



LEGAL DEPARTMENT

MARK V. HOLDEN
SENIOR VICE PRESIDENT
GENERAL COUNSEL & SECRETARY

September 28, 2010

Lynn B. Oberlander, Esq.
General Counsel
The New Yorker
4 Times Square
New York, NY 10036

Dear Ms. Oberlander:

I bring to your attention the distortions published in Jane Mayer's article, "Covert Operations: The billionaire brothers who are waging a war against Obama," in the August 30, 2010 issue of *The New Yorker*. The article's numerous flaws include using sources, many of whom are anonymous, and many of whose biases and conflicts of interest are not disclosed to the reader, and a failure to use even a modest amount of the counterfactual information in the reporter's possession.

The story incorrectly suggests that Charles Koch, David Koch and Koch Industries are secretly funding and participating in a shadowy political netherworld. Contrary to the article, the Kochs have openly supported economic freedom for decades, and affixed their names to fellowships, foundations and endowed professorships. David Koch's biography on the Americans for Prosperity Foundation website says he helped found the organization, "and also serves on the board of directors for the Reason Foundation and the CATO Institute." The Charles G. Koch Charitable Foundation website notes that Charles Koch "has continuously supported academic and public policy research (including a number of Nobel Prize winners) for more than 40 years" and says he founded or helped build organizations such as the Institute for Humane Studies, the Cato Institute, the Mercatus Center at George Mason University, the Bill of Rights Institute, and the Market-Based Management Institute."

In contrast to Ms. Mayer's piece, a September 17, 2010 report from Open Secrets compares Mr. Koch and liberal philanthropist George Soros. "These individuals aren't exactly flying under the radar as the Kochs hold leadership positions and are featured on the websites for the Cato Institute, Reason Foundation and the Mercatus Center among others. Soros also runs the Open Society Institute – website Soros.org -- as well as the recently created Institute for New Economic Thinking. Still [Soros and the Kochs] have

provided major funding to groups that aren't particularly transparent, such as Soros-backed Democracy Alliance, which doesn't provide information on the projects it funds."

On the other hand, Ms. Mayer unquestioningly prints a statement from George Soros' spokesman Michael Vachon that "none of [Mr. Soros'] contributions are in the service of his own economic interests." This statement was directly contradicted by Mr. Soros himself in a 2004 *New Yorker* article by Ms. Mayer in which Mr. Soros noted that "[t]here are occasionally symbiotic moments between political and business interests." Mr. Soros then explained how his attempt to set up a public policy think tank in England led to an opportunity to break into the British bond market, which he said resulted in "one of the most rewarding weekends of my life . . . I made many millions."

While painting a picture of the Kochs' corporate self-interest guiding their philanthropic efforts, the article ignores the documented reality that the Kochs' support free-market principles even when doing so runs counter to their short-term business interests. For example, because of prevailing environmental regulations, no new oil refineries have been built in this country since the 1970s. This directly benefits existing refiners by limiting production and competition. Yet the Kochs have consistently advocated for less constrictive yet environmentally sensitive ways to increase refining capacity. The Kochs also oppose the automotive bailout, tariffs that would raise domestic prices on the goods we produce, and the regulatory creation of boutique fuels that raise fuel prices, even though all of these benefit Koch companies. Moreover, Ms. Mayer's belief that a free market increases a corporation's short-term profits is fundamentally flawed, as is demonstrated by the fact that Koch Industries is among the few companies advocating free market policy principles, while the vast majority of companies push for various types of anti-free market government regulations and mandates.

Most disturbingly, the article presents as credible and unbiased a number of sources that are neither. For example, Ms. Mayer relies on Gus diZerega, who has not spoken with Charles Koch in more than 30 years and has no current knowledge of the Koch family. While Ms. Mayer writes that he "abandoned right-wing views, and became a political-science professor," she fails to acknowledge that he is a partisan critic. In his online biography at beliefnet.com, Mr. diZerega states that he "aims to focus more on his spiritual writing instead of trying to prevent the triumph of what he feels are the moral monsters that long controlled the U.S. government and still dominate the Republican Party."

