

Exhibit showcases Buffalo artist's legal battle

AP Associated Press

By Carolyn Thompson, Associated Press Writer | July 11, 2008

BUFFALO, N.Y. --Artist Steven Kurtz has never been shy about challenging the establishment, using a blend of performance art and science with his Critical Art Ensemble to stir debate about such things as genetically modified crops and germ warfare.

A 2007 performance had CAE members launching, with some fanfare, a harmless strain of bacteria onto volunteers in Leipzig, Germany to recreate the U.S. military's secret 1950 mock anthrax test on San Francisco.

Kurtz's latest installation is another questioning of authority -- with a personal twist. The show's subject is a four-year federal criminal prosecution of Kurtz that began when petri dishes in his Buffalo home set off bio-terror alarm bells for police.

The closely watched case was dismissed in April when U.S. District Judge Richard Arcara ruled that a 2004 mail and wire fraud indictment was "insufficient on its face."

The exhibit "SEIZED" at Hallwalls Contemporary Arts Center through July 19, initially conceived as a public relations tool as the artist headed toward trial, has taken on a slightly more celebratory tone with the legal victory.

Kurtz, though, is not quite ready to say it's all behind him.

"I've been at war for four years here. That doesn't just turn off with a judge's decision," the University at Buffalo professor said on a recent afternoon at Hallwalls.

The show has CAE's intellectual past projects sharing space with the more mundane physical remnants of his legal ordeal. A centerpiece is an artfully arranged stack of pizza boxes and sports drink bottles that Kurtz said were left behind by Joint Terrorism Task Force agents who raided his home following the death of his wife, Hope, from heart failure.

"If you say, 'What is this show?'" Kurtz said, "it's about, one, everything that the FBI took away from us, and two, everything that the FBI left behind."

The U.S. Justice Department's indictment of Kurtz became almost overnight a rallying point for artists and scientists around the world, who saw the case as an attempt by the United States to intimidate those who criticize government policy.

Kurtz was charged with felony mail and wire fraud even after explaining that petri dishes containing bacteria and other lab equipment that protective-suited agents took from his home were part of his artwork. At the time, the CAE was preparing to present its "Free Range Grain" project, examining genetically modified agriculture, at the Massachusetts Museum of Contemporary Art. Books about germ warfare and anthrax were for the project, "Marching Plague," meant to expose issues and costs surrounding germ warfare programs.

Kurtz believes the government saw in him the chance to exercise post 9/11 "pre-emptive justice" against an ideal target -- an academic, artist and activist -- especially after the Joint Terrorism Task Force had so aggressively acted.

After police responding to Hope Kurtz's natural death reported what they'd seen in the Kurtz home, the JTTF deployed dozens of agents while television cameras rolled.

"I don't know how much it all cost, millions of dollars ... and then they had egg on their face -- there is nothing there, it was not the next homegrown terrorist. So they had to do something," said Kurtz, free now for the first time in four years to speak without fear it will hurt his case.

Prosecutors said from the beginning the case against Kurtz was based on public safety concerns surrounding the improper transfer of controlled bacteria and had nothing to do with the work or ideology of Critical Art Ensemble. They said Kurtz was charged because he had obtained \$256 worth of *Serratia marcescens* and *Bacillus subtilis* that, as an individual, he was not eligible to buy. The organisms were sent to him in the mail by University of Pittsburgh geneticist Robert Ferrell.

U.S. Attorney Terrance Flynn declined to add anything to the government's past statements following the opening of "SEIZED."

Ferrell, who became Kurtz's co-defendant, pleaded guilty in October 2007 to a misdemeanor count of "mailing an injurious article," citing his poor health for the decision to end his legal fight. He had several recurrences of non-Hodgkin's lymphoma and a series of strokes as the case wore on. At sentencing, he was fined \$500 but spared prison.

Kurtz, who remained adamant about fighting the charges, said the case took a toll on him, too, as anxiety disorders he believes will eventually subside. He compares his detention after his wife's death to staring down three hungry lions after one has just eaten your partner.

"When you lose someone very close to you, it's really bad if you have a survivalist issue going on at the same time," he said. The investigation kept him out of his home for eight days, his car was seized and bank accounts temporarily frozen.

"I'm sure it makes some people second guess their critical positions, critical in the sense of being interrogative or questioning," said John Massier, Hallwalls' visual arts curator, "which, of course, are key elements to making art, to making contemporary art, to commenting on the world."

Defense attorney Paul Cambria described the federal prosecution as "an overreaction."

"This wasn't a situation where there was a fraud. They didn't misrepresent anything, they didn't lie to anybody. It was simply a couple of professors who bought some harmless bacteria and wanted to make a political statement through an art object," he said after the dismissal.

Numerous fundraisers and the establishment of the Critical Art Ensemble Defense Fund paid Kurtz's legal expenses. The defense fund's focus will shift next to other artists in need.

"You couldn't have scripted it to be more Kafka-esque," Massier said of Kurtz's story, which was made into a movie, "Strange Culture" and shown at Sundance Film Festival last year. "A wife dies in her sleep and he's kicked down this dark rabbit hole. Thank God it's turned out the way it has but I think it's been pretty harrowing all along."

Although he has yet to get back his computer, research notes, manuscripts and lab equipment from the government, Kurtz said Critical Art Ensemble is already at work on its next project: examining the hysteria surrounding so-called "dirty bombs."

On the Net:

Critical Art Ensemble: <http://www.critical-art.net>

Critical Art Ensemble Defense Fund: <http://www.caedefensefund.org> ■

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