

New Koch - The billionaire brothers are championing criminal-justice reform. Has their formula changed?

January 26, 2016 – by Jane Mayer

On the night of November 2nd, well-dressed Wichita residents formed a line that snaked through the lobby of the city's convention center. They all held tickets to the Wichita Metro Chamber of Commerce's annual gala, which had drawn thirty-five hundred people. The evening's featured speaker, Charles Koch, had lived in town almost all of his eighty years, but few locals—even prominent ones—had ever laid eyes on him. Charles, along with his brother David, owns virtually all of the energy-and-chemical conglomerate Koch Industries, which is based in Wichita and has annual revenues of a hundred and fifteen billion dollars. Charles's secretive manner, right-wing views, and concerted campaign to exert political influence by spending his fortune have made him an object of fascination, especially in his home town. "You never see him," one local newsman whispered. "He hates publicity." He paused. "Please don't quote me on that!"

It was therefore a surprise when Koch made it clear to the gala's planners, last fall, that he wanted to headline the event. At first, the organizers weren't uniformly enthusiastic about the idea. In the past, the group had featured such major national figures as former President George W. Bush. But Koch was intent on promoting a book that he'd written, "Good Profit," about his business philosophy. "They couldn't really say no," someone familiar with the arrangements confided to me. "He's too powerful in Wichita."

Charles shared the stage with Mika Brzezinski and Joe Scarborough, the co-hosts of the MSNBC cable show "Morning Joe," whom Koch Industries had chosen to serve as moderators. The audience laughed as Koch recalled such boyhood misadventures as his expulsion from military school. He amiably described early business mistakes, and he pointedly criticized Republicans as well as Democrats. He complained that many Republicans in Congress weren't doing enough to "hold the lid on defense spending," because they had been corrupted by having "big military contracts in their districts" for "weapons that the military doesn't want, like tanks, certain airplanes." He expressed a general disdain for politics, noting that whenever anyone told him he should run for President he responded, "What did I ever do to make you hate me?"

Starting in 2010, a controversial series of rulings by the federal judiciary and the Supreme Court essentially licensed unlimited political spending by corporations, unions, and individuals. Charles and David—a seventy-five-year-old patron of the arts, who is the wealthiest resident of Manhattan—were unusually prepared to take advantage of this shift. They had set up a broad alliance of donors and advocacy organizations to support conservative candidates who share their "pro-business" opposition to regulation, entitlements, and taxes. This network has since become one of the most powerful political forces in the country: a libertarian advocacy group backed by the brothers, Americans for Prosperity, has directors in thirty-four states. According to Politico, twelve hundred people work full-time for the Koch network—more than three times the number of people who work for the Republican National Committee.

A new, data-filled study by the Harvard scholars Theda Skocpol and Alexander Hertel-Fernandez reports that the Kochs have established centralized command of a "nationally-federated, full-service, ideologically focused" machine that "operates on the scale of a national U.S. political party." The Koch network, they conclude, acts like a "force field," pulling Republican candidates and office-holders further to the right. Last week, the *Times* reported that funds from the Koch network are fuelling both ongoing rebellions against government control of Western land and the legal challenge to labor unions that is before the Supreme Court.

Onstage in Wichita, Charles barely discussed his political spending. And he did not mention that, for the 2016 election cycle, he has organized a small circle of ultra-wealthy conservatives to spend nearly nine hundred million dollars on campaigns and advocacy—an unprecedented sum. The identities of the circle's other members have remained secret. This private jackpot is more than twice the sum that was spent by the Republican National Committee in the 2012 Presidential-election race. Most of the leading Republican Presidential candidates have attended gatherings of the donor circle in the hope of winning its financial backing.

The Koch brothers have been widely criticized by Democrats for their systematic attempt to use money to sway elections. In 2014, Guy Cecil, then the executive director of the Democratic Senatorial Campaign Committee, declared, “The Koch brothers are spending a fraction of their personal fortune to buy a Senate that is good for them and bad for almost every other family in America.” During the Wichita program, however, Scarborough declared such criticism of the Kochs to be outmoded. “Four or five years ago, the Koch brothers really burst on the national stage and into the national consciousness,” he said. Scarborough recalled that David, who was at the gala, “would give all this money to ballet companies that would allow ‘The Nutcracker’ to be performed, and he would go there and he’d get booed! That’s a kind of strange way to say thank you!” Scarborough went on, “But we started noticing about three years ago that New Yorkers—liberal New Yorkers!—started to feel defensive for David and Charles, and all that they’d not only done for New York but also for the country.”

