

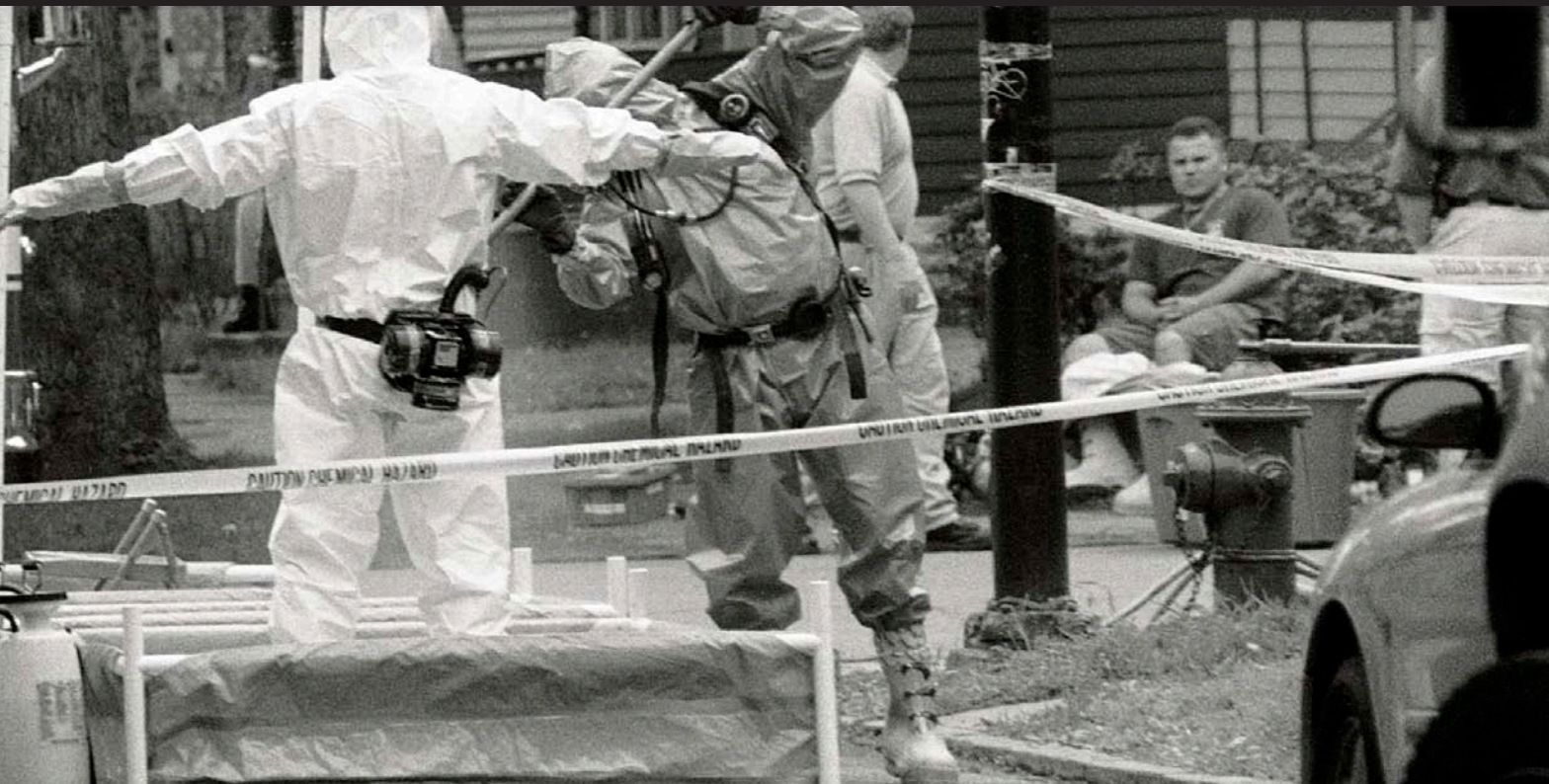
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**SEIZED**

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*“Kurtz’s work is at times critical of science,  
but researchers should nevertheless be willing to support him.  
Art and science are forms of human enquiry that can be illuminating and controversial,  
and the freedoms of both must be preserved as  
part of a healthy democracy—as must a sense of proportion.”*

*Nature* editorial, June 17, 2004

### *Japan 1930-31*

Professor of Epidemiology for the Tokyo Army Medical School Ishii Shiro convinces the high command of the Japanese Imperial Army to launch a biological weapons development program. His arguments are that "Russian spies" have conspired to spread anthrax, cholera and dysentery in Manchuria, and that the Chinese have poisoned wells with cholera. These events are never proven, but even the thought of such an occurrence convinces the high command to act. This strategy of fear becomes the standard for launching major germ warfare programs.

### *Japan 1943*

In spite of having created the largest, most expensive germ warfare program in the world, the Japanese never make a weapon they can successfully use. The field tests are all either complete failures, inconclusive, or the weapons kill as many Japanese troops as they do enemy troops. By 1943 the program is considered a failure. Dwindling resources are thought to be better used elsewhere.

Text from Critical Art Ensemble's installation  
*Marching Plague: Germs of Deception*, 2004-2007

For Immediate Release

05.26.08

SEIZED

Critical Art Ensemble

Institute for Applied Autonomy

June 7 to July 19, 2008

Opening Reception: Saturday, June 7, 8-11pm

Admission is FREE

Hallwalls Contemporary Arts Center is pleased to announce the exhibition SEIZED by Critical Art Ensemble (CAE) and the Institute for Applied Autonomy (IAA). The exhibition premieres Saturday, June 7, 2008 from 8-11pm and the opening reception is free and open to the public. The exhibition will remain on view through July 18, 2008. Gallery hours are Tuesday through Friday, 11am to 6pm and Saturday, 1-4pm.

