

**APPENDIX B**  
**REPORT ON KOCH FOUNDATIONS' FUNDING OF JUDICIAL EDUCATION**

The following factual summary of the Koch Foundations' funding of judicial education programs was provided to Bruce A. Green by the Koch Foundations in connection with his ethics assessment of the Foundations' efforts. It is intended to serve as the factual basis upon which he is to base his legal conclusions. It was drafted and provided by the Foundations, in cooperation with the judicial education programs at issue. On occasion, this summary has been supplemented with information requested by Mr. Green. The following narrative summarizes (i) Koch Industries, Inc., and the three foundations affiliated with Charles G. Koch, the Chairman and Chief Executive Officer of Koch Industries, Inc. (referred to collectively as the "Koch Foundations" or "Foundations"), (ii) the Koch Foundations' support of judicial education, (iii) the individual programs which the Foundations have supported and (iv) the market for judicial education.

**I. Koch Industries, Inc., and the Koch Foundations.**

Koch Industries, Inc. ("KI"), is a privately held corporation organized under the laws of Kansas with its headquarters in Wichita. Shares of KI are held primarily by the Koch Family (in particular, Charles G. Koch and David H. Koch, Executive Vice President) and KI directors, officers and employees. KI is the second largest privately held corporation in the United States, with annual revenues of approximately \$30 billion and a workforce of 16,000. KI is composed of nine business groups - Petroleum, Gas Liquids, Chemicals, Chemical Technologies, Agriculture, Mineral Service, Capital Services, Energy, and Ventures - has hundreds of subsidiaries and joint ventures, and does business throughout the United States and the world.

As a privately held corporation, KI is not required to make regular financial disclosure under federal securities law. The company nonetheless has a significant public profile.<sup>1</sup> Like any company of its size, KI maintains a public relations staff which, among other tasks, responds to press inquiries, circulates press releases on notable company events, and works to burnish the company's image.<sup>2</sup>

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1. As one indicator of the level of media coverage, an August 11, 1999, search in Westlaw's ALLNEWS database, which covers periodicals from January 1, 1996, to the present, revealed 2,483 articles mentioning "Koch Industries."

2. See Koch Industries, Inc., Koch News Resource, Press Releases <<http://www.koch.com>>

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KI has a unique corporate philosophy, developed by Charles G. Koch, and the leadership of the company is dedicated to ensuring that it permeates the entire company. In this regard, the company's website states:

At Koch Industries, we have gone beyond the familiar notion of corporate culture to build an operating philosophy and set of values that heavily influence the way we do business. We call this system Market-Based Management or MBM. MBM is the creation of Charles Koch, chairman and CEO. He, along with others, developed this management philosophy based on market-process economics, the philosophies of science and knowledge, and many years of practical business experience.

MBM is much more than a set of management tools. It involves a vision of our rapidly changing world, a set of core commitments, and an aim to enhance the potential of each employee.

MBM stands against the traditional command-and-control approach to corporate governance, with its command hierarchy and incentive systems designed to ensure that orders are followed and the hierarchy preserved. MBM promotes, by contrast, a spontaneous order of employee-entrepreneurs. These individuals work within a framework of appropriate incentives and decision rights, and create value for customers by applying powerful knowledge systems.

We believe that Market-Based Management improves company performance by helping people realize their potential. In essence, MBM helps our employees act like owners.<sup>3</sup>

This market-based philosophy not only animates KI's corporate efforts, it also underlies much of KI's philanthropic efforts. Although KI, as a corporation, contributes significant funds to charitable causes annually, the lion's share of Koch affiliated charitable contributions are made by three foundations that the principal KI shareholders effectively control: the Charles G. Koch Foundation (also referred to as "CGK Foundation"), the

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2. (...continued)  
kochind.com/indexes/news\_releases.asp (visited August 11, 1999).
  3. See Koch Industries, Inc., Koch Overview, Koch Philosophy, <<http://www.kochind.com/philosophy.asp>> (visited August 11, 1999); see also Charles Koch, *Empowering the Entrepreneur Within*, CHIEF EXECUTIVE, Mar. 1998, at 46-49.

Claude R. Lambe Foundation (also referred to as "CRL Foundation"), and the Fred and Mary Koch Foundation (also referred to as "FMK Foundation").<sup>4</sup> The contributions of these Foundations seek to promote the same market oriented philosophy espoused by Charles Koch and reflected in the company itself.<sup>5</sup>

The Koch Foundations contribute to dozens of organizations in the areas of education, public policy, arts, law, and medicine. Over the last eighteen years, the focus of the Koch Foundations' approximately \$59 million in contributions has been education, with over fifty percent of those contributions directed to higher education. Since 1995, the Foundations' support of higher education has included gifts to judicial education. In this period, funding of judicial programs has accounted for 9.1 percent of the Foundations' total gifts. In 1995, the Foundations gave 11.9 percent of their total grants to judicial education programs; in 1996, 15.7 percent; in 1997, 4.9 percent; and in 1998, 8.2 percent.<sup>6</sup> Collectively, these gifts constitute three percent of the Foundations' \$59 million in grants over the last 18 years.

The Koch Foundations, as a condition of receiving tax exempt status, must file with the Internal Revenue Service annual schedules detailing their contributions, officers

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4. Richard Fink, Executive Vice President of KI and a member of the Board of Directors, presides over the CRL and CGK Foundations, and Elizabeth Koch, the wife of the Chairman and CEO of KI, presides over the FMK Foundation. William Ingraham Koch and Frederick Koch, the estranged brothers of Charles G. Koch are also represented on the FMK Foundation's Board.
  5. One example of shared concerns of the company and the Foundations is the stated mission of CGK Foundation: "to advance the well-being of mankind through the development of a free and civil society," which is meant to be achieved "by funding academic research, graduate fellowships, and economic education programs for decision makers who are striving to solve critical social problems." CGK Foundation, Model Letter in Response to Guidelines Inquiry (undated) (provided by Kelly R. Young, Vice President, CGK Foundation).
  6. The Koch Foundations have also contributed to like-minded public policy organizations, such as the Cato Institute and the Citizens for a Sound Economy Foundation, and to organizations involved in impact litigation, like the Institute for Justice and Center for Equal Opportunities. These organizations, however, do not fund judicial education programs.

and directors, and principal location.<sup>7</sup> For example, the Claude R. Lambe Charitable Foundation's 1997 IRS Form 990-PF – the IRS form on which such reports are made – states that its principal address is in Wichita, Kansas; identifies both Charles G. Koch and his wife, Elizabeth Koch, as Officers and Directors; and reports grants to educational programs at the Cato Institute, Citizens for a Sound Economic Foundation, Foundation for Research on Economics and the Environment, George Mason University Foundation, and the Institute for Justice, among others. Pursuant to IRS regulation, these Forms 990-PF, are made publically available for inspection.

## **II. The Judicial Programs and the Foundations' Grants**

The Koch Foundations first entered the arena of judicial education in 1995. Since that time the Foundations have made contributions to three programs: the Law and Economics Center ("LEC") of the George Mason University School of Law; the Foundation for Research on Economics and the Environment ("FREE"); and the Law and Organizational Economics Center ("LOEC") of the University of Kansas. A summary of the programs and the Foundations' connection to them follows.