Scarborough, a former Republican congressman, described what generous philanthropists the brothers had been, noting that “the charity of the Kochs” had funded hospitals in New York and had eased the suffering of people with cancer; without the Kochs, he declared, “you can’t enjoy the arts in Manhattan.” At the gala, the “Morning Joe” hosts, who had secured exclusive interviews with the Kochs for the next morning’s newscast, did not exactly subject Charles Koch to a grilling. Scarborough’s penultimate question was to ask Koch how he had learned such “graciousness.”

Fraser Seitel, the president of Emerald Partners, a public-relations firm, and the co-author of “Rethinking Reputation: How P.R. Trumps Marketing and Advertising in the New Media World,” told me that “third-party endorsements” of the type offered by Scarborough “are what the practice of public relations is based on.” Seitel continued, “You can try to tell people how good you are, but they won’t believe it until a third party acknowledges the goodness of your actions.”

As the Kochs prepare to launch the most ambitious political effort of their lives, they appear to be undergoing the best image overhaul that their money can buy. Last fall, Charles sat down in his office with Kai Ryssdal, the host of public radio’s “Marketplace.” Koch said of his company, “Our attitude is to, in starting any initiative, any business, is to focus on how we can create value for others rather than how we maximize profit.” He chatted about how much he loved the movie “Reds” and noted that his house was “much bigger than I want.” At one point, Ryssdal observed, “You are everywhere lately, right?” He explained that the Kochs, after years of “making an art of not” being known “in the public arena,” had begun appearing on shows ranging from “CBS Sunday Morning” to “The Kelly File.” Koch Industries had even become a sponsor of “Marketplace.” “You guys are in *Popular Mechanics*, for crying out loud!” Ryssdal exclaimed. “Whoever is doing your P.R. is doing a great job.”

“They are embarked on an extraordinary exercise in rebranding,” David Axelrod, the former political adviser to President Barack Obama, said of the Kochs. In Axelrod’s view, the growing media accessibility of the Kochs is a relatively minor part of their image campaign. He points to a series of public-policy initiatives that they launched recently, all of which counter their plutocratic image by showcasing a concern for the poor. In the past year, Koch Industries has become one of the leading backers of a bipartisan coalition for criminal-justice reform, supporting legislation that aims at reducing prison sentences for nonviolent drug offenders, many of whom are poor people of color.

Mark Holden, the general counsel of Koch Industries, has gone to the White House four times to discuss the issue with Obama’s senior adviser Valerie Jarrett. The Kochs’ campaign has earned praise both from her and from the President. Although the Kochs and their political network spent some four hundred million dollars trying to defeat Obama and other Democrats in 2012, the President, during an N.A.A.C.P. convention last summer, spoke appreciatively of the brothers’ efforts on prison sentencing. When the audience responded scornfully to the mention of the Kochs, Obama scolded them: “No—you’ve got to give them credit. You’ve got to call it like you see it.”

The Kochs have also launched a nonprofit group, the libre Initiative, whose aim is to “equip the Hispanic community with the tools they need to be prosperous.” The organization reaches out to Latino voters by offering free services, ranging from Spanish-language driver’s education to English-proficiency classes. This

fall, the group handed out Thanksgiving turkeys in Florida. Other organizations controlled by the Kochs are offering “healthy life style” tips to low-income Americans, such as advice on cooking inexpensive nutritious meals. Koch Industries and Charles Koch’s private foundation have donated twenty-five million dollars to the United Negro College Fund; much of the money has been earmarked for educating black students who are interested in studying “how entrepreneurship, economics, and innovation contribute to well-being.”

“It’s all part of a very well-conceived strategy to change the image of the Koch brothers as dark and plotting oilmen ideologues,” Axelrod said. Seitel, the public-relations expert, observed, “They’re waging a charm offensive to reset the image of the Kochs from bogeymen shrouded in secrecy to philanthropists who are supporting black colleges and indigent defense.”

For more than two decades, Seitel has been a spokesman for the Rockefeller family, and he believes that the Kochs are following a template established by John D. Rockefeller, Jr., the tycoon for whom modern corporate P.R. was invented. In 1914, Rockefeller hired the publicity expert Ivy Lee to salvage his image after the Ludlow Massacre, in which security guards and National Guardsmen attacked miners on strike at a Rockefeller-owned mine, killing more than a dozen people, including some of the miners’ wives and children. Rockefeller, taking Lee’s advice, visited the miners’ tent camp and expressed a personal interest in his workers’ well-being. “It was all about humanizing him,” Seitel noted. “It’s much harder to loathe someone if he is open, available, and approachable.” Rockefeller soon became known for his charitable contributions; among other things, he founded a bank in Harlem run by African-Americans and donated a building site to the Museum of Modern Art.