Following the four year long ordeal of CAE founding member and University at Buffalo Art Professor Steve Kurtz—accused by the Justice Department of "bio-terrorism" and later indicted on charges of mail fraud for procuring harmless bacterial cultures for use in an educational art project—SEIZED presents the artworks behind this case which has attracted worldwide attention and propelled an international arts community to rally to Kurtz's support and on behalf of freedom of expression.

SEIZED will center itself upon the works and materials seized by federal authorities, in particular the multi-media project *Marching Plague*, which was commissioned by the UK-based art-science initiative, *The Arts Catalyst*, and produced in consultation with scientists from the Harvard-Sussex Program on Chemical and Biological Weapons Armament and Arms Limitation. The project is comprised of an installation, performance, film, and book dedicated to demystifying issues surrounding germ warfare programs and the cost of their development to global public health.

Additionally, project documentation and ephemera from the three other CAE projects confiscated by authorities will be on display. These works—Free Range Grain, Molecular Invasion, and GenTerra—utilize the framework of science and research to inspire informed dialogue about questions and concerns surrounding the new biotechnologies.

SEIZED will also exhibit the physical artifacts of the 2004 FBI investigation of Steve Kurtz. Items seized from Kurtz's home will be documented in photographs depicting the negative spaces remaining following their seizure: missing computers, books, notes, props from art performances, lab equipment, and an unfinished manuscript. In a curious—and unintentionally performative—gesture, the gaps left by seized items are filled in by the volumes of trash left behind in Kurtz's home by federal investigators: hundreds of empty drink bottles, pizza boxes, Hazmat suits, and other assorted refuse, all of which will be on exhibit alongside CAE artworks.

The resulting exhibition will offer a strange amalgam—part survey of CAE's recent body of artwork, and part exploration of an attempted bioterrorism investigation.

Hallwalls Contemporary Arts Center

341 Delaware Avenue, Buffalo, NY 14202 716.854.1694

[www.hallwalls.org](http://www.hallwalls.org)



Hallwalls' visual arts program is supported by generous grants from the New York State Council on the Arts and The Andy Warhol Foundation for the Visual Arts.



*GenTerra,*  
*St. Norbert Art and Cultural Centre, Winnipeg, 2001.*



*GenTerra,*  
*St. Norbert Art and Cultural Centre, Winnipeg, 2001.*



*GenTerra,*  
*London Museum of Natural History, 2003.*

### United Kingdom 1940

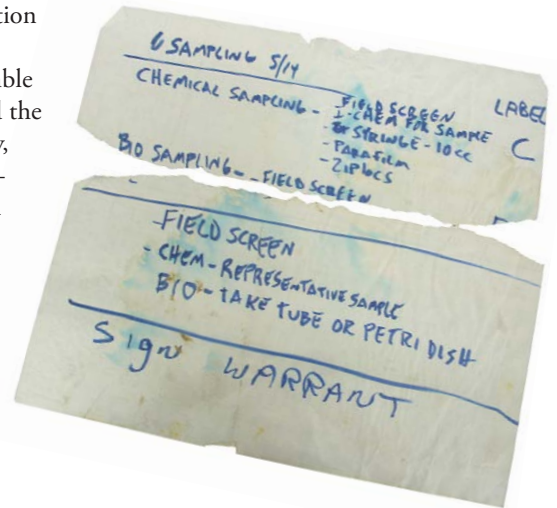
The British high command launches a massive bio-warfare initiative. Its concern is over intelligence that the Germans have an extensive biological weapons program. Although the intelligence is never authenticated and turns out to be completely mistaken, the fear generated is strong enough to produce nearly 20 years of intense investigation into biological weapons by the British in cooperation with the US and Canada.

### Canada 1941

The Canadians begin a germ warfare program in alliance with the US and the UK. The program is launched because of false intelligence stating that Germany is preparing botulinum toxin for use against military and civilian targets. The Canadians are also afraid the Japanese might use balloons to launch biological warfare attacks on civilians. This threat also fails to materialize.

**SEIZED** examines the physical artifacts of the 2004 FBI investigation of artist Steven Kurtz. The items the FBI seized from his home are represented here in photographs of the negative spaces they left behind: missing computers, books, notes, props from performances, lab equipment and unfinished manuscript. Curiously, the items that were ignored are as telling as the ones that were taken. Balancing these empty spaces is the voluminous pile of garbage the FBI left behind at the Kurtz residence. Here we have a rare window into the anatomy of a “bioterror” investigation. Hand drawn maps, “to do” lists, and countless articles of protective clothing are set against a backdrop of several hundred energy drinks and over thirty pizza boxes. To date, none of the seized items have ever been returned.

Also on display is documentation and ephemera from the three completed Critical Art Ensemble projects seized by the FBI and the Department of Justice. Finally, we present *Marching Plague*—the project the FBI attempted stop through confiscation of the research and materials necessary for its production and presentation.