### **A. LEC/George Mason**

The LEC was founded twenty-five years ago by Henry Manne "to train American judges and academics in what was then a novel approach to legal problems."<sup>8</sup> Prof. Manne is a pioneer in the field in law-and-economics and has written widely in the field.<sup>9</sup>

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7. This requirement is codified in Internal Revenue Code § 6033(a)(1) which provides, in relevant part, that "every organization exempt from taxation under section 501(a) shall file an annual return, specifying the items of gross revenue, receipts, and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe . . . ." In turn, the Treasury Regulations, at section 1.6033-2, specifically provide for the filing of annual reports.
  8. See Law and Economics Center, George Mason University School of Law, <<http://www.gmu.edu/departments/law/lawecon/about.shtml>> (visited August 12, 1999).
  9. In the founding meeting of the American Law and Economics Association, Henry Manne was honored (along with Richard Coase, Richard Posner and Guido Calabresi)

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The LEC was founded at the University of Miami School of Law, and after a brief move to Emory University, the LEC and Prof. Manne relocated to George Mason in 1986. The LEC's primary "mission" is to offer to federal judges instruction on the use of microeconomic principles in deciding cases.<sup>10</sup>

The LEC's operating budget has always been funded by private sources. As of January 1998, the LEC received financial support from 39 corporations and 18 foundations. To date, the Koch Foundations have given a total of \$145,000 to the LEC. In specific terms, the CGK Foundation made gifts of \$65,000 in 1997 and \$75,000 in 1999 to the LEC program.<sup>11</sup> Over the last five years, the CGK Foundation has provided 4% of LEC's total revenues.<sup>12</sup>

A model letter used by the LEC to invite judges to attend their programs clearly discloses the fact of corporate and foundation funding. That letter provides, in relevant part:

We can sponsor your participation at an institute because of the generous contributions of private foundations, individuals, and corporations. We accept donations from anyone with a genuine interest in economic and scientific education. However, to protect the integrity and credibility of the program, we

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9. (...continued)  
as one of the founders of law and economics.
  10. Law and Economics Center, George Mason University School of Law, <<http://www.gmu.edu/departments/law/lawecon/about.shtml>> (visited August 12, 1999). In addition to providing instruction to judges, the LEC publishes *The Supreme Court Economic Review*, "a faculty edited, peer-reviewed journal that brings together the perspectives of world class legal scholars and economists on the work of the United States Supreme Court." Law and Economics Center, George Mason University School of Law, <<http://www.gmu.edu/departments/law/lawecon/SCER.shtml>> (visited August 11, 1999). The LEC also supports the law school's new two-year Juris Master Program in policy analysis, which has a strong focus on law and economics.
  11. In 1995, the CGK Foundation gave the LEC \$5,000 for a project unrelated to judicial education.
  12. These percentage figures are based, in part, on information provided by the LEC.

only accept general contributions and never donations for a specific purpose. Of course, no corporate donor is ever allowed to interact with any program participants in any way whatsoever.<sup>13</sup>

The letter containing this disclosure has been in use since shortly after the recent arrival at the LEC of Odell Huff, who serves as the Director of Development for the LEC and for George Mason University School of Law. Prior to that, the model invitation letter did not disclose the fact of corporate and foundation funding. Instead, it appears that a brief discussion of funding was included in the LEC's course brochure that accompanied the letter. A typical brochure provided as follows: "Grants to George Mason University from independent nonprofit foundations allow the LEC to sponsor this institute free of charge, with the exception of purely personal and incidental expenditures."<sup>14</sup>

At the LEC, all decision making authority is vested in the program's chairperson, Mark F. Grady, who is also the Dean of the George Mason University School of Law; Francis H. Buckley, the Director of the LEC and Professor of Law; and John P. Giacomini, the Director of the Special Programs for the School of Law. In 1997 the LEC appointed an advisory board composed of academics, public policy analysts and judges that met once to advise the LEC on its programs. Recently, the LEC has appointed a new Judicial Advisory Board, composed solely of federal judges, to advise on questions of policy and course design. The seven members of the board are Douglas J. Ginsburg, Lynn N. Hughes, Blanche M. Manning, Pauline Newman, A. Raymond Randolph, Vaughn R. Walker and Jack Weinstein, and it is expected that the board will meet each fall. Neither KI nor the Foundations has any role in the design of the curricula, the selection of faculty or the invitation of judges. In fact, beyond providing grants to the LEC's judicial education programs, the Foundations have no contacts with the LEC on matters of program substance.<sup>15</sup>

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13. See Model LEC Invitation Letter (dated February 8, 1999) (provided by Odell Huff). This letter to judges is now outdated in one respect. The LEC has recently accepted support from a source specifically for a project that featured a series of conferences and a book of essays entitled the Fall & Rise of Freedom of Contract on the revival of free bargaining in the law. The book was published by the Duke University Press in August 1999 and includes major essays by leading figures in law-and-economics.
  14. LEC, The Law and Economics Center 1997 Institute for Federal Judges.
  15. Note, however, that there are at least two additional points of contact between  
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Invitations for the LEC programs are sent to all federal judges, both Article III and Article I judges, although the program gives priority to the former. Beyond this preference, judges are admitted into the program on a first come, first served basis.

The LEC's programs are academically rigorous.<sup>16</sup> Course work for the LEC's Basic Economics Institute historically has included extensive reading assignments and classes on such topics as: Law and Economics; Competition, Demand and Exchange; Prices and Markets, Information Costs; Capital Values, Future Yields and Interest; Production; Economics of Takings; Price Takers, Price Searchers; Competitive and Monopoly Markets; Evolving Property Rights and Competition; Statistical Inference; Econometrics; Free Exchange and Competitive Advantage; and Financial Markets. Judges are informed of the demands of the program prior to application; specifically, the brochure indicates that courses will meet six mornings a week for three and one half hours with some afternoon sessions. Further, the LEC's brochure has in the past provided that "[o]wing to the intensive and technical nature of the Institutes, the importance of faculty/participant interaction . . . we discourage spouses and children from attending, especially children under 14."<sup>17</sup>

The LEC will offer two one-week Judges Institutes in October 1999. The first, on the Economics of Private Law, will examine the rationality of private law rules through the prism of microeconomics. The lecturers will be Charles Goetz of the University of Virginia, Alan Schwartz and George Priest of Yale Law School, and Orley Ashenfelter of

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George Mason and KI. First, prior to accepting the positions of Director of Development for the LEC and for George Mason University School of Law, Odell Huff was a Program Officer for the Charles G. Koch Foundation. (Note that this prior connection is disclosed in Mr. Huff's brief resume posted in the LEC's website. See Law and Economics Center, George Mason University School of Law, <<http://www.gmu.edu/departments/law/lawecon/staff.shtml>> (visited August 12, 1999).) Second, Richard Fink, KI's Executive Vice President, is a member of the George Mason University's Board of Visitors.

16. We have not reviewed the curricula of the LEC's classes – or the classes of the other two programs – with an eye toward their ideological slant, if any.

17. The Law and Economics Center, 1997 Institutes for Federal Judges. The more recent LEC material does not appear to draw such a hard line on the attendance of family and guests. See George Mason Univ. School of Law, LEC, "Reply Memorandum and Application Form," 1999 Sessions (provided by Odell Huff).