Mike Paul, the president of Reputation Doctor, a public-relations firm based in Manhattan, also views efforts such as the Libre Initiative as attempts to improve the Kochs’ image. He points out that a string of huge legal judgments against Koch Industries had given the brothers a reputation as “the heads of the Toxic Empire.” In 1999, a jury ordered the company to pay nearly three hundred million dollars—then the largest wrongful-death judgment of its kind in history—after one of its butane pipelines exploded, killing two teen-agers. (The company appealed, then settled the case for an undisclosed amount.) More recently, researchers at the University of Massachusetts Amherst, using statistics from the Environmental Protection Agency, found that Koch Industries was one of only three companies in America that ranked in the top thirty for air, water, and climate pollution. Paul suggested that the Kochs, in order “to win people over,” decided that they had to “look more compassionate—and so their theme is that they care about the poor.”

Inside the Koch Industries headquarters, in Wichita, a box of black glass surrounded by sunflowers and security fences, such cynicism is dismissed. In an interview, Melissa Cohlmiya, the company’s managing director of corporate communications, rejected the notion that her bosses’ efforts on behalf of the disadvantaged have ulterior motives. “Yes, we are trying to do a better job of telling our story and addressing misinformation,” Cohlmiya said, shortly before she retired, at the end of December. “But to say our longtime efforts in working to advance criminal-justice reform are related to this is simply not accurate.” She noted, correctly, that Charles Koch has supported criminal-justice reform for decades. Although he has become more vocal about the issue recently, she said that “media coverage has not been the driver behind our efforts.”

Instead, she pointed to Charles Koch’s own explanation of why he finally decided to engage with the media: that he felt misunderstood. In October, he told the *Wall Street Journal*, “I always followed the mama whale’s advice to the baby whale: ‘Son, the time you get harpooned is when you come up to spout off.’ But I was too thick to realize I was being harpooned already, and spouting off would maybe lessen the harpoons, or at least it wouldn’t make ’em any worse.” During his interview on “Marketplace,” he told Ryssdal that the unfortunate result of years of reticence was that “people didn’t know who we are.”

In fact, leaked audiotapes from one of the Kochs’ private planning sessions with allied donors suggest that the public knew who they were, and didn’t approve. After this private assessment was made, the billionaire brothers embarked on a makeover.

The Kochs’ strategy began to change after the last Presidential election. Having spent so much money trying to defeat Obama, they were stunned when he was reelected. As late as Election Day, their political advisers were

assuring them that Mitt Romney had secured the Presidency. The 2012 defeat led the Kochs and their advisers into an intense period of review. Most of the postmortem took place in private, but in March, 2013, a clue to the Kochs' line of thinking was offered by Arthur Brooks, the president of the American Enterprise Institute. In a speech at the annual Conservative Political Action Conference, Brooks, who frequently attends the Kochs' political retreats, offered a diagnosis of what had gone wrong in 2012.

Brooks told the audience that a single statistic explained why conservatives had lost. In polls, he said, only a third of respondents agreed that Republicans "cared about people like" them. And fewer than half of Americans believed that Republicans cared about the poor. Conservatives had an empathy problem. This was important, Brooks explained, because Americans almost universally believed that "fairness matters." He went on, "I know it makes you sick to think of that word, 'fairness.'" But Americans, he said, overwhelmingly believed that "it's right to help the vulnerable."

In the view of the American public, Brooks said, the Democrats were "the fairness guys." He added, "They're the 'helping-the-poor guys.' Who are we? We're the 'money guys!'"

Conservatives didn't have a policy problem, Brooks assured the audience: free-market economics still offered the best solutions for America. Republicans just needed different packaging for their message. "In other words, if you want to be seen as a moral, compassionate person, talk about fairness and helping the vulnerable," Brooks said. "You want to win? Start fighting for people! . . . Lead with vulnerable people. Lead with fairness!" He added, "Telling stories matters. By telling stories, we can soften people."

Not all conservatives accepted Brooks's argument that the Republicans had simply sold their message poorly. "Maybe it's also the content of the message," Matthew Continetti, the editor of the *Washington Free Beacon*, wrote in a column. But as the Koch brothers planned their next moves they embraced Brooks's notion that, if conservatives wanted to stop being stereotyped as representing just the one per cent, they had to be seen as champions of the other ninety-nine per cent.