*“On a practical level,  
all scientists at Pittsburgh have had their  
shipments from the American Type Culture Collection delayed and secondarily  
scrutinized because of your office’s prosecution of this case.  
Let me be blunt: you are interfering with my work on finding  
the cause of a cancer because of your prosecution.”*

Letter to US Attorney Terrance P. Flynn  
from Dr. Patrick Moore, MD, MPH, Director, Molecular Virology Program,  
University of Pittsburgh Cancer Institute, October 18, 2007

### Germany 1942

At the start of WWII, Germany states it will not use biological weapons. In 1942 Hitler orders that no biological weapons program (not even retaliatory weapons) be pursued. This order is repeated again in 1943. Germany is the only primary combatant nation to respect the Geneva Protocol's prohibition against bacteriological warfare programs.

### USA 1949-51

In 1949 the biological wing of the army research unit at Fort Detrick, Maryland decides it should cash in on the germ warfare gravy train. To convince the US high command of the necessity of the program, it runs an unannounced anthrax simulation in the Pentagon and in the Washington, DC, Greyhound bus station. A report is submitted to Pentagon officials claiming perfect distribution of the simulant and implying this would yield perfect infection and mortality rates. While scientific research completely contradicts this claim, Pentagon officials are sufficiently frightened to want an advanced program started immediately.

## When Thought Becomes Crime\*

*Critical Art Ensemble, 2004*

How did it come to this?

Only a perverse authoritarian logic can explain how CAE can at one moment be creating the project *Free Range Grain* for the *At Your Own Risk* exhibition at Schirn Kunsthalle in Frankfurt, reconfiguring it for *The Interventionists* exhibition at Mass MoCA in a second moment, and then suddenly have a CAE member in FBI detention. The US Justice Department has accused us of such shocking crimes as bioterrorism, health and safety violations, mail fraud, wire fraud, and even murder. Now, as we retool *Free Range Grain* for the Risk exhibition at the Glasgow Center for Contemporary Art, the surreal farce of our legal nightmare continues unabated.

Of course, we always knew that cultural interventionist work could have serious consequences. And over the years, predictably, CAE has been denounced (and threatened) by all varieties of authority: cops, corporate lawyers, politicians, all types of racists, and church groups—even the Archbishop of Salzburg. But to be the target of an international investigation that involves the FBI; the Joint Terrorism Task Force; the ATF; the Department of Homeland Security; the Department of Health and Safety; numerous local police agencies; and even Canadian, Norwegian, and German federal investigators goes far beyond the pale. As of this writing, CAE member Steven Kurtz, and one of our long-time collaborators, University of Pittsburgh geneticist Robert Ferrell, are fighting the insanely real threat of being sent to federal prison.

So how did we create such a vortex of Kafkaesque legalistic repression? In the *Free Range Grain* project, for instance, CAE simply used molecular biology techniques to test for genetically modified food in the global food trade. We want(ed) this interventionist performance to demonstrate how the “smooth space” of global trade enables the very “contaminations” the authorities say it guards against. Now we, along with our colleagues on the CAE defense team, have been trying to understand why the authorities have taken such a reactionary position in regard to our art practice. We have come up with many reasons; we can address only a few in this brief article.



The first reason, we believe, involves the discourse in which we framed our project. By viewing the scientific process through the lens of the capitalist political economy, we disrupted the legitimized version of science as a self-contained, value-free specialization. The powers that be would have science speak for itself, within and about itself. This insularity is akin to Clement Greenberg's idea of letting art history explain the production of art, or Emile Durkheim's use of "social facts" to explain the social. But any discourse exists within larger historical and political contexts. It seemed self-evident for us to place competing discourses in conversation, and to show the socioeconomic ideologies at work in food production. From the perspective of authority, however, we were being subversive, deviant. For those who wish to preserve the autonomy of science, citizens can discuss scientific structure, method, materials, etc., as long as they do not refer to the political or economic interests that impinge on scientific research. A biology club can talk about cells, but if it goes beyond the institutionalized boundaries of the life sciences, look out for the feds.

The second challenge we posed came from our amateur approach to life science knowledge systems, experimental processes, acquisition of materials, etc. An amateur can be critical of an institution without fear of recrimination or loss of status or investment. An art professor, for example, will probably not tell students that art school is a pyramid scheme into which they will pour a lot of capital, feed the higher-ups, and probably get very little if anything in return. That criticism is more likely to emerge from outside the power structure (or from disgruntled ex-students). In science, where the financial stakes are much higher, any criticism of resources may well result in funding cuts—a situation one can ill afford in such a capital-intensive discipline. So it takes an outsider to science—a creative tinkerer—to rattle the cage of the discipline's most dearly held assumptions and practices.

With special regard to the institutional financing of science, the amateur reveals the profit-driven privatization of a discipline that is purportedly—mythologically—open to all. By undertaking research as if science were truly a forum in which all may participate according to their abilities and resources, CAE angers those who manipulate scientific activity through capital investment. The financial stakes are so high that the authorities can imagine only one motivation for critical, amateur research, particularly if it is conducted at home outside of systems of surveillance/discipline. If that research intends to expose, disrupt, or subvert the meta-narratives that put scientific investigation in the service of profit, the amateur investigator must want to produce terrorist acts.

In the paranoid political climate of the United States, American authorities leap all too easily from ideological criticism to terrorism. Moreover, CAE's legal battle reveals that the government has made thinking into a crime: A citizen can be arrested without having committed any act of terror or without having



*Molecular Invasion,  
World Information Organization, Amsterdam, 2002.*



*Molecular Invasion, detail,  
World Information Organization, Amsterdam, 2002.*



*Molecular Invasion,  
Corcoran Museum of Art, Washington, DC, 2002.*

### *United Kingdom 1952*

The British germ warfare program is an abysmal failure. The weapons are found to be completely unreliable and of little use on land. The only possibilities are in enclosed areas and on ships. In 1952, sea tests begin at the Isle of Lewis in the Hebrides. The results are inconclusive. Tests on the sea and simulations in the London Underground continue for another 14 years. After wasting millions of pounds, no functional use for this weaponry is ever found.