Ms. Mayer also quotes Bruce Bartlett, whom she describes as a "conservative economist and a historian." However, she fails to mention that the Kochs ceased funding Mr. Bartlett's work for the National Center for Policy Analysis – a fact that should be revealed to the reader so one can evaluate Mr. Bartlett's objectivity. Further, although she says the Kochs fund "slippery organizations with generic-sounding names" many sources in her article, including the Center for Public Integrity, the Constitutional Accountability Center, the Center for American Progress, and ClimateProgress.org are neutral-sounding but left-leaning organizations funded by liberal philanthropists.

In the course of presenting a distorted view of Koch's environmental record, the article quotes University of Texas environmental law professor Thomas McGarity, who declares that "Koch has been constantly in trouble with the EPA." Ms. Mayer accepts this false conclusion uncritically, even though Mr. McGarity is affiliated with the Center for American Progress and an advocate for loosening the rules restricting lawsuits against refineries and other businesses. Ms. Mayer also fails to disclose that Mr. McGarity was the President of the Center for Progressive Reform ("CPR") from 2002-2007. He continues to sit on CPR's Board of Directors alongside CPR Advisory Council member John Podesta, president of the Center for American Progress, whose institution provided the majority of the information Ms. Mayer uses -- yet another fact Ms. Mayer never reveals.

The truth is that Koch companies' efforts have been lauded by the EPA. Last year, Koch Industries subsidiary Georgia-Pacific received the EPA's SmartWay Excellence Award for achievements including reducing fuel consumption and reducing total miles traveled. In 2004, Flint Hills Resources received the EPA's Clean Air Excellence Award for its contributions to "help make progress in achieving cleaner air." In December 2000, the agency recognized Koch Petroleum Group for being the first petroleum company to step forward to reach a comprehensive Clean Air agreement involving the EPA and state regulatory agencies in Minnesota and Texas. Then-EPA Administrator Carol Browner characterized the agreement as "innovative and comprehensive," and praised the "unprecedented cooperation" of Koch in stepping forward ahead of other industry peers. Koch companies have received 180 environmental, health and safety awards in the 20 months since President Obama took office.

Ms. Mayer also cited the University of Massachusetts at Amherst Political Economy Research Institute index, which claims that Koch Industries is "one of the top ten air polluters in the United States." That index faults virtually every major manufacturer in America today, and the "pollution" tracked by the index is emissions that are permitted by law and carefully regulated by the EPA. The article fails to note that a co-creator of the index, Michael Ash, is a longtime member of the Union for Radical Political Economics. According to its website, it is an association that "presents a continuing critique of the capitalist system and all forms of exploitation and oppression while helping to construct a progressive social policy and create socialist alternatives." It is not a neutral source; it is a self-described "radical" organization.

Koch Industries attempted to cooperate with Ms. Mayer and provided voluminous information to her, nearly all of which was ignored. By her statements and the lists of skewed questions she presented to us, she made her point of view obvious. In the words of one interviewee, "She made it seem as if it is un-American to oppose President Obama's policies." It was clear from the start and proven in the final product that the reporter had no interest in an accurate article. However, we did expect the *New Yorker* to scrutinize material Ms. Mayer apparently located on the internet, appropriately identify

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and sift out dubious sources, and give fair consideration to the many relevant facts and first-hand information provided by the company.

Failure to disclose key sources' bias and conflicts of interest is a serious matter, legally and journalistically. We are asking that the *New Yorker* publish a correction acknowledging that the magazine should have disclosed the biases and financial conflicts of its sources, particularly Mr. Bartlett and Mr. Ash. I await your response.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Mark V. Holden". The signature is written in a cursive, slightly slanted style.

Mark V. Holden

cc: Mr. David Remnick