Princeton University. The second institute this fall will deal with the Economics of Public Law, and the lecturers will include Douglass North of Washington University, Charles Goetz and Roberta Romano of Yale Law School, and Ben Klein of UCLA. The subjects covered will include corporate law and antitrust. Next spring, LEC plans to offer an institute on Science and Public Health similar to the one offered last June addressing questions of scientific methodology and expert testimony in the courtroom. Past Science and Public Health Institute speakers have included Nobel Laureate Leon Lederman; Kip Viscusi of Harvard Law School; Bruce Ames, the Director of the National Institute of Environmental Health Sciences at the University of California at Berkeley; and Dr. James Trefil of George Mason University, a leader in the scientific literacy movement. Next year philosopher John Searle of the University of California at Berkeley has agreed to lecture in the institute. Another institute next spring will deal with issues of moral and political philosophy in Early American Thought, and lecturers will include Harvey Mansfield of Harvard University, Walter Berns of the American Enterprise Institute, Gordon Wood of Brown University, James Q. Wilson of UCLA, and Peter Berkowitz of the George Mason law faculty.

The LEC has also offered several more advanced programs including (i) an advanced five-day economics program for federal judges, covering such topics as Public Choice and Constitutional Structure; Economic History and Neo-Institutionalism; Experimental Economics; Industrial Organization; Cooperation and Competition; and Social Institutions and Norms; (ii) a Science and Public Health Institute for Federal Judges; and (iii) a one-week Antitrust Economics Institute for Federal Judges. The last of these programs covered – in addition to basic economic concepts – the following topics:

- Horizontal and vertical arrangements that restrain trade;
- Anticompetitive restrictions on supply and the role of market structure;
- Definition of "agreement" for the purpose of applying the Sherman Act's ban on collective action that restrains trade;
- Delineation of relevant markets and measurement of market power;
- Identification of unlawful exclusionary conduct including refusals to deal and "predatory pricing" by dominant firms;
- Content and application of the Rule of Reason;



- **Limits on vertical contractual restrictions, such as tie-in arrangements and exclusive dealing;**
- **Allegations of unlawful collaboration and exclusionary conduct by participants in associations and network industries;**
- **Evaluation of efficiency arguments and other justifications for allegedly anticompetitive conduct; and**
- **Analysis of antitrust injury and standing requirements.**

Among the distinguished faculty retained by the LEC to serve as lecturers at these various programs have been Gary S. Becker, James Buchanan, Milton Friedman, Paul Samuelson and Henry G. Manne. Four of these five individuals are Nobel laureates.

- **Gary S. Becker is a University Professor of Economics and Sociology at the University of Chicago and the Rose-Marie and Jack R. Anderson Senior Fellow at the Hoover Institution at Stanford University. Professor Becker holds a Ph.D. in Economics and was awarded the Nobel Prize in Economic Science in 1992.**
- **James M. Buchanan is Advisory General Director of the James M. Buchanan Center for Political Economy at George Mason University. Professor Buchanan holds a Ph.D. in Economics and was awarded the Nobel Prize in Economic Science in 1986. He has held teaching positions at the University of Virginia, UCLA, and Virginia Polytechnic Institute.**
- **Milton Friedman is the Paul Snowden Russell Distinguished Professor Emeritus of Economics at the University of Chicago. He holds a Ph.D. in Economics and was awarded the Nobel Prize in Economic Science in 1976.**
- **Paul Samuelson is a professor of Economics at the Massachusetts Institute of Technology. Professor Samuelson holds a Ph.D. in Economics and was awarded the Nobel Prize in Economic Science in 1988.**
- **Henry Manne is a University Professor, Chair of Law and Economics Center and former Dean of George Mason University School of Law. He holds J.D., LL.M. and J.S.D. degrees, and has been designated one of the "founders" of the field of law and economics by the American Law and Economics Association.**

Two additional Nobel laureates, Leon Lederman and Douglas North, have lectured at LEC programs. Other faculty members include the following individuals: Armen A. Alchain of UCLA; Charles J. Goetz of the University of Virginia; Benjamin Klein of

UCLA; William E. Kovacic of George Mason University; Bruce N. Ames of the University of California, Berkeley; Thomas F. Gieryn of Indiana University; James S. Trefil of George Mason University; W. Kip Viscusi of Harvard Law School; Robert D. Cooter of the University of California, Berkeley; William A. Fischel of Dartmouth College; Darrell L. Williams of UCLA; Orley C. Ashenfelter of Princeton University; Leon M. Lederman of Fermi National Accelerator Laboratory; Douglas C. North of Washington University in St. Louis; Robert H. Frank of Johnson Graduate School of Management; and Michael K. Block of the University of Arizona.<sup>18</sup>

A non-exhaustive list of places at which the LEC's programs have taken place follows: Amelia Island, Florida (Economics Institute, November 8-21, 1997); Tucson, Arizona (Advanced Economics Institute, April 25-May 1, 1999; Science and Public Health Institute, May 2-8, 1998; Basic Economics Institute, October 17-27, 1998); Salish Lodge, Snoqualmie, Washington (Antitrust Economics Institute, June 12-18, 1999; Science and Public Health Institute, June 5-18, 1999).<sup>19</sup>

According to the 1999 LEC promotional material, the program "pays and arranges for meals, lodging, texts and materials" and "[p]articipants must pay for their own personal expenses."<sup>20</sup> As for travel, the material provides that "[e]ach participant will be reimbursed for the lowest available coach class airfare, or auto mileage at 27¢ per mile, up to \$500."<sup>21</sup> As for lodging, each participant is housed in a single room.<sup>22</sup>

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18. Affiliations provided are those in effect as of the time of participation in LEC seminars.
  19. Note that each of these events was held during off-peak season in the respective locales.
  20. George Mason Univ. School of Law, LEC, "Reply Memorandum and Application Form," 1999 Sessions (provided by Odell Huff); *see also* The Law and Economics Center, 1997 Institutes for Federal Judges.
  21. George Mason Univ. School of Law, LEC, "Reply Memorandum and Application Form, 1999 Sessions" (provided by Odell Huff); *see also* The Law and Economics Center, 1997 Institutes for Federal Judges.
  22. George Mason Univ. School of Law, LEC, "Reply Memorandum and Application Form," 1999 Sessions (provided by Odell Huff). The material describes the accommodations at Salish Lodge as "deluxe rooms, about 365 square feet in size and comfortably furnished. All resort rooms have amenities such as in-room refrigerators, 2-line telephone with voicemail and dataport, terry cloth robe, hair dryer, iron, ironing  
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Enrollment in the LEC courses is limited; for instance, in most cases, the Basic Economics Institutes is capped at 25 participants. Over the course of its long history, however, the LEC has reached a significant portion of federal judiciary. As of 1998, 470 judges had attended LEC programs (both the basic Institutes as well as more specialized programs).<sup>23</sup>

## B. FREE

FREE was founded by John Baden, an economist and former academic. The program is based in Bozeman, Montana, and is unaffiliated with a university or law school. FREE began its judicial education program in 1992; according to its promotional material, the programs were developed at the behest of certain federal judges.<sup>24</sup> In addition to conducting seminars for federal judges, FREE hosts programs for academics – including law professors – and members of the media. As of 1998, more than 150 federal judges had attended FREE Seminars.