### *USA 1969*

Richard Nixon cancels the germ warfare program as a failure. The program virtually dies, but only after millions of tax dollars are wasted. No functional weapon is ever developed or used. Nixon then begins an initiative to create a global ban on biological weapons. The Biological Weapons Convention is created in 1972 and activated in 1975. The document is principled but unenforceable. The US has been in direct violation of the treaty it created since 2001.

done anything illegal at all. Former US Attorney General John Ashcroft has unofficially reformed law enforcement policy and practice according to the Bush administration's idea of "preemptive war." He has argued that if indicators—any type of dissent in relation to the interests of the investing classes or "national interest"—suggest that a person or group could do something illegal, then they should be arrested, detained, deported, or otherwise persecuted with the full resources of all repressive state agencies. Apparently, the US Justice Department is now trying to make CAE into an example of what can happen to citizens whose only "crime" is having thoughts of dissent enacted within the sphere of legality and with the alleged protection of constitutional rights.

For experimental art, political art, tactical media, and independent media in the United States (and to some degree in other nations), the implications of Steven Kurtz's arrest are profound. The repressive forces of the state are directly targeting producers of cultural interventionist work. In past decades, policymakers have often leaned on political artwork through financial penalties such as rescinding artist's grants, folding federal arts programs, and economically squeezing out the spaces that exhibit subversive work.\*\* Now, these attacks on civil grounds have undergone a horrific paradigm shift, and individual artists are being charged with criminal activity. The persecution works slowly and insidiously, through silencing artists, looting their work and their research, and constraining their movement. We are no longer seeing cultural conflict in action, but a proto-fascist attack upon open source management of expression itself.

\*The set of theses presented in this document were collectively developed through a series of lectures given by the CAE Defense Team. Contributors include Doug Ashford, Gregg Bordowitz, CAE, Natalie Jeremijenko, Claire Pentecost, and Lucia Sommer. Special thanks to Karen Schiff for editing.

\*\*The New York Council for the Humanities recently rescinded a grant awarded to the City University of New York for its series on academic freedom because Steve Kurtz was one of the invited speakers!



*“I am absolutely astonished...  
based on what I have read and understand,  
Professor Kurtz has been working with totally innocuous organisms...  
I am dismayed by what appears to me to be yet one more instance in which  
knowledgeable persons in the field of bioterrorism are not being brought in  
and consulted to ascertain what might be real problems  
and what are purely spurious problems.”*

Dr. Donald A. Henderson, MD, MPH,  
Distinguished Scholar at the Center for Biosecurity of the  
University of Pittsburgh Medical Center, July 6, 2004

## 1977 USA/USSR

The last case of smallpox is recorded. The most deadly human disease in history is considered wiped off the face of the earth. Unfortunately, viable samples of smallpox remain in the arsenals of the USA and the USSR (and present day Russia).

## USSR 1979

The greatest number of people ever killed by anthrax is not the result of a terrorist attack, but of a military accident in the victim's own country. In April 1979, the Soviet biowarfare unit Compound 19 at Sverdlovsk (home to a large-scale military weapons manufacturing site and a city of 1.2 million people) notices that a neighboring population has an outbreak of anthrax. What actually happened is uncertain. Seemingly, 66 deaths occurred in a 4 km swath downwind from Compound 19. The US military and various intelligence corps believe that an anthrax aerosol was accidentally released. While the deaths are tragic, they are very light compared to the death rates predicted (hundreds of thousands of deaths) by those invested in the program.

## Frequently Asked Questions

from CAE Defense Fund: [caedefensefund.org](http://caedefensefund.org)

### Q: What happened to Steve Kurtz?

#### Background to the Case

Dr. Steven Kurtz is a Professor of Visual Studies at SUNY Buffalo and a founding member of the award-winning art and theater collective Critical Art Ensemble (CAE). For more than a decade, cultural institutions worldwide have hosted CAE's participatory theater projects that help the general public understand biotechnology and the many issues surrounding it.

In May 2004, Steve Kurtz and his wife Hope were preparing to present *Free Range Grain*, a project examining GM agriculture, at the Massachusetts Museum of Contemporary Art (MASS MoCA), when Hope Kurtz died of heart failure. Police who responded to Steve Kurtz's 911 call deemed the couple's art suspicious, and called the FBI. The art materials consisted of several Petri dishes containing three harmless bacteria cultures, and a portable lab used to test food labeled "organic" for the presence of genetically modified ingredients. As Kurtz explained, these materials had been safely displayed in museums and galleries throughout Europe and North America with absolutely no risk to the public.

The next day, however, as Dr. Kurtz was on his way to the funeral home, he was illegally detained by agents from the FBI and Joint Terrorism Task Force,



who informed him he was being investigated for “bioterrorism.” At no point during the 22 hours Kurtz was held and questioned did the agents Mirandize him or inform him he could leave. Meanwhile, armed agents from numerous federal law enforcement agencies—including five regional branches of the FBI, the Joint Terrorism Task Force, Homeland Security, Department of Defense, and the Bureau of Alcohol, Tobacco and Firearms—along with the Buffalo Police and Fire Departments, descended on Kurtz’s home in Hazmat suits. Cordoning off half a block around his home, they seized his cat, car, computers, manuscripts, books, equipment, and even his wife’s body from the county coroner for further analysis. The Erie County Health Department condemned the house as a possible “health risk.”