The need for a new sales pitch was urgent. Around the time that Arthur Brooks was advising conservatives to appear more compassionate, the *Times* reported on its front page that Koch Industries had piled thirty-foot-high mounds of petroleum coke—a by-product of oil refining that is sold abroad as fuel—next to a poor, inner-city neighborhood in Detroit. Residents complained that the filthy soot was coating everything. Gary Peters, then a Democratic congressman from Detroit and now a U.S. senator, recalls, "It was getting into residents' lungs in poor neighborhoods where people already had to put up with quite a lot." Similar piles owned by the company had appeared on the South Side of Chicago. Senator Richard Durbin, a Democrat from Illinois, told me, "This black junk was blowing all over the neighborhoods—in schools, in residential areas—all over." Koch Industries maintained that the piles were harmless and legal, but this argument wasn't going over well with locals. Durbin, who, with Peters, introduced a bill to study the health effects of pet coke, told me, "I can't imagine a responsible corporate citizen looking at these blocks and blocks of pet coke—piles six and seven stories high!—and not wondering if it was doing the right thing. And meanwhile it has this campaign going where it's trying to appeal to inner-city residents?"

The Kochs' public-relations problems grew when Harry Reid, who was then the Senate Majority Leader, began denouncing them almost daily from the Senate floor. In February, 2014, he described the Kochs as "trying to buy America," adding, "It's time that the American people spoke out against this terrible dishonesty of these two brothers who are about as un-American as anyone that I can imagine."

Someone who has long worked for Koch Industries told me that such attacks hurt company morale: "When you said 'Koch,' you might as well have said you worked for the Devil." But David Koch had promised, in *Forbes*, that he and his brother would not succumb to their critics; they would "fight the battle as long as we breathe."

As the Koch network began marshalling a hundred million dollars for 2014 races—and nearly twice as much for other kinds of activism—the brothers embarked on a new public-relations plan. The company hired Steve Lombardo, who had been a top executive at the global P.R. firm Burson-Marsteller, as its chief of

communications and marketing. Lombardo had worked with many corporations, including some in the tobacco industry, but his expertise was in opinion research, and he had a passion for conservative politics. He was joined at Koch by several former political operatives, including David Dziok, the former spokesman for Michele Bachmann, the Tea Party leader. The Kochs' public-relations team also added veterans from the National Republican Congressional Committee and various Republican House and Senate offices.

Lombardo believed that the key to creating a positive brand was to reach the public's "subconscious mind," as he wrote in *O'Dwyer's*, the public-relations trade journal. The most effective "pathway" to the subconscious, he argued, was "storytelling," in part because it tapped into emotions. He expanded on this in a Koch Industries newsletter. "Building a brand is telling a story," he explained, adding, "It is about giving people a sense of who you are, what you believe in, and what you are doing to improve their lives." By the spring of 2014, Koch Industries had launched its first nationally televised corporate advertising campaign. The story: "We Are Koch." In one spot, a narrator's warm declarations—"Koch Industries started in the heartland"—accompanies footage of cowboys and smiling young female and minority employees.

Having spent nothing on corporate advertising in 2013, the company spent nearly fifteen million dollars on it in 2014, and twelve million in 2015, according to Elizabeth Wilner, of Kantar Media, who oversees the firm's campaign-media-analysis group. Koch ads began appearing in sports stadiums and during the broadcast of television programs, including "The Daily Show." (During one segment of that program, Jon Stewart mocked the company's new tagline and proposed a different one: "Koch Industries, the next generation of robber barons—bending the democratic process to our wills since 1980!")

As Jon Gingerich, the senior editor of *O'Dwyer's*, notes, the Koch Industries public-relations strategy evoked a political campaign more than a corporate one. "Normally, when corporate executives are under attack, accountability and transparency are the crisis hallmarks," he told me. The Kochs, he said, deflected criticism by presenting upbeat messages. "With the Kochs, it's resembled something like Ted Cruz's recent TV spot, where he's sitting at the dining-room table with his family," Gingerich explained. "Everything is heartland and roll-up-your-sleeves populism. The message, to me, anyway, seems to be: We're normal people, too."

The television ads were merely the most visible aspect of the Kochs' image overhaul. "While the ad campaign is important, it is only one piece of the puzzle," Lombardo acknowledged, in the Koch Industries newsletter. He said that the company would also "work proactively with the media to communicate our position on issues."

The planning for the Kochs' political makeover took place in private, but in June, 2014, a leak from one of their twice-yearly donor summits provided a glimpse of their thinking. Lauren Windsor, a liberal blogger who hosts an online news program called "The Undercurrent," obtained audio recordings of the secret gathering, which was held at a resort near Laguna Beach, California. Soon afterward, she began posting them.