As its name makes clear, FREE's focus is on the intersection of economic principles and environmental values. In its promotional material, under the heading "the FREE Mission," the organization writes:

FREE advances conservation and environmental values by applying modern science and America's founding ideas to policy debates. We are intellectual entrepreneurs, explaining how economic incentives, secure property rights, and responsible prosperity can foster a healthy environment. While our seminars are explicitly pro-environment, they explain why ecological values are not the only important ones. We stress that trade-offs among competing values are

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22. (...continued)  
board, coffee-maker with complimentary coffee, and minibars (billed to individual accounts)." *Id.* Further, the room rates are described as "Sunday-Thursday, \$211.68 including tax, and Friday-Saturday, \$267.68 including tax." *Id.* Further these rates are available to judges who wish to extend their stays at their own expense. *See id.* *See also* The Law and Economics Center, 1997 Institutes for Federal Judges (describing similar terms and conditions).
23. *See* Law and Economics Center, Cumulative List of Participating Federal Judges: First through Twenty-Fourth, Basic Economics Institutes and Other Institutes for Federal Judges: 1976-98. This number include roughly 50 deceased judges and 20 Bankruptcy Judges.
24. Foundation for Research on Economics and the Environment, Seminars for Federal Judges, <<http://www.free-eco.org/activities.html>> (visited May 12, 1999).

inescapable. We show why it is ethically and materially irresponsible to pretend such choices can be avoided.<sup>25</sup>

The promotional material continues, under the heading "Our Philosophy:"

Historically Americans have relied on the federal government for environmental protection. However, the easy solutions have been implemented. Under the current system of public ownership and political management, taxpayers all too often find themselves subsidizing economically irrational, environmentally destructive activities. Below cost timber sales on the majority of the nation's 120 forests are compelling examples.

Effective environmental policy requires a new paradigm: sound economics and environmental protection must go together. Conversely, when environmental policies thwart material wants, conservation goals languish.

FREE works at the juncture of economics, ecology, and ethics. FREE has built its reputation by providing constructive alternatives to the regulatory paradigm of the past twenty-five years. The key to our continuing success is straightforward: we have a sincere concern for environmental quality while recognizing the importance of economic prosperity and sound science.<sup>26</sup>

According to FREE, its programs' objectives are to (i) "detail the dangers of legislating 'risk free' laws and the linkages among science, risk analysis, and economics;" (ii) "explain the importance of secure property rights and economic freedom to the efficient and sensitive use of natural resources;" (iii) "show how the application of economics to law provides insights into the public interest;" and (iv) "describe ways in which incentives and voluntary cooperation can be used to protect and enhance environmental values while fostering economic prosperity."<sup>27</sup>

Koch Foundations have provided grants to FREE since 1987, well prior to the inception of its judicial education program. Since 1987, the Foundations have provided a

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25. Foundation for Research on Economics and the Environment, <<http://www.free-eco.org/>> (visited August 11, 1999).

26. *Id.*

27. *Id.*

total of \$435,000 in funds.<sup>28</sup> The first Koch-affiliated contribution to FREE's judicial programs was that of the CRL Foundation in 1996, made four years after FREE launched the program. Of this initial \$90,000 gift in 1996, \$25,000 supported FREE's 1996 budget for judicial education, representing 11.5% of the budget for those programs, and \$65,000 supported FREE's 1997 budget for judicial education, representing 22.4% of the budget for those programs.<sup>29</sup> The CRL Foundation made subsequent contributions to FREE's judicial education budget of \$75,000 in 1997, which was allocated for expenditure in FREE's 1998 fiscal year, representing 25.9% of FREE's 1998 judicial education budget. The CRL Foundation is giving another \$75,000 in 1999 toward judicial education programs.

These contributions are among many that FREE receives from a diverse group of corporations and foundations. Nor are the Koch Foundations' contributions the largest to FREE. *The Washington Post* last year reported that the M.J. Murdock Charitable Foundation has been the largest contributor to FREE's judicial seminars, and that the Carthage Foundation has contributed \$100,000 annually to FREE since 1993.<sup>30</sup>

While FREE routinely indicates on its program agenda, which all judges receive, the names of foundations that are sponsoring the program, its announcement letter states that all seminar expenses are covered by "funds from 'dead-men' foundations."<sup>31</sup> It follows this policy, the letter states, because "it is a violation of judicial standards for judges to accept corporate support." On questioning, a staff member of FREE indicated that "dead-men foundations" are, roughly speaking, those foundations that are not controlled by the settlor. Thus, under this view, the CRL Foundation is a "dead-man" foundation notwithstanding the fact that it is controlled by Charles Koch. Charles Koch's control of Koch Industries, however, calls into question at least the relevance of this term, as defined by FREE, if not the accuracy of the disclosure.

At FREE, the Chairman, Dr. Baden, and the Program Director, Peter Geddes, are fully responsible for designing the programs, choosing the faculty, and soliciting judges

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28. The grants unrelated to judicial education - all made by the CRL or CGK Foundations - are as follows: \$2,500 in 1987; \$5,000 in 1989; \$13,000 in 1992; \$15,000 in 1993; \$45,000 in 1997, and \$75,000 in 1998.

29. These, and similar, percentage figures are based in part of information provided by FREE.

30. Ruth Marcus, *Issues Groups Fund Seminars for Judges*, THE WASHINGTON POST, April 9, 1998, at A1, A12.

31. Letter from John Baden, Ph.D., to Hon. Robert J. Dawson, Nov. 4, 1998.

to attend. Consistent with the program's mission, the seminars are designed to explore the juncture of law, economics, ecology, and ethics, and thus, the faculty is drawn from the academy, think tanks, and business and legal worlds. In designing the seminars, FREE actively solicits opinions and suggestions from the judges who attend and works to respond to their expressed needs in the areas of legal-environmental education.

FREE has a nine-member board of trustees, which performs typical board-level advice and consent functions and is not involved in the day-to-day operation of the organization. FREE's board members include two federal court of appeals judges, Hon. Danny J. Boggs of the U.S. Court of Appeals for the Sixth Circuit, and Hon. Douglas H. Ginsburg of the U.S. Court of Appeals for the D.C. Circuit, academics, and prominent members of the private sector.<sup>32</sup> The board members are not involved in raising funds and receive no remuneration for their services.<sup>33</sup>

