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Politics & Policy

How Koch Industries Tries to Influence Judicial  
System

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In September 1997, Judge Michael Corrigan left his courtroom in Kansas's State District Court in Wichita to join a small group of hand-picked state judges for a special seminar at the University of Kansas in Lawrence. Then, last December, he attended the second phase of the seminar at the \$250-per-night Sundial Beach Resort in Sanibel, Fla.

The topic: hard-nosed, market-based economics, a subject Judge Corrigan says he never took in college. "Talk about a mental challenge," the judge raves.

Equally interesting, however, was the identity of the founder and key patron of the two-week seminar: a Koch family foundation headed by an official of Koch Industries Inc. of Wichita, an oil, natural gas, minerals and agribusiness giant that aggressively lobbies government.

In between the sessions, Judge Corrigan handled the pretrial phase of two cases involving Koch. He was aware of Koch's involvement in the seminars, the judge says, but didn't inform any of the parties to the cases. "I considered it to be a matter of the University of Kansas," he says.

The seminars illustrate how, in recent years, Koch has sought to influence thinking in the judicial system. Since 1995, 550 judges have attended the two-part, nearly expense-free "Economic Institutes for State Judges." Koch also has been directly involved in launching a parallel rating system for judges that grades them on how their decisions affect the business community.

There's nothing illegal about this, of course, but

some see at least the potential for a conflict of interest. A lawyer opposing Koch in one of the cases that came before Judge Corrigan, Darrell Miller, of Mankato, Kan., says he saw no bias in the judge's handling of the case, in which his client, a grain company, agreed to pay Koch \$150,000 to settle an accounting dispute. Still, he wishes he had been told about the judge's involvement in the seminar. "This is something that all trial counsels would like to know."

Henry N. Butler, who holds the chair of "Koch Distinguished Teaching Professor of Law and Economics" at the University of Kansas, directs the economic seminars under the auspices of a university foundation heavily endowed by Koch Industries. He and other instructors run the sessions, which are very popular among judges.

One reason: Nearly all of the judges' expenses, about \$5,000, for the two weeks, are paid by some 90 major corporations, law firms and foundations. A Koch foundation contributes the most, about \$1,000 toward each judge's tab, according to Mr. Butler. Tax returns show that two Koch-controlled family foundations have contributed at least \$1.3 million toward the seminars.

Last month, 66 judges cooled off at the Snowbird Ski & Summer Resort, just outside Salt Lake City. Among other things, the judges were told in their morning sessions that judges let too much "junk science" into cases involving damage claims against companies and that the rules of the federal Environmental Protection Agency and the Labor Department's Occupational Safety and Health Administration are enormously expensive and often ineffective.

"Wow. We probably had the benefit of a whole course in economics this morning," said Superior Court Judge William D. Birney of Norwalk, Calif., as he and his wife rode up the mountain on a cable car to begin their afternoon of leisure.

Mr. Butler says that Koch has no role in the selection process. But a list of judges who have taken the seminars, which were described in an article in the Wichita Eagle last week, shows that many successful applicants come from Kansas,

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Texas, Oklahoma, Minnesota and Louisiana -- all states where Koch Industries' business is concentrated.

One of the courses Mr. Butler teaches is about "the costs of overdeterrence" by judges who punish companies for harming people or the environment. "Many potentially hazardous activities offer great benefits to society," states the Institute's syllabus for the session.

Koch Industries has settled some of the most expensive environmental lawsuits in the country, including cases in Minnesota and Texas where huge oil spills have cost it over \$6.9 million in civil penalties and \$50 million for damages and cleanup costs.

Koch (pronounced "coke"), a closely held concern said to have annual revenue of \$30 billion, is before the courts in hundreds of pending cases, large and small. Mr. Butler sees no conflict between those cases and his seminar. "What we teach is basic microeconomics," he says. "We are providing an important public service by keeping judges intellectually alive."

Many of his former judicial pupils agree with him, including Judge Corrigan, who says he now views cases "in a way that is different than I have in the past."

The chairman of the ethics committee of the American Bar Association, Baltimore lawyer M. Peter Moser, says that in cases where a donor appears in court before someone who has been a recipient, "it creates an issue as to whether the judge should be disqualified, so it needs to be disclosed."

Some judges say they decided to attend the seminars after receiving low grades from a new system that ranks judges on how their decisions affect the business community. Currently being used by political groups in judicial elections in half a dozen states, the ranking system, like the seminars, was developed with considerable help from Koch.