In one session, entitled "The Long-Term Strategy: Engaging the Middle Third," Richard Fink, who was introduced to the donors as the Kochs' "grand strategist," offered a summary of the new plan. Fink, who has a Ph.D. in economics from New York University, has been the Kochs' closest political adviser since the eighties. He was an executive vice-president and a director on the board of Koch Industries, and also a board member of Americans for Prosperity. After the losses of 2012, Fink explained, he had surveyed twenty years of research into the political opinions of moderates, including a hundred and seventy thousand surveys conducted in the United States and abroad. His conclusion, he told the donors, was that if conservatives wanted to win over Americans they needed to change their pitch.

In a ballroom overlooking the Pacific Ocean, Fink began, "We got our clocks cleaned in 2012." The demographic challenge, he said, was formidable. The United States was essentially divided into three parts. The Kochs, he said, had already "been very successful in mobilizing" the first third, which comprised conservatives and libertarians who shared their political vision. Another third, he said, would never support them: these were "the collectivists." (In the nineteen-fifties and sixties, the John Birch Society used this term to conflate liberals and Communists.) Fink continued, "The battle for the future of the country is who can win the hearts and minds

of that middle third. . . . Whoever can mobilize a majority of that thirty per cent will determine the direction of the country.”

The “middle third,” Fink said, tended to think that liberals cared more about ordinary people. What did the middle third think about corporations? “Big business they see as very suspicious—‘They’re greedy. They don’t care about the underprivileged.’ ”

Fink, thinking that he was only among friends, confided that the critics weren’t entirely wrong. “What do people like you say? I grew up with pretty much very little, O.K.? And I worked my butt off to get what I have.” When he saw impoverished people “on the street,” he admitted, his gut reaction was: “Get off your ass and work hard, like we did!”

Unfortunately, he continued, voters in the middle third had a different reaction when they saw the poor. They felt “guilty about it.” Rather than just being concerned with expanding “opportunity” for themselves, he said, this group was also concerned with expanding “opportunity for other people.” For these voters, the government-slashing agenda of the Kochs was a stumbling block. Fink acknowledged, “We want to decrease regulations. Why? It’s because we can make more profit, O.K.? Yeah, and cut government spending so we don’t have to pay so much taxes. There’s truth in that.” But to the “middle third” these positions seemed motivated not by ideological principle but by greed.

The rich donors who made up the Koch network, Fink said, needed to persuade moderate, undecided voters that their intent was generous. “We’ve got to convince these people we mean well, and that we’re good people,” Fink said.

Fink was brutally honest about how unpopular the views of his wealthy audience were. “When we focus on decreasing government spending,” he said, and on “over-criminalization and decreasing taxes, it doesn’t do it, O.K.? . . . They’re not responding, and don’t like it.”

But he pointed out that if anyone in America knew how to sell something it should be the successful business leaders in the Koch network. “We get business,” he told the audience. “What do we do? We want to find out what the *customer* wants, right? Not what *we* want them to buy!”

The company’s internal research had shown that Americans wanted a clean environment, widespread good health, high standards of living, security, freedom, peace, and opportunity for both themselves and others. This posed a problem, given that the Kochs and their network opposed environmental regulation and government action on global warming, and supported privatizing Social Security and health care.

But Fink had a solution. “This is going to sound a little strange,” he acknowledged. “So you’ll have to bear with me.” The Koch network, he said, needed to present its free-market ideology as an apolitical and altruistic reform movement to enhance the quality of life—as “a movement for well-being.” The network should make the case that free markets forged a path to happiness, whereas big government led to tyranny, Fascism, and even Nazism. Arguing that an increase in the minimum wage would cause higher unemployment, Fink told his audience that unemployment in Germany during the nineteen-twenties had led to the rise “of the Third Reich.”

At another panel that weekend, James Otteson, a professor of political economy at Wake Forest University’s business school, argued that using the term “well-being” would be “a game changer.” He added that he was setting up an institute devoted to well-being at Wake Forest. To illustrate the power of framing free-market theories in this way, he shared an anecdote. A colleague, whom he described as a “left-wing political scientist” who “railed” against Republicans and capitalism, had been so fully persuaded by Otteson’s description of factors contributing to human well-being—“peace and security,” “health,” “environment”—that he had said, “You know, even *I’d* be willing to take Koch money for that.” The donors laughed. “Who can be against well-being?” Otteson exclaimed. “The framing is absolutely critical.”