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32. The other members of the board are Richard A. Derham or Davis, Wright Tremain; H. Deecy Stephens Gray of D.C. Stephens, Ltd.; James L. Huffman of Lewis and Clark Law School; John L. McCormick of Stern, Stewart & Company; Karen Vinton of Montana State University; and R. Neal Wilkins of Texas A & M University. Former members of FREE's board have included Richard W. Duesenberg, retired from Monsanto Company (1996-98); Marlin Gibson of Wintead, Sechrest & Minick (1996, 1998); Edward W. Warren of Kirkland & Ellis (resigned 1999); James A. Kraft of Plum Creek Timber Company (1998); John A. Lamping of Amoco Corporation (1996, 1998); Furman C. Moesley of Sasquatch Books (1998); Thomas H. O'Leary of Burlington Resources, Inc. (1998); and R. Neal Williams of Port Blakely Tree Farms, Inc. (1997-98). (Affiliations provided are those in effect at time of service of board.)
33. One issue of potential significance to FREE's board surrounds the recent decision by the District of Columbia Circuit in *American Trucking Assoc. v. EPA*, 1999 W.L. 300618 (D.C. Cir. May 14, 1999). See, e.g., Editorial, "Lobbied Judges Side in Favor of Big Polluters," THE IDAHO STATESMAN, June 13, 1999, at 11B; Editorial, "Were Federal Judges Right to Overturn Air Quality Standards?" SUN-SENTINEL FT. LAUDERDALE, June 7, 1999, at 23A. In this opinion, issued *per curiam* – but, in light of a dissent, clearly joined by Stephen Williams and Douglas Ginsburg – the Court purported to strike down certain provisions of the Clean Air Act as violative of the non-delegation doctrine. Note that Judge Ginsburg is on FREE's Board and Judge Williams has attended a FREE seminar and Edward Warren – at the time a FREE board member – was the attorney for an intervenor, the Small Business Administration, who, along with several other attorneys for other parties, briefed and argued the case. According to a FREE staff member, Mr. Warren has recently
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In recruiting judges to attend its introductory seminars FREE sends announcements to all federal judges who have not previously attended a seminar, and they are invited to apply.<sup>34</sup> Although FREE is keen to attract those with the most decision making authority in the realm of environmental law, namely judges on the Court of Claims, the Federal Circuit and the District of Columbia Circuit, it makes no special efforts to bring them to its programs.

All judges who wish to attend a FREE program are, as a matter of course, asked to provide a written "expression of substantive interest" in the seminar, which serves to impress upon the judges the serious nature of the program and weed out those not interested in rigorous study.

FREE's foundational course is a one-week program on Environmental Economics and Policy Analysis. This course has been offered twice in 1998 and once in 1997. Although the objective of the program in Environmental Economics and Policy Analysis is always the same, the actual lectures and courses differ from program to program. For instance, the June 16-21, 1998, program offered lectures and courses under the following headings: "Environmental Economics: an Oxymoron?" "Prices and Incentives in Environmental Policy," "Beavers, Ranchers, and Other Keystone Species: A Western Environmentalist's Re-Consideration of Ecological Integrity," "Evaluating Environmental Amenities," "The Western Water Conundrum," "Economic Values and the Environment," "'Markets' and 'Rights': Why is Economics so Dismal?" "Combat Biology From the Clearwater to the Courtroom," and "Reasons Peculiarly Our Own." On the other hand, in the May 26-31, 1998 program, the only shared element was "Combat Biology From the Clearwater to the Courtroom," and the list of remaining courses and lectures were as follows: "The Ecology of Economics," "Oh Louisiana! A West of Visions, Ideals, Dreams, Hallucinations," "Basic Economic Concerns," "Alternatives to Federal Court: The Devolution Debate," "Preservation, Conservation, 'Scientific Management,' and the Rise of Bureaucratic Professionalism," "Application of Economic Principles to the Environment," "The Risk Ledger: Beyond Tunnel Vision," "If Not 'Scientific Management,' Then What?" and "Public Choice Economics Can Help Explain Bureaucratic Perversities."

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33. (...continued)

resigned from FREE's board.

34. FREE's marketing approach is to send a personal invitation to those judges "nominated" by prior attendees and to send an announcement to all other judges who have not yet attended the introductory program inviting them to apply. No preference is given to either group; however, in order to be accepted into the program a judge must at some point obtain a nomination from a prior attendee.

FREE's advanced programs have been conducted under the following headings: "Bringing Sound Science and Economics to Risk Analysis," "Real and Alleged Environmental Crises," and "Applying Science and Risk Analysis to Endangered Species."

The academic rigor of FREE's programs is reinforced by a written affirmation the execution of which is required of all judges prior to attending.<sup>35</sup> Affirmation provides, *inter alia*,

I will receive readings prior to the conference. This material supplements each speakers' lecture. I agree to study this material prior to my attendance;

I will receive the book *Federal Judge's Desk Reference to Environmental Economics*. The lectures will be tied to the principles in this book. I agree to read this book prior to attending the seminar.

In addition to these affirmation, each judge must commit him or herself to attending all lectures, activities, lunches and dinners during the course of the seminar.

Following its courses, FREE contacts each of the attendees to express the organization's appreciation for the judge's attendance. In these letters, FREE solicits recommendations of judges who might wish to attend future seminars. Further, FREE solicits the attendees' assistance with its grant-giving bodies. For instance, in one recent letter, Dr. Baden wrote as follows:

As you know, we rely solely on the support of "dead men" foundations to cover the direct expense of our judges programs, e.g., John M. Olin Foundation, Inc. For support to be renewed, foundation officers must recognize the value of their grants. Therefore, we would welcome your thanking these individuals by sending a letter to the foundations listed below. Your letters help sponsors gauge the relevance of our program and the value of their educational investments.<sup>36</sup>

The CRL Foundation is listed as one such supporter.<sup>37</sup> Judges have responded favorably to such requests, as evidenced by the letters received by the CRL Foundation.

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35. Affirmation, FREE, Environmental Economics and Policy Analysis: A Seminar for Federal Judges, August 24-29, 1999.

36. Letter from John A. Baden, Ph.D., to Hon. Peter Hill Beer, dated July 13, 1999.

37. *Id.*



FREE's faculty are distinguished in their fields:

- **John Baden**, Chairman of Foundation for Research on Economics and the Environment. He holds a Ph.D. in Political Economy and has taught at Indiana University, Montana State University, and Utah State University. At the Utah State University, Dr. Baden directed the Environmental Studies Program.
- **George M. Gray**, Deputy Director of the Harvard Center for Risk Analysis and Instructor in Risk Analysis at the Harvard School of Public Health. Dr. Gray holds an M.S. and a Ph.D. in Toxicology and is a strong proponent of using more and better scientific information in the risk-assessment process.
- **James L. Huffman**, Dean and Professor of Law Northwestern School of Law, Lewis and Clark College. Dean Huffman holds an M.A. and J.D. and has taught and lectured in the law both throughout the country and abroad. He teaches Environmental law and has published widely in the field.
- **Russell D. Robert**, Adjunct Professor of Entrepreneurship and Director of Management Center, John M. Olin School of Business, Washington University, St. Louis. Professor Roberts has a Ph.D. in Economics and has taught at several universities including UCLA and Stanford.

FREE faculty members have also included the following individuals: Don Snow, Executive Director, Northern Lights Institute of Arts, and Literary Director, *Northern Lights*; Mark Plummer, Senior Fellow, Discovery Institute; Todd Wilkinson, Western Correspondent, *Christian Science Monitor*; Lynn Scarlett, Executive Director, Reason Public Policy Institute; Barrett Walker, Trustee, Alex C. Walker Foundation; Edward Warren, Kirkland & Ellis; Mike Gilpin, University of California, San Diego; Andy Stahl, Executive Director, Forest Service Employees for Environmental Ethics; Randal O'Toole, Director, Thoreau Institute; Ray Rasker, Northern Director, The Sonora Institute; Dwight Lee, University of Georgia; Robert Nelson, University of Maryland; Frederic A. Morris, Research Leader, Battelle Research Center; James J. Johnson, Senior Vice President and General Counsel, Proctor & Gamble; Bruce N. Ames, University of California, Berkeley; Alfred DeCrane, Texaco (retired chairman); Michael Bean, Chairman, Environmental Defense Fund; Hank Fischer, Northern Rockies Representative, Defenders of Wildlife; and Doug Honhold, Staff Attorney, Earthjustice Legal Defense Fund.<sup>38</sup>

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38. Affiliations provided are those in effect at the time of participation in FREE seminar.