A week later, only after the Commissioner of Public Health for New York State had tested samples from the home and announced that there was nothing in it that posed any sort of public or environmental health or safety risk, was Kurtz allowed to return home and to recover his wife’s body.

While most observers assumed the Task Force would realize its initial investigation was a terrible mistake, the Department of Justice (DoJ) has instead chosen to press their “case” against Dr. Kurtz. Despite the Public Health Commissioner’s conclusion as to the safety of Kurtz’s materials, and despite the fact that the FBI’s own field and laboratory tests showed they were not harmful to people or the environment, the DoJ continues to waste vast sums of public money on this outrageous and politically motivated prosecution.

### **Q: What materials did the FBI seize during their raid on Steve Kurtz’s home?**

Materials from four of Critical Art Ensemble’s projects were seized in the 2004 FBI raid on Steve Kurtz’s home, and have never been returned:

#### **GenTerra (2001-2003)**

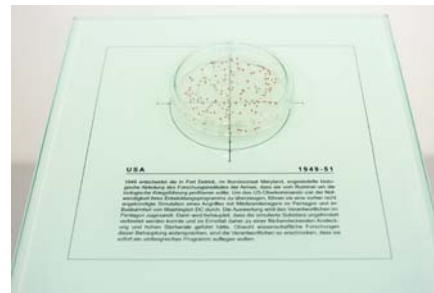
This science-theater project used a harmless form of gut *E. coli* (which resides in the intestinal track of all humans) to educate the public about transgenic organisms and examine issues surrounding the creation of genetically modified organisms (GMOs) and biological environmental resource management. When the FBI seized the materials for this project during their raid on Kurtz’s home, it had already been commissioned by, and performed at, cultural institutions throughout North America and Europe—such as the London Museum of Natural History; Oldham Gallery, Manchester; the New Museum in NYC; the Henry Art Gallery in Seattle; The Block Museum of Art at Northwestern University; and St. Norbert’s Art & Cultural Center, Winnipeg—with absolutely no risk to the public.



*Free Range Grain,*  
*Schirn Kunsthalle, Frankfurt, 2003.*



*Marching Plague: Germs of Deception, detail,*  
*Leipzig, Germany, 2007.*



*Marching Plague: Germs of Deception, detail,*  
*Leipzig, Germany, 2007.*

### USA 1997

In 1997, the US Secretary of Defense William Cohen makes a dramatic appeal to rejuvenate the bioweapons program by appearing on television holding a five pound bag of sugar and declaring this amount of anthrax sprayed from an airplane over Washington DC would result in the death of 50% of the population. His numbers are fabricated, and are disputed by the World Health Organization. This time the program is not revived.

### USA 2001

In July President George Bush rejects 26 years of negotiations over the Biological and Toxin Weapons Convention, and refuses to accept the verification protocols. The treaty continues to remain a principled but unenforceable document.

### Molecular Invasion (2002-2003)

This public science-theater work was produced in cooperation with students from the Corcoran School of Art and Design and exhibited at the Corcoran Museum of Art in Washington, DC. The project was an attempt to develop non-toxic chemical disrupters to Monsanto's Roundup Ready soy, corn and canola, as a means of self-defense for traditional and organic farmers whose fields are being contaminated by Monsanto's GM crops and are being forced by Monsanto into signing their contracts. A likely candidate was found, which is completely harmless to all living creatures and the environment: Pyridoxil-5-Phosphate, a Vitamin B6 enzyme. The FBI confiscated the seeds CAE was using in this project.

### Free Range Grain (2003-2004)

This participatory science-theater project examined issues surrounding Genetically Modified (GM) agriculture and control of the global food supply. It used a portable DNA testing lab to test food for the presence of GM ingredients. *Free Range Grain* had been exhibited and performed internationally at major cultural institutions such as Schirn Kunsthalle, Frankfurt; ESC Gallery in Linz, Austria; and the Next Five Minutes, Amsterdam; and was scheduled for exhibition at the Massachusetts Museum of Contemporary Art when the FBI confiscated the lab and all materials for the project.

### Marching Plague (2004-2007)

This multi-media project was commissioned and produced by the UK-based art-science initiative, The Arts Catalyst, in consultation with scientists from the Harvard Sussex Program on Chemical and Biological Weapons Armament and Arms Limitation. The project used



the harmless bacteria *Bacillus subtilis* and *Serratia marcescens* in an installation, performance, and film dedicated to demystifying issues surrounding germ warfare and the cost of its development to global public health. *Marching Plague: Germ Warfare and Global Public Health* was written as a companion book to this project. In its raid on the Kurtz home, the FBI confiscated the bacteria samples, Steve Kurtz's computers containing all digital copies of the book manuscript, and his reference books and notes.

### **Q: What is the violation he is accused of and what is the possible sentence?**

In their initial investigation, the Justice Department sought charges under Section 175 of the US Biological Weapons Anti-Terrorism Act of 1989, as expanded by the USA PATRIOT Act, Title 18, Part 1, Chapter 10, Section 175: Prohibitions with respect to biological weapons.

#### **Possible Sentence of 20 Years for “Mail Fraud” Charges**

On June 29, 2004, a federal Grand Jury appeared to reject those charges and instead handed down indictments of two counts each of “mail fraud” and “wire fraud” under Title 18, United States Code, Sections 1341 and 1343. Also indicted was Dr. Robert Ferrell, Professor of Human Genetics at the University of Pittsburgh's Graduate School of Public Health, who served as an advisor on several of CAE's projects. The charges concern technicalities of how Ferrell allegedly helped Kurtz obtain \$256 worth of harmless bacteria for one of CAE's projects. Although they are a far cry from the charges originally sought by the US Attorney, these are still serious federal charges. Under the USA PATRIOT Act these charges now carry the same potential sentence as the original “bioterrorism” charges would have: up to 20 years in prison.