Days after the Southern California summit, the Charles Koch Institute—which arranges fellowships for those interested in “advancing free societies”—hosted what it called its Inaugural Well-Being Forum, at the Newseum, in Washington. Among the panelists was Otteson. Arthur Brooks served on the initiative’s five-member advisory board. Although the forum’s name suggested New Age spirituality, it promoted the Kochs’ free-market message. As Brooks had concluded in an earlier speech on well-being, standing beside a sign reading, “h-a-p-p-i-n-e-s-s,” “The earned-success system that brings you happiness is the system of free enterprise that lifts people out of poverty.”

The term “well-being” also cropped up in an initiative launched by Americans for Prosperity’s charitable foundation. (David Koch sits on the foundation’s board.) The initiative, which was named the Bridge to Wellbeing, incorporates such charitable events as Tapas and Topics, where snacks are dispensed along with advice on “how you can advance economic freedom in your community.”

Fink, during his speech to the donors, explained that another way to “earn the respect and good feeling” of the “middle third” was to publicize partnerships with unlikely allies. He talked up Koch Industries’ partnerships with the United Negro College Fund and the National Association of Criminal Defense Lawyers, both of which the company had financially supported, on a smaller scale, for years.

Later that afternoon, Fink appeared on a panel entitled “Drive the National Conversation,” alongside Michael Lomax, the president of the United Negro College Fund, and Norman Reimer, the executive director of the National Association of Criminal Defense Lawyers. Fink explained that, by reaching across the partisan divide, the Kochs could demonstrate that their network offered America “a positive vision.” Such gestures would show that “the other side creates divisiveness, but we solve problems.”

Lombardo, the marketing director, joined Fink and the nonprofit leaders on the panel. He was described as having worked closely on Koch Industries’ grant to the United Negro College Fund, which he called a major success. “The proof is in the pudding,” he said, citing the number of positive headlines it had generated. Thirty media outlets had picked up an Associated Press story about the grant, he said, adding, “We had a little over fifteen thousand social-media messages. . . . Of those, eighty-seven per cent were positive. So kudos to Michael and the team. They did a great job!”

The Kochs received equally positive press that fall, when, in the wake of the killing of Michael Brown, in Ferguson, Missouri, they began speaking publicly about the need for criminal-justice reform. In February, 2015, when Koch Industries joined a bipartisan umbrella group for sentencing reform, the Coalition for Public Safety, the news made the *Times*. The Kochs were coming together with such avowedly liberal groups as the American Civil Liberties Union and the Center for American Progress, a progressive think tank. Among the most surprising of the Kochs’ new allies was Van Jones, a former senior fellow at the think tank, and the head of a criminal-justice-reform group called #cut50. Only months earlier, he had criticized the United Negro College Fund for accepting Koch money, arguing that “few people still alive have done more to promote policies that hurt African-Americans than the Koch brothers.”

In an interview, Jones defended his partnership with the Kochs on sentencing reform. “Everyone has his eyes wide open about the Kochs’ politics and their ultimate agenda,” he said. “But if you’re sitting in prison right now you’re not praying that the Koch brothers *won’t* help.” Jones believes that the Kochs’ embrace of the issue is driven by their strong libertarian convictions. “It’s not part of presenting the company in a new light,” he told me. “It doesn’t make sense to mix their criminal-justice-reform work with their corporate advertising. The Koch brothers have a despicable record on everything under the sun, from campaign finance to poisoning the planet, but they have been on this issue for years. Mass incarceration is the opposite of liberty and justice. There are very deeply held principles for both sides.”

It is true that, at least as far back as 1980, when Charles Koch enlisted David, then a company executive, to run for Vice-President of the United States on the Libertarian Party ticket, the brothers have publicly supported radical reform of America’s criminal-justice system. The platform of the Libertarian Party in 1980 called for an end to all prosecutions of tax evaders and the abolition of a number of federal agencies whose regulations Koch

Industries and other businesses have chafed at, including the E.P.A., the Occupational Safety and Health Administration, and the Federal Election Commission, whose campaign-spending limits the brothers opposed. But the Kochs, as hard-line libertarians, have had goals quite different from those of many of their liberal allies. Their distaste for the American criminal-justice system is bound up in distrust of government and a preference for private enterprise. Until recently, the criminal-justice victims the Kochs focussed on were businessmen who had run afoul of the modern regulatory state—that is, people like them.