In addition to the two basic courses in 1998 and the one in 1997, FREE offered five additional one-week courses. Each of these programs was held in Montana, either at Gallatin Gateway Inn, Gallatin, Montana, or at Elkhorn Ranch, Big Sky, Montana. FREE provides their seminars to judges free of charge and reimburses them for travel, board and lodging. Judges, however, are required to book their flights more than 21 days in advance in order to obtain the most favorable airfare possible.

### **C. LOEC/University of Kansas**

The LOEC was established in 1995 at the University of Kansas as a joint program of the University's schools of law and business. The program was consciously modeled after George Mason's long-running LEC program.<sup>39</sup> Henry Butler is the Director of the LOEC, a position he has held since 1994, and since 1998 he has held the Fred C. and Mary R. Koch Distinguished Professor of Law and Economics, with a joint appointment at the schools of law and business.<sup>40</sup> According to the LOEC's promotional material, the program was founded in response to the "growing" need for education programs for state judges.<sup>41</sup> The material continues:

Many of us are justifiably enthusiastic about the emerging "devolution" of federal government programs to the state and local governments. We expect state and local governments to be more responsive to their citizens' preferences, more creative in their solutions, and better guardians of taxpayers' money. Clearly, state court decisions take on added significance as more and more disputes involve state laws. State judges must be prepared to deal with these ongoing changes. An educated judiciary benefits society through informed interpretations of statutes and thoughtful resolution of private disputes.<sup>42</sup>

As of June 1998, some 470 state judges had attended the LOEC Economic Institutes for State Judges.

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39. Economics Institutes for State Judges, the Learning Environment, <<http://www.loec.org/recruiting3.html>> (visited May 12, 1999).

40. The Fred C. and Mary Koch Chair was funded by an irrevocable, noncontingent gift from the eponymous foundation. The University maintains full control over Professor Butler's compensation and tenure. Note, however, that Professor Butler has on occasion served as an instructor at programs run for employees of KI.

41. The Law and Organizational Economics Center, LOEC Background, <<http://www.loec.org/about.html>> (visited August 11, 1999).

42. *Id.*

The LOEC is the only judicial education program for which the Koch Foundations have provided a portion of the initial funding.<sup>43</sup> The LOEC has received contributions from the Koch Foundations (the FMK<sup>44</sup> and CRL Foundations) for the 1995-96 program year in the amount of \$450,000 representing 70% of its budget; \$508,580 for the 1996-97 program year, representing 49.4% of its budget; \$200,000 for the 1997-98 program year, representing 19.8% of its budget; and \$450,000 for the 1998-99 program year, representing 35.9% of its budget.<sup>45</sup> In the last several years, the LOEC's donor base has increased substantially, and the program now receives gifts from 56 corporations, 24 foundations and 11 individuals (including judges) and law firms around the nation for its judicial education programs.

The invitation letter used by the LOEC does not disclose the program's source of funding. The accompanying brochure, however, states that it "relies on the generous contributions of foundations and corporation to provide the Economics Institutes for State Judges at a minimal cost to the participants."<sup>46</sup>

Prior to conducting its first program, Professor Butler corresponded directly with Hon. Ellen Peters, then Chief Justice of the Connecticut Supreme Court and then-President of the Conference of Chief Justices seeking her "reaction" to several issues raised by the letter. In particular, Prof. Butler asked for Chief Justice Peters' opinion on

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43. The LOEC's promotional material indicates that its "Judicial Education Program was established in 1995 with a grant from the Fred C. and Mary R. Koch Foundation." The Law and Organizational Economics Center, LOEC Background, <<http://www.loec.org/about.html>> (visited August 11, 1999). As will be indicated below, to the extent that this statement is construed to mean that the Foundation bore the entire cost of the program's start-up, this is incorrect.

44. Each of the four Koch brothers is represented on the board of the FMK Foundation. David Koch represents himself; Charles Koch is represented by his wife, Elizabeth; William Koch is represented by Harry Najim; and Fred is represented by Larry Spurgeon.

45. Because of differences in fiscal years, among other matters, the LOEC budgets do not always reflect gifts from the Foundations in the same years that the grants were disbursed from the Foundation.

46. LOEC, Economics Institute for State Judges (1999 Programs).

whether "the Center's funding mechanism is acceptable."<sup>47</sup> In this letter, Professor Butler disclosed that the LOEC received

a seed grant of \$1,000,000 – \$500,000 for each of the 1995-96 and 1996-97 academic years – from the Fred and Mary Koch Foundation, a private 501(c)(3) organization, to start the KU Economics Institutes for State Judges. The foundation's contributions will be made to the [LOEC], and the funds will be paid through the Kansas University Endowment Foundation, our version of the separate 501(c)(3) organization that every state university has.<sup>48</sup>

Professor Butler went on to describe plans for further development and funding of the LOEC.

In order to achieve our ambitious goal of educating at least 120 state judges per year, the Center must have a broad base of support from foundations and corporations. My financial goal for the Center is to develop and maintain the same long-term continuity that George Mason's Law and Economics Center has had for the parallel federal program. To that end, I and a full-time development officer will engage in regular, national fundraising from foundations and corporations to finance this program after the initial seed money from the Koch Foundations is expended. I will make every effort to secure complete funding from private 501(c)(3) foundations; however, it may become necessary to use contributions from corporations. To help allay any appearance of impropriety in accepting corporate contributions, I have imposed the following constraints on the Center's source of funding. (a) Corporate contributions to the [LOEC] must not be restricted in any way (for example, a corporation could not say that I [sic] will contribute only if you invite a certain judge or cover a certain topic); (b) Expenditures from corporate contributions will not exceed one-third of the direct operating cost of any single institute; (c) No contribution from an individual corporation will exceed five percent of direct operating cost of the institutes. . . . I believe that these restrictions should reduce th[e] risk [of possible charges of improper influence of judges] to a bare minimum.<sup>49</sup>

According to staff at LOEC, neither Chief Justice Peters nor another member of the Conference responded in writing. Professor Butler, however, has publically affirmed that

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47. See Copy of letter from Henry N. Butler to Hon. Ellen Peters, dated July 1, 1995, at 3.

48. See *id.* at 2-3.

49. See *id.* at 2.

Chief Justice Peters "told [him] that there were no objections to the funding sources when she raised the issues at a meeting of the Conference . . . in summer 1995."<sup>50</sup>

The moving force behind LOEC is Professor Butler. He is primarily responsible for developing the curricula, recruiting judges to attend and choosing faculty members for the judicial programs. He undertakes these tasks under the supervision of the LOEC's board of directors, which consists of Professor Butler and the deans of the University of Kansas' schools of law and business. Professor Butler is assisted in curriculum decision by the LOEC's 14-member judiciary advisory board, which is responsible for making suggestions for future seminars, subject to Professor Butler's final approval.<sup>51</sup> The Judicial Advisory Board consists of judges who have been through the program and have been appointed to the board through a recommendation or request. The Judicial Advisory Board has no responsibility for the LOEC's budget and fundraising and neither they nor the judges who attend the LOEC's programs have contact with the corporate or foundation funders. No board member receives remuneration for his or her services.

