagined the scenario hundreds of times. A group of agents from the Federal Bureau of Investigation sits around a large table, sifting through boxes of papers, files, books and other materials a university professor might have in his or her office. The agents have a specific agenda: they are looking for evidence that will prove, or at least suggest, that this particular academic, University at Buffalo Associate Professor of Art Steve Kurtz, is a bio-terrorist.

Finding nothing more than departmental memos, professional correspondence, and postcards from book publishers, they come across a document of a personal nature. It is a note, handwritten on flowered stationery, resting in a small green envelope, penned by a graduate student admirer. "Your work is inspirational," was probably a line, as was, "Thanks for being a good friend this year." But, most chillingly, especially in these uncertain times, the note contained a line that read, "State smashers need to stick together!"

While such a statement cannot prove that an individual is developing biological weapons, it might be useful to the prosecution to identify a suspect with the aesthetics and politics of a deviant subculture, linking marginality with criminality. The anarcho-punk call to "smash the state," which means, roughly, to "abolish existing state structures in order to develop new, more equitable and functional ones," certainly sounds threatening and might serve prosecutors well in a hearing.

While his status as a state smasher is still uncertain, Professor Steve Kurtz is definitely a founding member of the internationally recognized art collective, Critical Art Ensemble (CAE). CAE has been working collaboratively for over fifteen years; their practice is process-oriented and performance-based, their strategies are interventionist, and their projects explore the intersections between technology, critical theory, and radical politics.

CAE works in public, educational, academic and art contexts; for the past few years, the

focus of their work has been to demystify the modern biotech industry by developing participatory performance experiences for audiences. Their projects are consistently provocative, completely harmless, and always within legal boundaries. One recent project, *Free Range Grain*, typifies their method of inquiry and presentation: members of the group developed a mobile microbiology lab that allowed audience members to perform tests on food they had brought from home to determine whether or not the food contained common genetic modifications.

The criminal investigation of Steve Kurtz and his colleagues began on May 11, 2004 when Kurtz awoke to find his wife, Hope, dead of cardiac arrest. He dialed 9-1-1 and



University at Buffalo
Professor of Art, Steve Kurtz

when police arrived, they noticed equipment that he had been using for the *Free Range Grain* project and other materials and immediately alerted the Joint Terrorism Task Force. The FBI arrived at Kurtz's Allentown home, cordoned off an entire block and would not permit him access to his house for several days. Over the course of the following week, police, agents in HAZMAT suits and federal officials confiscated Kurtz's computers, manuscripts, books, art supplies, and his wife's body.

Within days, the Commissioner of Public Health for New York State had tested samples from Kurtz's home and announced that the residence presented no public safety threat. Meanwhile, federal investigators had left dozens of pizza boxes, soft drink bottles and other debris in their wake, leaving Kurtz's home as more of a health risk than it had been prior to their arrival.

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After the seizure, FBI agents began issuing subpoenas to cultural workers who were associated with Kurtz, including three other UB faculty members, ordering them to appear at the Federal Grand Jury hearing on the case scheduled for June 15. The sub-poenas indicated that the Grand Jury was conducting an investigation of possible violations of the US Biological Weapons Anti-Terrorism Act of 1989. This law prohibits the possession of “any biological agent, toxin or delivery system” without justification of “prophylactic, protective, bona fide research, or other peaceful purposes.”

Meanwhile, I, Julie Perini, the author of the aforementioned short epistle in the green envelope, was leading a quiet life in the isolated town of Juneau, Alaska. Placid and beautiful, but also wild and somewhat rowdy, Alaska is a great spot for a stressed-out grad student ~~perched (illegally) right in the sun for a hot state~~ to hide out.

On June 8 Special Agent Mike Hickok, the primary investigator on this case for the Buffalo Joint Terrorism Task Force, interviewed me by phone, letting he know that he had “something” that led him to believe I knew Professor Kurtz very well. I was nervous—I had never brushed up against the legal system before. I had never even been outwardly political, although I had been known to utter inebriated, ironic statements like, “Time to smash the state!” upon hearing of the current administration’s latest actions.

Agent Hickok first stated that he had a subpoena he wanted to issue to me to appear at the June 15 hearing in Buffalo—a scant week away! “Or you can just do an interview with us now and maybe we won’t need you to come back to testify,” he said. He began to ask me questions: How did I know Professor Kurtz? Had I read any of his writings? Did I know what he was working on? What does this line from this letter mean, “state smashers need to stick together?” What are Kurtz’s politics? What did I mean by liberal? What other professors did I spend time with socially?

The next week Special Agent Mary Beth Kepner came to my house in Juneau to issue me a subpoena for a June 29 hearing. Using just a few hundred of the several billion dollar national anti-terrorism budget, the US Government shipped me from Alaska to Buffalo to explain

to a Grand Jury what state smashers are.