Mark Holden, the Koch general counsel, who has overseen Koch Industries' criminal-justice-reform work, acknowledges that the brothers were motivated to give money to the National Association of Criminal Defense Lawyers after being prosecuted for environmental crimes, in 2000. In that case, a whistle-blower who worked for a Koch refinery in Corpus Christi, Texas, told authorities that the company had covered up the fact that it was “hemorrhaging” benzene, a known carcinogen. The Justice Department mounted what David Uhlmann, who then oversaw the department's environmental-crimes section, has called “one of the most significant cases ever brought under the Clean Air Act.” In a settlement, the original ninety-seven charges were dropped, including criminal charges against four company employees, but Koch Industries pleaded guilty to one count of concealing information from the government about its discharge of benzene. The company agreed to pay a ten-million-dollar fine, and to pay ten million more to improve the environment in Corpus Christi. “It was a huge overreach, a grave injustice,” Holden told me. “We were very skeptical, going forward, of criminal prosecutors having too much power. So we got involved in criminal-justice reform.”

In 2004, the company gave the National Association of Criminal Defense Lawyers money to help it start a new initiative that would focus on ways to strengthen white-collar-criminal defense. The initiative featured numerous joint projects with the conservative Heritage Foundation, which also was determined to combat “over-criminalization.” The anti-government tenor of the effort meshed perfectly with the Kochs' outlook. As Holden puts it, “The criminal-justice system is a big-government program that has failed miserably.”

David Uhlmann, who is now a law professor at the University of Michigan, argues, “The Koch brothers are not interested in criminal-justice reform because they suddenly became interested in the number of poor and minority Americans who are in prison. By their own admission, they became interested because they were prosecuted in Corpus Christi. They and their allies want to take us back to 1970, before the regulatory state.”

Jeffrey Winters, a political-science professor at Northwestern University and the author of the 2011 book “Oligarchy,” regards attacks on the Justice Department by ultra-wealthy players with vested interests as “very worrisome.” Winters notes that “one of the greatest challenges in history has been to create legal governing institutions that are stronger than the strongest people in society. Oligarchs have long deployed their wealth and power to free themselves of constraints that others in society face.”

Norman Reimer, of the National Association of Criminal Defense Lawyers, insists that the Kochs' long-standing support for criminal-justice reform “is deeply principled and not window dressing.” In 2011, his organization awarded Mark Holden its Defender of Justice Leadership Award, in recognition of his and Koch Industries' “vision and courage.” But Reimer acknowledges that until recently the company had funded mainly programs involving white-collar crime. Reimer told me that for years he had been asking Koch Industries to donate funds to support indigent defense, but it didn't do so until 2014. At that point, Reimer says, the company provided a “significant six-figure” grant to train and support public defenders. That grant, while much needed, was less than a tenth of what Koch Industries spent on its corporate-image ads that year.

Holden has nonetheless won over many doubters. Growing up in Worcester, Massachusetts, he worked part-time as a prison guard, and he often speaks feelingly in public about the country's over-incarceration of the underprivileged; he says that, had he not been lucky enough to come from a family that kept him in check, he might have been incarcerated himself. Valerie Jarrett told me, “From my first meeting with Mark, he's been accessible 24/7,” and added, “He's been extremely constructive.”

Holden, for his part, recalls his first meeting with Jarrett as “phenomenal.” She asked him if Koch Industries would join the corporate movement to “ban the box”—abandon the use of employment forms that require

prospective employees to disclose criminal records. He told her that Koch Industries had already done so. “You made my day!” she exclaimed at the end of the meeting. Holden teased back, “You must have been having a bad day.” From this has grown one of the strangest friendships in American politics.

Skeptics who see the Kochs’ sentencing-reform effort as a publicity stunt note that they have continued to give money to groups and candidates that have run scurrilous tough-on-crime campaigns. The Marshall Project, a nonpartisan news organization that covers the criminal-justice system, recently reported that, in 2014, Koch Industries gave nearly half a million dollars to the Republican State Leadership Committee, a group that waged campaigns to remove state judges in Montana, Missouri, Tennessee, Illinois, and North Carolina who were deemed to be “not tough on child predators,” “liberal on crime,” and “finding loopholes in the law” to overturn “convictions of violent criminals.”

Cohlmya, the Koch Industries spokesperson, said, “We did not give money to the R.S.L.C. for the purpose of running attack ads on judges.” But she acknowledged that the money went to “general operating funds,” with no stipulation against paying for such ads.

The Kochs have also continued to support the campaigns of conservatives who present themselves as tough on crime, such as Senator David Vitter, a Louisiana Republican who made a failed bid for governor last fall. As the Intercept’s Lee Fang reported, Vitter ran TV ads claiming that Obama’s extension of clemency to prisoners would release “dangerous thugs.” Koch Industries, however, has several facilities in Louisiana, and Vitter, like the Kochs, is an outspoken opponent of the E.P.A., which he has accused of “collusion” with environmental groups. Vitter is also a staunch defender of the brothers; at a 2014 town-hall rally, he declared, “God bless the Koch brothers!”