Currently, all state judges nationwide are invited to attend the LOEC's programs.<sup>52</sup> The program gives preference to state appellate and trial judges of courts of general jurisdiction, that is, to judges most likely to find the tools of economics-useful in deciding cases. As a screening mechanism, the LOEC asks judges when applying to describe their docket and to affirm that their docket is not primarily criminal. Moreover, as a means of emphasizing the academic rigor of the program, judges are asked to specifically affirm that they "agree to read the assigned material prior to class, attend all

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50. Henry N. Butler, *Judges' Economics Classes Not Improper*, THE WICHITA EAGLE, Aug. 12, 1999, at A6.

51. Currently, the board is composed of the following judges: Edward Larson, Supreme Court of Kansas (chairman); Catherine L. Anderson, Fourth Judicial District of Minnesota; Maura D. Corrigan, Michigan Court of Appeals; Thomas G. Fisher, Indiana Tax Court; Raul A. Gonzalez, Supreme Court of Texas; Steven R. Plotkin, Louisiana Court of Appeals, Fourth Circuit; William Ray Price, Supreme Court of Missouri; Gregory Kellam Scott, Supreme Court of Colorado; Richard V. Thomas, Supreme Court of Wyoming; Elizabeth A. Weaver, Supreme Court of Michigan; and Bruce D. Willis, Minnesota Court of Appeals. See LOEC, Economics Institute for State Judges (1999 Programs).

52. Early in its history, the LOEC imposed geographic limitations on the judges it invited to participate in its programs. Such limitations, however, were purely a function of the program's limited capacity. Since 1997, invitations have gone to state judges nation-wide.

class and group functions, and participate in classroom discussions and activities."<sup>53</sup> Subject to these conditions, the LOEC accepts judges into the program on a first come, first served basis.

Unlike the other programs, LOEC currently uses testimonials from judges extolling the virtues of the LOEC's instruction as part of their recruiting effort. For instance, in its 1999 brochure for the Economic Institute for State Judges, the following two testimonials, among others, appear:

The instructors are uniformly excellent. What particularly impressed me was their ability to handle our unsophisticated (to put it charitably) questions and work them into a coherent, thorough presentation of a topic. Rather than learning answers to any particular problems, I think I came away with more tools to analyze the long-term consequences of a proposed legal doctrine, and greater confidence in employing cost-benefit analysis.<sup>54</sup>

[The Institute's first . . .] week in Lawrence has provided a watershed experience to look at economics in a legal context that provided not only intensive theoretical information, but excellent practical legal application, as well.<sup>55</sup>

In addition to these two testimonials, the LOEC's promotional material for its 1999 Economic Institutes for State Judges contains eleven others under the heading "Participant Endorsements."<sup>56</sup>

The Economic Institute for State Judges – the LOEC's staple program – entails 56 hours of classroom time, which is the relative equivalent of a four-credit college class.<sup>57</sup> This program focuses on areas of economics

that deal with (a) the operation and characteristics of markets, (b) the formation and economic role of prices, (c) the importance of the individual as the primary

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53. LOEC, Application, Economics Institutes for State Judges (Nov. 1999).

54. LOEC, Economics Institute for State Judges (1999 Programs) (quoting Harris Hartz, New Mexico Court of Appeals).

55. *Id.* (quoting James M. Sutton, Jr., Superior Court of California).

56. *Id.* ("Participant Endorsements").

57. See Economics Institutes for State Judges, <<http://www.loec.org/recruiting3.html>> (visited May 12, 1999).

unit of analysis, (d) subjective value, freedom of contract, and the rule of law, (e) cost, competition and monopoly, (f) theory of the firm, (g) risk, injury, liability, and risk assessment, (h) scientific methodology, and (i) the nature and role of private property and contracts.<sup>58</sup>

Over a two-week period, the judges are assigned reading and attend lectures on an array of topics including economics, finance, statistics, accounting and public policy. During the first week, courses and lecture are delivered under the following headings: "Exchange, Cooperation, and Opportunity Cost," "Production, Costs, and Supply," "Prices, Markets, Information, and Coordination," "Competition and Monopoly," "Regulation and Public Policy Analysis," "Basic Concepts in Statistics," and "Capital Values and Interest." During the second week, the courses and lectures delivered are "Externalities, Property Rights, and Transaction Costs," "Economics of Accounting Data," "Organizational Economics," "Risk, Injury, and Liability," "Risk Analysis," "Scientific Methodology and the Admissibility of Expert Testimony," and "Economic Analysis of Law."

The LOEC program has started to offer an advanced course on "case analysis" which focuses on employment contracts, punitive damages, valuation, and expert testimony. The LOEC has also offered individual courses on special topics, from time to time, including a program focusing on products liability entitled "Restatement (Third) of Torts: Products Liability: Is it a Reasonably Safe Product?" and a course on issues in employment law entitled "Economic Analysis of State Employment Law Issues."

The LOEC stays in contact with the judges who attend the programs in a number of ways. On a monthly basis, the LOEC provides each judge with the "LOEC Update, a compilation of articles and op-ed pieces applying economics to legal and public policy issues."<sup>59</sup> Further, the LOEC periodically distributes "pertinent books and publications;" for example, in 1997-98, the LOEC distributed *Science on Trial: The Clash of Medical Evidence and the Law in the Brest Implant Case* by Marcia Angell, M.D., with the financial assistance of the Association for the Advancement of Sound Science.

In addition to staying in touch with the judges who attend, LOEC solicits their support in relations with the LOEC's grant-giving institutions. The LOEC routinely asks judges to share their comments and words of support directly with LOEC's funders. For

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58. LOEC, Judicial Education Programs; Economics Institutes for State Judges: Annual Report 1997-98 Academic Year (with Detailed Program Descriptions), at 8 (June 30, 1998), *see also id.* at 17 ("Seven Economic Concepts for Judicial Decision Making").

59. LOEC, Judicial Education Programs; Economics Institutes for State Judges: Annual Report 1997-98 Academic Year, at 16 (June 30, 1998).

instance in one such letter, Professor Butler wrote: "If you enjoyed the [Basic Economics Institute] and would like to share your comments, the LOEC would appreciate your writing any of the following supporters of the judicial education program."<sup>60</sup> Judges have responded to such entreaties as evidenced by several letters of support received by the CGK Foundation.

The LOEC faculty is distinguished and has longstanding ties to law and economics. The LOEC faculty includes:

- **Barry Adler**, Professor of Law at New York University School of Law. He has served as Sullivan & Cromwell Research Professor of Law at the University of Virginia School of Law and has taught at George Mason University School of Law and Emory University School of Law. He is widely published in the areas of commercial and corporate law.
- **Henry N. Butler** holds a J.D. and Ph.D. in Economics. He has served as Assistant and Associate Professor at George Mason University and as Associate Dean and Director of George Mason's Law and Economic Centers.
- **W. Kip Viscusi**, the John F. Crogan, Jr., Professor of Law and Economics at Harvard Law School. Professor Viscusi holds a Masters in Public Policy and Ph.D. in Economics.