On June 29, in front of the 23 poker-faced citizens who constitute the Federal Grand Jury of Western New York, District Attorney William Hochul did not ask me a single question about any criminal activities. He seemed to want me to articulate, under oath, what Professor Kurtz’s politics were. He distorted what I’d said in the interview with Agent Hickok. This time a court steno-grapher recorded my answers. Hochul asked: “Miss Perini, in your interview with Agent Hickok, is it true that you stated that you and Professor Kurtz discussed destroying the American capitalist system?” “Miss Perini, would you say that Professor Kurtz approved of biological warfare?” “Miss Perini, did you say in your interview with Agent Hickok that Professor Kurtz is a *leftist*?” “Miss Perini, can you explain this line, ‘state smashers need to stick together?’”

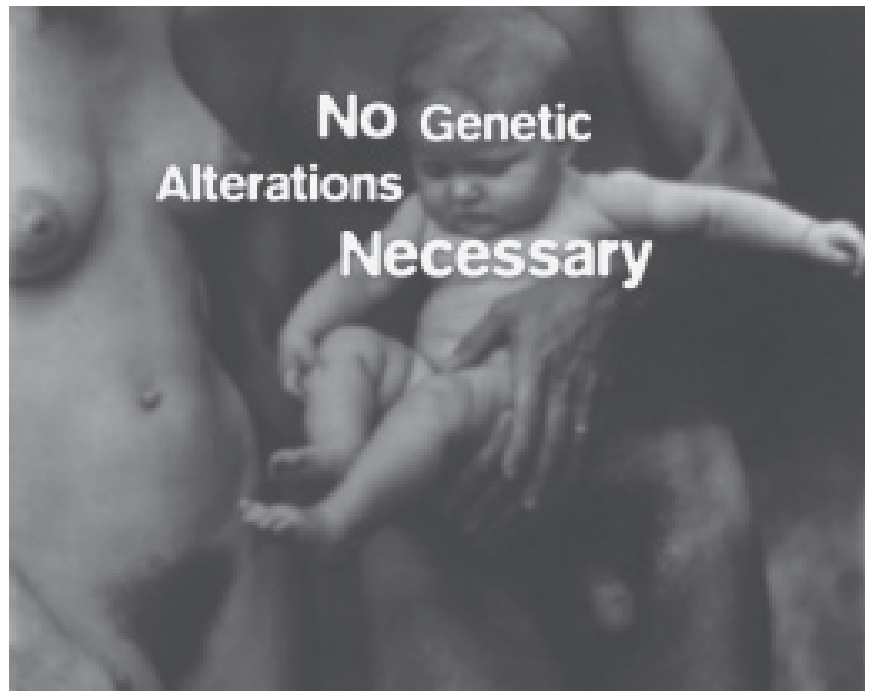
On that same day, Kurtz was charged, along with Professor Robert Ferrell of the Department of Genetics at the University of Pittsburgh’s School of Public Health, not with bio-terrorism as the subpoenas had claimed, but with what Kurtz’s attorney Paul Cambria has called “petty larceny.” The charges concern technicalities of how Ferrell helped Kurtz to obtain \$256 worth of harmless bacteria for one of CAE’s projects.

Under the arraignment conditions, Kurtz will have to check in with his probation officer every week, and is subject to travel restrictions,

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Artwork from the
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random inspections of his home and periodic drug tests. He is to abide by the conditions of the arraignment until the trial, which will most likely be scheduled for a date in the spring of 2005.

Government sponsored harassment and repression of political dissidents is certainly nothing new. As long as there have been federal police to investigate federal crimes, there have been cases against so-called seditious persons, sometimes resulting in execution, deportation, or incarceration. As the FBI grew under J. Edgar Hoover's management, so did the archives of files on the non-criminal activities of progressive political organizations and cultural groups. Perhaps reaching its apex in the 1960s with CO-INTELPROs (counter-intelligence programs) targeted against the American Indian Movement, the Black Panther Party, and countless others, the FBI successfully crippled these progressive social movements.

The USA Patriot Act of 2001 has introduced legislative changes that significantly increase the

surveillance and investigative powers of law enforcement agencies in the United States, especially with respect to the Internet. The Act did not provide for the system of checks and balances that traditionally safeguards civil liberties. Government attorneys now have increased access to stored email, voicemail and other electronic communications, and although the acquisition of such information requires a court order, it does not require probable cause: there is no judicial discretion, and the court *must* authorize the surveillance upon government certification. The indictment Kurtz and Ferrell received contains numerous citations from electronic messages exchanged between them, building an argument that the two had a "scheme to defraud."

Airport PA systems, media announcers, and the FBI website all explicitly encourage us to remain alert and vigilant—we are all soldiers in this war on terror. If we notice someone suspicious, like a grown man using science equipment in his home, we're to turn him in. This culture of terror is complemented by legislation granting the government an unprecedented amount of access to personal information. We have returned to an era when law enforcement is monitoring and harassing individuals who are exercising their first amendment rights—the art, scientific and academic communities need to actively resist this harassment that justifies itself in the name of national security. If we don't, the result will be the continued swift and senseless persecution of countless innocent individuals.

For a comprehensive discussion of the case see: www.caedefensefund.org

For more information about the work of Critical Art Ensemble see: www.critical-art.net

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