In 1996 Justice Alma Wilson, a member of the Oklahoma Supreme Court, scored a 39, one of the lowest scores in the state. She was outraged when an advocacy group -- Oklahomans for Judicial Excellence -- gave her the grade. She later got angry

with Mr. Butler when he wrote a letter to the Daily Oklahoman applauding the scoring system and saying his seminar was a way judges could raise their scores.

She attended one of Mr. Butler's seminars, but the 30-year veteran of the bench says the whole process left a bitter taste: "I don't need any rehabbing."

Judge Keith Rapp, who sits on the Oklahoma Court of Civil Appeals in Tulsa, went to the Sanibel seminar in 1997 after getting a score of 42. He liked socializing with the other judges at their beachfront condominium and felt he gained from the classes in economics.

But later, when Mr. Butler came out in defense of the system for grading judges, Judge Rapp began to wonder. Economics are only part of what a judge must decide, he later wrote in an angry letter to Mr. Butler. A judge's oath of office also requires him to weigh such things as social benefits and racial integration, he argued.

While he knows Ron Howell, the Tulsa political consultant who developed Oklahomans for Judicial Excellence, Mr. Butler says his Law and Organizational Economics Center, based at the University of Kansas, isn't involved in it or any of the other groups rating judges. "I just don't follow this stuff closely," he says.

Both Mr. Butler's seminars and Mr. Howell's rating system were developed with early funding from Koch. Mr. Howell retired from an executive position with Koch in 1987 and set up his Tulsa consulting firm with Koch support.

He says the support gave him time to work on civic matters, such as the rating system. "We look at their clear pro-economy, anti-economy impact."

The rating system has been used by pro-business groups in judicial campaigns in Texas, Louisiana, Alabama, Mississippi, West Virginia and Kansas. Last November, it popped up in Michigan in a tumultuous, watershed election that saw the formation of the first Republican-controlled Supreme Court since 1976.

One link between the seminars that educate and entertain state judges and the scoring systems that

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rank them is Richard H. Fink, senior vice president of Koch Industries. A trusted protege of Charles Koch, the company's chairman, he runs Koch's Washington office.

He feels strongly that citizen-action groups, not academics or think tanks, are the best way to sell his free-market ideas. He defends the Koch foundation's right to help fund the seminars: "Our funding of these programs is completely lawful, absolutely ethical and fully disclosed."

He left a professorship at Virginia's George Mason University in the early 1980s and founded a pro-business Washington lobby -- Citizens for a Sound Economy -- with some seed money from Koch family foundations.

In 1990 Mr. Fink was hired to run Koch's Washington office and immediately began to turn his attention to ways to spread Koch Industries' libertarian "market-based management" philosophy. "We felt we ought to compete whenever there's a discussion of ideas," Mr. Fink explains. Since he was president of two Koch family-related, multimillion-dollar foundations and vice president of a third, he could put his dreams into motion.

He lured Mr. Butler from Virginia's George Mason University to fill the Koch-endowed chair at the University of Kansas, awarding him a \$500,000 grant from Koch Industries to set up a master's degree program. Then he awarded over \$1 million in grants from the Fred C. and Mary Koch Foundation to help Mr. Butler start the seminars.

Mr. Butler and at least one other professor he uses at the state judges' seminars, Barry Baysinger, have also been paid by Koch to teach the company's "market-based management" philosophy to managers at Koch's headquarters.

At the same time, Mr. Fink had a hand in giving life to Mr. Howell's grading system for state judges. He says he arranged some seed money for Mr. Howell, who got more from Citizens for a Sound Economy, the group Mr. Fink founded.

Very little of this tangled history was known to the judges meeting last month at Snowbird. At dinner one evening Judge Stephen J. Sundvold and two colleagues on the bench of the California Superior

Court in Orange County were surprised to hear of Koch's involvement in the seminars. Judge Sundvold recalled that in the first week's session in Kansas one judge rose and asked Mr. Butler, "Who is paying for this?"

Mr. Butler, he said, told the judges "that we didn't need to worry about it."

Mr. Butler remembers the exchange differently. He says he explained that the seminar had a "broad base of support" from a number of companies and foundations but he didn't identify any. "I would have, if they had asked," he said.

--- INDEX REFERENCES ---

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