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Koch's views on criminal justice may surprise some

Businessman thinks the U.S. system is 'overcriminalized'

BY ROY WENZL
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Of all the contentious history between Koch Industries and the U.S. government, the Corpus Christi, Texas, case from 1995 is the one that Charles Koch remembers most vividly.

A federal grand jury indicted his company on 97 felonies involving alleged environmental crimes at an oil refinery.

Prosecutors dropped all but one of the charges six years later, after the company spent tens of millions of dollars defending itself.

Ultimately, Koch Petroleum Group agreed to pay a \$10 million settlement.

"It was a really, really torturous experience," said Mark Holden, Koch's chief counsel. "We learned first-hand what happens when anyone gets into the criminal justice system."

Holden said Charles Koch wondered afterward "how the little guy who doesn't have Koch's resources deals with prosecutions like that."

No one at Koch wants to re-litigate the Corpus Christi case, Holden said. But it prompted Charles Koch to study the justice system — both federal and state — wondering whether it has been overcriminalized with too many laws and too many prosecutions of nonviolent offenders, not only for him but for everybody.

His conclusion: Yes, it has.

Ten years ago, he began giving money to support efforts by the National Association of Criminal Defense Lawyers to help train defense lawyers and reverse what some see as a national trend to get tough on crime, which has resulted in the tripling of the incarceration rate since the 1980s and has stripped the poor of their rights to a legal defense.



BO RADER/FILE PHOTO

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He's going to give more to that effort, he said.

"Over the next year, we are going to be pushing the issues key to this, which need a lot of work in this country," Koch said. "And that would be freedom of speech, cronyism and how that relates to opportunities for the disadvantaged."

The nation's criminal justice system needs reform, "especially for the disadvantaged," Koch said, "making it fair and making (criminal) sentences more appropriate to the crime that has been committed."

Holden said legislators in recent decades drifted into a habit of adding more laws every year and taking stands to show themselves as "getting tough on crime." It has gone too far, Holden said.

The weight has fallen most heavily on minorities, Holden said.

It has festered in neighborhoods and fostered the anger of people protesting against police actions in Missouri and New York. And, Holden said, "It definitely appears to have a racial angle, intended or not."

The Bureau of Justice Statistics estimates that one in three black men will spend time in prison.

THE IMPACT

Among the concerns, Holden said, of federal and state governments are:

- Too many nonviolent offenders have been sent to prison for too long. The United States incarcerates 2.2 million people. Another 65 million — one in four adults — now have criminal records, according to the defense lawyers association.

- "We have more of America now in prison than they ever did (in South Africa) in apartheid," Holden said. "Let that swirl around in your head for a while."

- The economy has been damaged by making it difficult for offenders to get jobs once they are out of prison. The social stigma and routine background checks, according to the association, "has made it all but impossible for a person with a criminal record to leave the past behind."

- Millions of former offenders have been denied voting and other rights long after they have paid their debt to society.

- The Sixth Amendment right to an attorney has been impaired by allowing public defender offices to be underfunded and overwhelmed, including by government prosecutors with far more resources at their disposal.

The Corpus Christi case led Charles Koch and his company to give money,



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starting about 10 years ago, to the National Association of Criminal Defense Lawyers. The company and the association would not say how much Koch has given, but the amount totals in the seven figures, Holden said.

Campaigning against overcriminalization has prompted Koch to form unofficial alliances with people and organizations that usually champion liberal causes, including political activist George Soros and the American Civil Liberties Union, who are also campaigning for a reduction in prison populations.

KANSAS PRISONS

Kansas has 9,600 inmates in eight adult prisons, according to the 2014 annual report from the Kansas Department of Corrections, which has an annual budget of \$306 million.

The cost per inmate is \$25,000 per year.

"That's more than what it costs to send a kid to college for a year," said David Gilkey, a Wichita youth mentor.

The prison population is projected to rise by 740 more inmates by 2024, which would add another \$18.5 million per year to the state cost, according to state estimates.

Nobody wants to let violent criminals out of prison, Holden said. Of the 9,600 inmates in Kansas, 4,836 were convicted of committing violent crimes, and another 2,129 were sent there for sex offenses.

But there are also 1,736 inmates serving drug sentences and another 567 serving sentences for nonviolent property crimes.

WASTING HUMAN RESOURCES

Gilkey and Norman Reimer say much the same things about overcriminalization of the justice system and their support of Koch's plans to reform it. Few men could be as different in background.

Reimer, an attorney, directs the National Association of Criminal Defense Lawyers in Washington, D.C.

Gilkey is a former Wichita crack addict and an ex-convict who spent nearly four years in Kansas prisons. But in the nine years since his release, Gilkey has become a respected Wichita mentor to young people.

He runs "Rise Up for Youth," a United Way-supported group; he goes regularly into the tough parts of town, speaks to gang members and goes into local schools at the request of educators to plead with youngsters to study, stay away from drugs and stay out of crime.

Reimer said the "tough on crime" stance has created "too many laws, too many flaws in the criminal justice process and far too much work for beleaguered public defenders assigned to represent poor people in courts."

"There are never adequate resources now to ensure that the poor can have access to a lawyer," he said.

It may surprise some Koch critics that Koch took an interest in criminal justice; it's not a surprise to Reimer.

"We share a reverence for the Bill of Rights," he said.

Putting 2 million people in prison was a mistake, he said.

"We are not a nation of bad people. We are a nation that made some bad choices," he said.

"We've become addicted to severe sentences, to the point where we are mass-producing convictions in many courts, while not providing defense counsel on a timely basis.

"We've got to fix that, and there is now a growing consensus among people knowledgeable about justice and economics that we are wasting precious human resources in criminal justice."

Gilkey said he's seen hundreds of examples showing Reimer and Koch are right. He grew up and committed crimes in Wichita's poorest neighborhoods, then began to work with youths there and visit prisons where people from Wichita are incarcerated.

He's no liberal on many social or justice issues. He tells boys to treat police officers with respect.

He wishes he could legally obtain a gun because of some of the tough neighborhoods he walks into to mentor youths.

He says marijuana should never be legalized, because as a drug addict, he learned first-hand that pot is "the gateway drug to all the other drugs."

But he said we have devised a "crazy" and costly system where we spend tens of millions in Kansas to incarcerate people and train them so well in prison that many of them earn tech school certificates to become plumbers or electricians or other trade workers.

"When they get out, they can't get jobs," Gilkey said. "They have to check that box on the job application that says, 'Have you ever been convicted?' No one hires them then."

Gilkey, like millions of other convicted felons, lost the right to vote and to apply for a concealed-handgun permit.

"Most employers won't hire me if they learn I'm a convicted felon," he said. "Most apartment complexes won't rent to me if I tried. My wife and I rent a house only because someone decided to trust us."

He believes nonviolent offenders should not face prison time. It would save millions, he said. It would put people to work paying taxes instead of getting fed

for years at taxpayer expense.

Holden, Koch's counsel and a friend of Gilkey's, said laws allow many crimes to be expunged from someone's record. But that's a tricky legal process, and many poor people don't have the money to hire lawyers, he said.

It makes no sense to give a life sentence like that to nonviolent offenders after they've served time, Holden said.

"If you have a nonviolent felony and you get out of prison, we as a country can't forgive and forget?" he asked

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