The faculty at LOEC seminars have also included the following individuals: Terry Anderson, Senior Fellow, Hoover Institution, Stanford University; Barry Basinger, Keith Chauvin, Joyce Hall, and Maurice Joy of the University of Kansas School of Business; Mark G. Huang, an attorney with Shook, Hardy & Bacon; and Fred McChesney of Cornell Law School.<sup>61</sup>

The LOEC holds the majority of its programs at the main campus of the University of Kansas in Lawrence. The first of each two-week Economics Institute for State Judges is held in Lawrence and many of the LOEC specialty programs, *e.g.*, its

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60. Memorandum from Henry Butler and Cindy Belot to Participants, 16th Economics Institute for State Judges, July 31, 1998. Note that the list of those to whom such letters should be addressed includes Victoria Hughes, Vice President, Charles G. Koch Charitable Foundation. As the CGK Foundation never provided funds to the LOEC, its listing as a supporter is in error.

61. Affiliations provided are those in effect at the time of participation in LOEC seminar.



programs on products liability and employment law, have also been held at the University. However, the LOEC routinely conducts the second week of its Economics Institutes - as well as some of its advanced and specialty programs - off-site. Past locations have included Snowbird, Utah, in the summer, and Sanibel Island, Florida, in the winter.

According to the LOEC's 1999 promotional material for its Economics Institutes, in addition to the instruction itself, the program provides textbooks and other reading material, group meals associated with the Institute, lodging, and "[f]ifty percent of travel expenses up to a total reimbursement of \$500 for the two-week program."<sup>62</sup> The material also indicates that judges are responsible for "[i]ncidental lodging charges, e.g., phone calls, room service, etc.," "[e]xpenses associated with upgrading LOEC lodging accommodation," "[a]ny meals not associated with the Institute," "[e]xtracurriculars, e.g., golf, tennis, hiking, etc.," "transportation expenses above the stated travel allowance," and "[e]xpenses associated with [a] spouse's visit."<sup>63</sup>

#### IV. Other Judicial Education Programs

The three programs for judges that the Koch Foundations support are simply one segment of a wider network of seminars from which judges may choose. The Federal Judicial Center, Institute for Judicial Administration, Judicial Division of the American Bar Association, University of Virginia School of Law, Yale University School of Law, Roscoe Pound Foundation of Trial Lawyers of America, and several states are among the many entities that have offered judicial education programs. These programs offer course work on a wide range of topics and receive funding from a wide variety of sources.

The following is a list of several such programs, descriptions of the material offered and, to the extent available, information on funding.

- The Federal Judicial Center offers orientation, workshops and conferences for federal judges, including updates on changes in federal law and classes covering discrete areas of the law. In addition to government funding, the Federal Judicial Center Foundation, a private, not-for-profit corporation, receives gifts to support these programs. In 1997, program supporters included: (i) the Henry J. Kaiser Family Foundation for a judicial seminar on

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62. LOEC, Economics Institute for State Judges (1999 Programs) ("Facts and Information").

63. *Id.*

health care and (ii) the Carnegie Corporation for a judicial seminar on science and technology.<sup>64</sup>

- The Institute for Judicial Administration, which is part of the New York University School of Law, has hosted (i) an annual seminar since 1956 for new state and federal appellate judges, in conjunction with the Federal Judicial Center and the ABA Appellate Judges Conference; (ii) an annual seminar for experienced appellate judges to expose them "to 'cutting-edge' developments in legal theory, jurisprudence, quantitative methods, criminology, and *law and economics*," and (iii) a special program for federal trial judges on "ways to improve juror selection and jury decision making."<sup>65</sup> The Institute also hosts periodic conferences on topics affecting the administration of justice; for example, the center held a conference entitled "Civil Justice Reform for the 1990s," supported by funding from Aetna Life & Casualty Co.<sup>66</sup>
- The Judicial Division of the American Bar Association, through its Appellate Judges Conference, provides seminars on a variety of issues.<sup>67</sup> The seminars are three and one half days in duration and cover such topics as "Separation of Powers as it Affects Judicial Independence," "State Constitutional Law — Education, Religion, Taxation and Rights," and "Ambiguity and Other Vagaries of Language."<sup>68</sup> The faculty has included Alan Morrison, of the Public Citizen Litigation Group, as well as academics and members of the judiciary.<sup>69</sup>

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64. FEDERAL JUDICIAL CENTER ANNUAL REPORT 1997 at 11

65. The Institute for Judicial Administration, <<http://www.law.nyu.edu/ija/>> (visited May 13, 1999) (emphasis added).

66. Brochure of The Institute of Federal Administration, Inc., New York University School of Law.

67. See ABA, Judicial Division, <<http://www.abanet.org/jd/jdevents.html>> (visited May 17, 1999).

68. See ABA, Judicial Division, <<http://www.abanet.org/jd/sunval99.html>> and <<http://www.abanet.org/jd/svtopics.html>> (visited May 17, 1999).

69. *Id.*

- The University of Virginia School of Law, in connection with its John M. Olin Program in Law and Economics, offers a "Graduate Program" for state and federal appellate judges.<sup>70</sup> The Graduate Program for Judges incorporates economic principles in the law and economic methodology, focusing principally on "game theor[y]." Further, "significant attention is given to questions relating to the appropriateness of the use of economic analysis in deciding cases."<sup>71</sup>
- Yale University School of Law in the past has hosted judicial conferences in connection with its Program on Civil Liability, which received funding primarily from corporations and corporate foundations without having input on the substance of the conference.<sup>72</sup> In 1988 and 1990, the Yale program hosted a separate conference that was sponsored entirely by corporate donations from Aetna Casualty and Life.<sup>73</sup>
- The Roscoe Pound Foundation of the Association of Trial Lawyers of America holds an annual Forum for State Court Judges which "brings together state Supreme Court and Intermediate Appellate Court judges, trial lawyers, and law professors for a lively, open exchange of theories and experiences on civil justice issues affecting state courts."<sup>74</sup> The topic of these fora have included the following: "Assaults on the Judiciary: Attacking 'the Great Bulwark of Public Liberty,'" "Scientific Evidence in the Court: Concepts and Controversies," and "Possible State Court Responses to the ALI's Proposed Restatement of Products Liability."

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70. University of Virginia School of Law, John M. Olin Program in Law and Economics, Graduate Program for Judges, <<http://www.virginia.edu/~olin/grad.htm>> (visited May 13, 1999).

71. *Id.*

72. Jack B. Weinstein, *Limits on Judges Learning, Speaking and Action — Part I — Tentative First Thoughts: How Many Judges Learn?*, 36 ARIZ. L. REV. 539, 545 & n.30 (1994) (citing telephone interview with program director).

73. *See id.*

74. Roscoe Pound Foundations, Assoc. of Trial Lawyers of Amer., <<http://www.atlanet.com/foundations/pound/98forum.ht>> (visited May 24, 1999).

- In the 1980s, the Department of Justice sponsored economics tutorials for about 100 federal judges, in response to great demand from the federal bench.<sup>75</sup>

A more complete – if outdated – list of judicial education programs is set forth in *Judicial Education: A Guide to State and National Programs* published in March 1986 by the Foundation for Women Judges.

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75. See Paul M. Barrett, *Influential Ideas: A Movement Called "Law and Economics" Sways Legal Circles*, WALL STREET JOURNAL, Aug. 4, 1986, at A1, A16.