Charges of mail fraud, and more recently, wire fraud, are designed to dismantle phony financial schemes that defraud the public out of money through mail, credit card or internet. Because these laws are written very broadly, they are often used to convict figures in organized crime—and they have historically been used selectively against political dissidents such as Marcus Garvey.

Having wasted millions of taxpayer dollars and failing to produce any evidence of “bioterrorism,” the government is now claiming that Dr. Ferrell used his contract through the University of Pittsburgh to purchase the samples from American Type Culture Collection (ATCC), which he then gave to Dr. Kurtz for use in one of CAE's art projects, thereby “defrauding” the University and ATCC. If true, this would constitute a minor contract discrepancy concerning \$256 of harmless materials, to be settled between the parties involved. Yet neither the University



*The City Sprays Back, Leipzig, Germany, 2007.*



*The City Sprays Back, Leipzig, Germany, 2007.*



or criminal litigation in the state courts. Serious consideration, however, should be given to the prosecution of any scheme which in its nature is directed to defrauding a class of persons, or the general public, with a substantial pattern of conduct.”

The interpretation of wire and mail fraud being used by the federal government in this case is so radical as to make incorrectly filling in a manufacturer’s warranty for a TV set into a federal crime. In a July 2005 hearing on the case, Magistrate Judge Kenneth Schroeder noted that such an interpretation would be akin to opening a “Pandora’s box.”

### **Q: Why should this case concern me?**

This is a precedent-setting case with profound implications for all Americans’ constitutionally guaranteed rights to freedom of speech, expression, and inquiry; and for artists, scientists, researchers, and anyone engaged in vital public discussion about the actions of their government. It threatens to set dangerous legal and political precedent by vastly expanding the government’s reach into our homes and public institutions; by eroding the boundary between civil and criminal law; and by intimidating and criminalizing those who would legitimately and legally criticize government policy. In addition, the case has already led to dispossession of the public’s fundamental right to scientific knowledge. Because of this case, many of the manufacturers that formerly supplied amateurs and science hobbyists no longer will, for fear of litigation. The case therefore threatens to end independent research and seriously damage the public’s ability to critique corporations and the military, which will exercise even more exclusive control of scientific knowledge.

### **Q: What legal precedent would be set if we lose this case?**

If the Department of Justice wins this case, it would mean that any discrepancy in a civil contract that involves the mail or the Internet in any way (such as incorrectly filling in and mailing a warranty card) could be prosecuted as a federal crime, punishable under the USA PATRIOT Act by up to 20 years in prison. Given that mail fraud law is already the most broadly written law on the books, the government’s power of selective prosecution would be almost unlimited. Winning this case would give the DoJ the means to truly enforce its scheme of “preemptive justice.”

### **Q: Why are eminent scientists alarmed by this prosecution?**

The preeminent science magazine *Nature* has called on scientists to support Kurtz. “As with the prosecution of some scientists in recent years, it seems that government lawyers are singling Kurtz out as a warning to the broader artistic community....



*Prosecutor William J. Hochul Jr. Freedom Library*

*This collection of books was seized by the FBI during the raid of Steven Kurtz’s home on May 12-15, 2004. Apparently, having any of these books makes one an “enemy of state” in the eyes of the Justice Department. Papers filed by the prosecution indicate they intended to use this constitutionally protected speech in an attempt to prove “crime.” The books on bio-warfare were part of the research materials for the book Kurtz was writing, *Marching Plague: Germ Warfare and Global Public Health*.*



*Federal Agent Cigar*

*This Don Julio cigar was imported from the Dominican Republic and is commonly available at Wal-Mart. Cigars have long been a part of the romanticized image of the federal agent. This image was cultivated in part by Agent Purvis’s use of a cigar to signal the arresting officers in the apprehension and assassination of John Dillinger. As Bureau policy prevents federal agents from smoking while on duty, this cigar was more likely disposed of by another responding agency.*

While at Hallwalls Contemporary Arts Center, Critical Art Ensemble releases 2 ml of *Serratia marcescens* (a harmless simulant historically used by various military organizations for coverage testing) to see if the gallery would be a functional site for the use of anthrax by terrorists. Petri dish sensors placed throughout the gallery indicate this small amount has contaminated the whole space. Does a perfect distribution rate indicate a perfect infection rate and consequently a perfect mortality rate? Intuitively one might think yes, and that is how this pseudo-scientific exercise has historically been used to con the unsuspecting. In actuality, the history of germ warfare testing and accidents has shown that even a minimal mortality rate would be extremely unlikely.

Art and science are forms of human enquiry that can be illuminating and controversial, and the freedom of both must be preserved as part of a healthy democracy—as must a sense of proportion.”

“Kurtz’s materials are politically, not physically, dangerous,” said Mary-Claire King, the University of Washington geneticist who first proved the existence of a gene for hereditary breast cancer. “They [Steve Kurtz and the Critical Art Ensemble] recreate [scientific] ideas using their own way of imaging, and then say, ‘Maybe you’d like to look at it this way.’ To me, that’s teaching. It does not seem to me to threaten homeland security. In fact, I would be threatened to live in a homeland in which that was perceived to be a threat.”