Ted Cruz, the Texas senator, is one of the Republican Presidential contenders whom the Kochs have invited to vie for their network’s financial support. Yet Cruz, as a member of the Senate Judiciary Committee, recently voted against a sentencing-reform measure that they had championed. Afterward, Koch Industries released a statement describing the company as “disappointed” in Cruz’s vote. Yet the Kochs have not said that this disqualifies Cruz from earning their support in the Presidential race. In fact, one of the most active members of their donor network, the hedge-fund manager Robert Mercer, has given more than ten million dollars to one of Cruz’s super PACs.

The Kochs’ crisscrossing interests are evident in the multiple roles of Mark Holden who sits on the boards of both Americans for Prosperity, whose foundation is overseeing the Bridge to Wellbeing programs for the poor, and the Freedom Partners Chamber of Commerce, a business league formed by the Kochs’ anonymous-donor network to distribute hundreds of millions of dollars in the hope of defeating liberals. Holden heads both the Kochs’ campaign to reduce sentences for nonviolent drug offenders and the legal defense of the company’s inner-city pet-coke piles.

More questions about the Kochs’ motives arose last fall, when criminal-justice-reform legislation working its way through Congress changed dramatically. In October, the Senate Judiciary Committee passed a sentencing-reform bill that had bipartisan support. Several weeks later, the House Judiciary Committee added provisions that, environmental and consumer-safety advocates say, would weaken the government’s ability to prosecute an array of corporate crimes. According to critics, the new measures would unreasonably raise the standard required for the government to hold corporate executives criminally liable for wrongdoing; the government would have to prove that the executives hadn’t just committed a crime but knowingly done so, even in instances of dire consequence to the public, such as lethal pollution and unsafe food or drugs.

Uhlmann, the former Justice Department official, warned, “For thirty years, Congress has insisted that companies know their legal obligations, and that they fail to do so at their own peril. This legislation would erode the venerable principle that ignorance of the law is no defense.” He went on, “While we need to reduce the Draconian sentences imposed on nonviolent drug offenders, the Kochs are using criminal-justice reform as a Trojan horse for their efforts to weaken environmental, health, and safety regulations.”

Rena Steinzor, a law professor at the University of Maryland, who argued for tougher treatment of corporate crime in her 2014 book, “Why Not Jail?” agrees with Uhlmann. “The Koch brothers are playing a long game that has as its ultimate goal reducing the federal government to a size so small it is difficult for us to comprehend,” she warns. “It would literally be confined to currency, roads, and foreign affairs. Public-health protections would be gone.”

Speaking to the *Washington Post*, Mark Holden lauded the House provisions, which mirrored many of the white-collar-criminal-defense reforms that the Kochs had long sought. But many of their Democratic counterparts in the sentencing-reform coalition were horrified. President Obama declared that the House provisions were unacceptable, adding that he wanted criminal-justice reform that made things better, not worse. Sally Yates, the deputy attorney general, warned that, if the House’s proposed new standards became law, some “criminals would go free as a result, because we simply would not be able to meet that standard of proof.” She told NPR, “It would provide cover for top-level executives, which is not something we think would be in the best interest of the American people.” Neera Tanden, the president of the Center for American Progress, called the House version a deal breaker. If the new Koch persona was anything more than a public-relations ploy, she told me, “this is the test.”

The Republican chairman of the House Judiciary Committee, Bob Goodlatte, told me that Republicans in the House would also not bend on the white-collar provisions: “We’re happy to discuss specific concerns, but it’s a deal breaker for us if they’re not included.”

In the midst of this standoff, Holden reassured his liberal partners that the Kochs were sincere about sentencing reform, and would rather see it pass without the white-collar-crime provisions than not at all. Speaking of the white-collar legislation, he told me, “We’re not pushing this now. Hopefully, it will get worked out, but if it will kill it we don’t want the perfect to be the enemy of the good.”

But as Congress returned from the holidays the criminal-justice-reform coalition seemed to be fraying. Although Van Jones praised the Kochs’ promise to support the sentencing-reform bill with or without the House provisions, he criticized the brothers for not doing more to pressure Republicans in Congress to support sentencing reform. “A fair criticism would be that the Koch brothers haven’t used their nuclear arsenal on this thing,” he acknowledged. “They haven’t said that they’ll run ads about it.”

Mike Paul, the head of Reputation Doctor, isn’t surprised that the Kochs’ rebranding has encountered troubles. “You can’t just use spin to make it look like you’re doing the right thing,” he says. “Ultimately, the currency that the Kochs are after is trust. And it’s won only by showing consistency, transparency, and evidence of real change.” ♦

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