“I am absolutely astonished,” said Donald A. Henderson, Senior Advisor of the Center for Biosecurity at the University of Pittsburgh Medical Center, and former Dean Emeritus of the Johns Hopkins University School of Hygiene and Public Health. Henderson was awarded the Presidential Medal of Freedom by President Bush for his work in heading up the World Health Organization smallpox eradication program and was appointed by the Bush administration to chair the National Advisory Council on Public Preparedness. “Based on what I have read and understand, Professor Kurtz has been working with totally innocuous organisms... I am dismayed by what appears to me to be yet one more instance in which knowledgeable persons in the field of bioterrorism are not being brought in and consulted to ascertain what might be real problems and what are purely spurious problems.” Henderson noted that the organisms involved in this case do not appear on lists of substances that could be used in biological terrorism and are harmless both alone and in combination.

Innumerable other scientists, artists, institutions, and others have written letters of support for Kurtz and Ferrell. A number of these can be read at: <http://caedefensefund.org/letters.html>



## **Q: What is the current status of the case?**

In October 2007, Dr. Ferrell pleaded to a lesser misdemeanor charge after recurrent bouts of cancer and three strokes suffered since his indictment prevented him from continuing the struggle.

On April 21, 2008, Federal Judge Richard J. Arcara dismissed the entire indictment against Dr. Kurtz as “insufficient on its face.” This means that even if the actions alleged in the indictment (which the judge must accept as “fact”) were true, they would not constitute a crime. The Department of Justice had thirty days from the date of the ruling to appeal. No action has been taken in this time period. At this point, the only option left to the prosecution is to re-indict. Such an action is rare, and the defense is not expecting it, but is prepared for it.

This victory for constitutional rights could never have happened without the activism of thousands of people protesting, vocally opposing the prosecution, and refusing to let it go on in silence. And without their efforts at fundraising, Drs. Kurtz and Ferrell would not have been able to defend themselves from these false charges.

The next fight will be to get back all the material seized by the FBI.

## **Q: What can I do?**

For more information, and how to help, please visit: <http://caedefensefund.org>



*FBI Trash*

*Following the three-day raid on the Kurtz residence, the FBI left behind a substantial pile of garbage. The refuse included hundreds of bottles of Gatorade and water, over 30 pizza boxes, Hazmat suits, respirator filters, unlabeled biological sample bags, maps of Kurtz's home and a hand written check list culminating with "Sign Warrant."*

*“[T]he UUP insists that all charges and legal proceedings  
against Dr. Steven Kurtz be immediately dropped.”*

Resolution of Support for Dr. Steven Kurtz,  
adopted without dissent by the United University Professions Delegate Assembly,  
representing more than 34,000 academic and professional faculty on 29 SUNY campuses,  
February 9, 2008

## **Critical Art Ensemble**

Critical Art Ensemble (CAE) is a collective of tactical media practitioners of various specializations, including computer graphics and web design, wetware, film/video, photography, text art, book art, and performance, dedicated to exploring the intersections between art, technology, political activism, and critical theory. Formed in 1987, CAE has produced a wide variety of projects for an international audience at diverse venues ranging from the street, to the museum, to the Internet.

CAE is the recipient of numerous awards, including the 2007 Andy Warhol Foundation Wynn Kramarsky Freedom of Artistic Expression Grant honoring two decades of distinguished work, and has been invited to exhibit and perform in many of the world's cultural institutions—including the Whitney Museum and the New Museum in NYC; the Corcoran Museum of Art in Washington, DC; the London Museum of Natural History; the ICA, London; Schirn Kunsthalle, Frankfurt; Musée d'Art Moderne de la Ville de Paris; der Volksbühne, Berlin; ZKM, Karlsruhe; El Matadero, Madrid; Museum of Contemporary Art, Helsinki; Museo de Arte Carrilo Gil, Mexico City and many more. The collective's work has been covered by most major art journals, including *Artforum*, *Kunstforum*, and *The Drama Review*, which dedicated a special section to CAE in 2000.

CAE has written six books, and its writings have been translated into eighteen languages.

## **The Institute for Applied Autonomy**

The Institute for Applied Autonomy (IAA) was founded in 1998 as an anonymous collective of engineers, designers, artists and activists united by the cause of individual and collective self-determination. Toward this end, the IAA has produced numerous projects under its flagship initiative, Contestational Robotics. These include several tele-operated robotic graffiti writers; I-See, which gained worldwide media attention as a web-based navigation service to help users avoid surveillance; TXTmob, a cellular phone broadcast service widely used by demonstrators during the DNC and RNC protests in the US, and during the election protests in the Ukraine and Washington, DC; and Terminal Air, an installation and website that visualizes the movements of airplanes believed to have been used in the CIA's "Extraordinary Rendition" program.

The IAA has won numerous awards for its work, including the 2000 Prix Ars Electronica Award of Distinction and several Prix Ars Electronica Honorable Mentions; a Rhizome New Media Fellowship; and artist grants from the Pennsylvania Council on the Arts. The collective's work has been exhibited in museums, galleries, and public spaces internationally, including ZKM, Karlsruhe; the World Information Organization, Amsterdam; the Museum of Contemporary Art, Barcelona; the Australian Centre for the Moving Image; Princeton University; Brown University; the Aldrich Museum of Contemporary Art; the Contemporary Arts Center, Cincinnati; Mass MoCA, and Eyebeam Atelier.

## **Works, Documentation, and Ephemera**

GenTerra, 2001-2003

Critical Art Ensemble and Beatriz da Costa

Project documentation

Molecular Invasion, 2002-2003

Critical Art Ensemble, Claire Pentecost, and Beatriz da Costa

Project documentation

Free Range Grain, 2003-2004

Critical Art Ensemble and Beatriz da Costa

Project documentation

Marching Plague, 2004-2007

Critical Art Ensemble

Project documentation

Marching Plague: Germs of Deception, 2004-2007

Critical Art Ensemble

Installation

Marching Plague: Germ Warfare and Global Public Health

New York: Autonomedia, 2006

Critical Art Ensemble

Book

Marching Plague, 2006

Critical Art Ensemble

Color video, 18 minutes

The City Sprays Back, 2007

Critical Art Ensemble

Color video, 8 minutes

Evidence, 2004

Institute for Applied Autonomy, Critical Art Ensemble, The Yes Men

Color video, 4 minutes

Body of Evidence, 2008

Institute for Applied Autonomy

Installation

Prosecutor William J. Hochul Jr. Freedom Library, 2008

Institute for Applied Autonomy

Installation

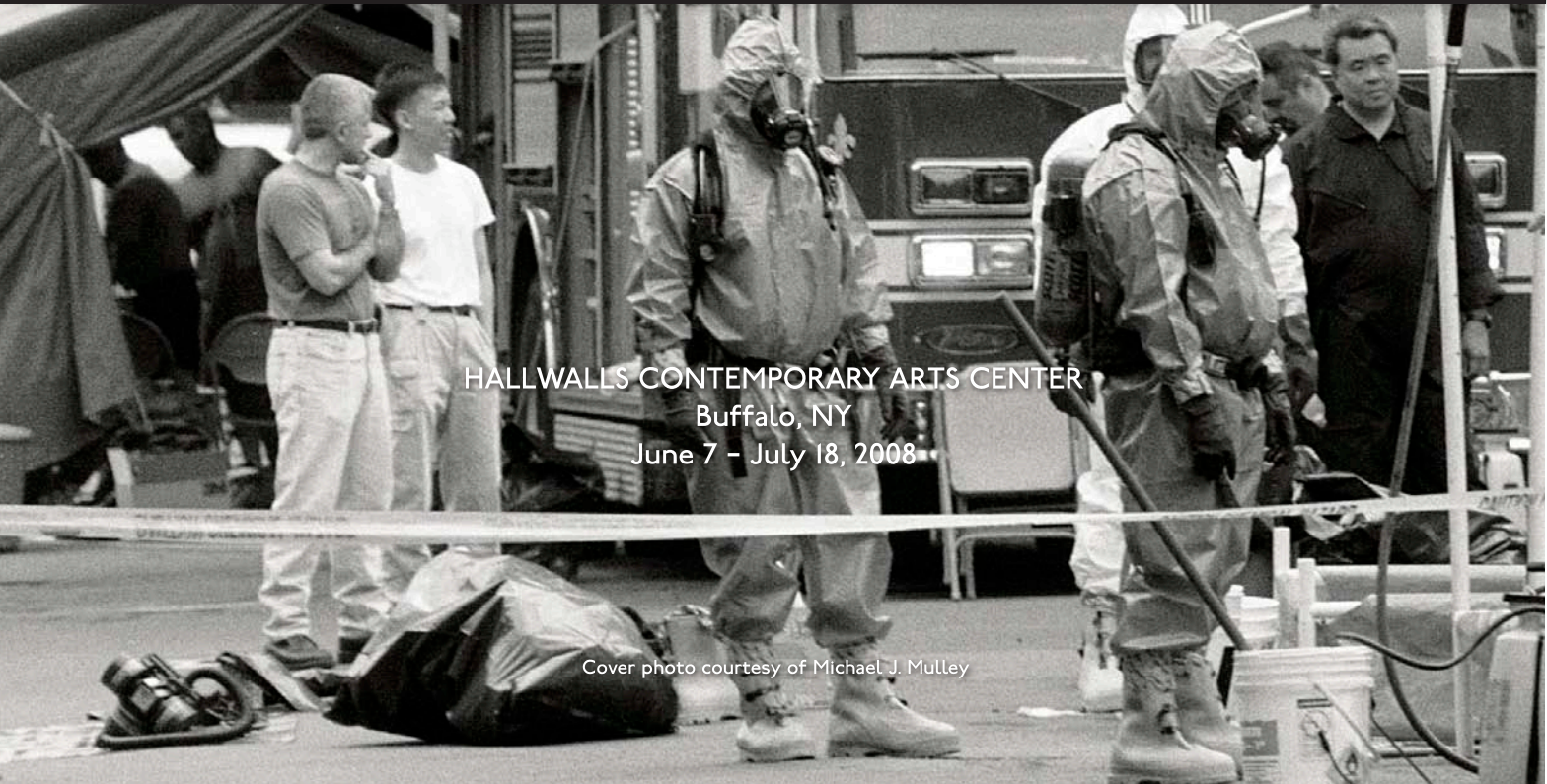
*"[The indictment] "is just part of the 'select agent' hysteria...  
Making common organisms sound as though they should be under lock and key is very  
confusing to law enforcement and the public."*

—Dr. C.J. Peters, MD, Director for Biodefense,  
Center for Biodefense and Emerging Infectious Diseases,  
University of Texas Medical Branch, June 2004

CRITICAL ART ENSEMBLE // // INSTITUTE FOR APPLIED AUTONOMY // // CRITICAL ART ENSEMBLE // // CRIT

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HALLWALLS CONTEMPORARY ARTS CENTER

Buffalo, NY

June 7 - July 18, 2008

Cover photo courtesy of Michael J. Mulley