

# The Prosecution of Judge Waite

by

James Allison

June 7, 2011

*(Powerpoint illustrations, by Marybeth Gardam, are meant to be projected on a screen behind the two actors.)*

## **Master of Ceremonies:**

I am \_\_\_\_\_, your master of ceremonies. Welcome to “The Prosecution of Judge Waite.”

Maybe you noticed something funny about the election of November, 2010: Right down your street, the biggest flood of corporate money in American history. *(Powerpoint image of flag greening into money.)*

And with it, big wins for candidates who favor big money and big corporations over the voices of We The People. Hey, that was nothing: Get ready for a tsunami in 2012. So, what broke the dam?

The answer is: the Supreme Court of the United States. More specifically, its 5-4 decision on January 21, 2010, in the case of Citizens United v. Federal Election Commission. *(Powerpoint image of Justices with corporate logos.)*

Here’s what happened.

In 2008, an issues-based 501 c 4 corporation called “Citizens United” wanted to show “Hillary, the Movie,” an anti-Hillary Clinton film, on “video on demand” just before a 2008 presidential primary.

The Federal Election Commission said in effect “Sorry, we have a law against that. The issue is one of timing. The law forbids your spending corporate treasury funds to broadcast an electioneering ad shortly before any federal election.” Citizens United sued, and the case worked its way to the U.S. Supreme Court.

Two years later, on January 21, 2010, five of our nine Supremes ruled that a corporation has a First Amendment right to ‘speak’ through unlimited amounts of monetary contributions--that the Constitution protects the corporate right to monetary speech just as it protects the right of any natural person to speak freely. The floodgates were open. How did this come about, this corporate claim on the rights of natural persons, the rights of we the people, this claim of corporate personhood? And what can we do about it?

We are pleased to have with us James Allison, of Bloomington Indiana, where he and his wife, Tomi, study corporate personhood’s checkered history and its chilling effect on our democracy. (Powerpoint intro, James Allison.)

Jim attended public schools in California and the University of California at Berkeley, and holds a Ph.D. from the University of Michigan. He taught psychology at Indiana University for nearly 30 years and is a Professor Emeritus there. He's authored two books and about a hundred research papers. He served in the military, and as Chief Flight Instructor for the Wabash Valley Soaring Association. Jim and Tomi are Life Members of WILPF--Women's International League for Peace & Freedom, founded by Jane Addams of Hull House. (Powerpoint intro, WILPF.) WILPF pioneered research on the history and impact of corporate power and corporate personhood.

In 2010 Jim and Tomi completed their research on a Supreme Court decision that happened over a hundred years ago, in 1886. That decision, the Santa Clara railroad tax decision, was the first brick placed in the legal monument to corporate personhood. Please help me welcome Professor James Allison to \_\_\_\_\_.

**Jim:**

Thank you! It's good to be in \_\_\_\_\_ (Cedar Rapids, Chapel Hill, wherever) for \_\_\_\_\_ (Move To Amend, WILPF, whomever).

What was a corporation exactly, back in the days of our founders? To James Madison, John Marshall and other founders, the answer was simple and clear: A corporation was an artificial creature of the law, with no other rights than its charter said it had, or that it required to complete its purpose: to make a road, a bridge, a building. It had special privileges, such as limited liability, but no constitutional rights. Most state charters expired after 10 or 20 years, and had to be renewed. And the state could, and sometimes did, revoke the charter of a corporation found to not be acting in the public interest.

What about those inalienable rights listed in the Bill of Rights? Those were the rights of natural born persons, period: free speech, religion, assembly, and all the others were personal rights, not corporate rights. And if corporations were going to have special privileges that helped make them rich and powerful, then government would have to regulate them with scrupulous care.

Thus, like moth to a flame, the Supreme Court of the United States was drawn into the task of regulation, and began to build a huge body of constitutional case law on corporations. But all of that case law was suddenly overturned with the 1886 Santa Clara decision.

**(Judge Waite loudly clears his throat and "Harumphs.")**

*(Powerpoint photo of Judge Waite.)*

(Jim pauses and looks at the photo of Waite, then the actor, before continuing.)

An early example: In 1839, *The Bank of Augusta v. Earle*. What did the Supreme Court rule? It ruled that corporations might be treated as "citizens" in federal court, so as to hold them accountable for wrongs, but could not claim the constitutional rights of living persons. And so it went, case after case, decade after decade. As it should have continued, except that corruption changed the game plan in 1886.

*(Waite rises. Powerpoint photo of Judge Waite.)*

**Waite:**

I must object!

*(Waite turns to the audience.)*

My name is Morrison Remick Waite, Chief Justice of the United States Supreme Court, 1874-1888. I was educated at Yale (Phi Beta Kappa, Skull and Bones) and practiced law in Ohio, much in defense of railroads and big corporations. And why not? Railroads in those days were the shapers of cities, bringer of dreams, modernizers and wealth builders. It's true that I had no judicial experience before President Grant appointed me Chief Justice . . . and I was not his first choice. In fact, I was his seventh choice. Many were dubious at first, but I proved them wrong. Soon I became known as a quick study, honest and industrious to a fault. I served until my sudden, unexpected death in 1888. And I can tell you that my ruling in Santa Clara was completely correct and legally unassailable! (Waite sits down.)

**Jim:**

Thank you for your service, Judge Waite. But I must disagree with you. Let me explain.

So we had all that standing case law, saying that corporations did not deserve the constitutional rights of human persons--from the birth of the republic, right up through 1860 and long beyond.

But then something odd happened in the 1880s. And it happened because of two results of the Civil War. What were they? *(Powerpoint photo of Union and Confederate soldiers.)*

First, the Civil War made railroads richer than God. Now they could get the very best lawyers, rented by the ton, to help them fight the enemy of expediency: government regulation.

*(Judge Waite stands up pointing a finger.)*

**Waite:**

Perfectly legal!

**Jim:**

Of course.

Second, the Civil War inspired Congress to write the 14th Amendment in defense of the human rights of newly freed slaves.

**Waite:**

*(Commenting to those immediately around him:)*

A good idea . . . but hard as hell to get approved!

*(Waite sits down.) (Powerpoint quote of 14th Amendment.)*

**Jim:**

Ratified in 1868, the 14th Amendment was supposed to protect freed slaves from abuse by southern legislatures. This is what it says in Section 1, which speaks famously about due process and equal protection:

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Can anyone doubt that the words of the 14th Amendment were meant to protect the recently freed slaves from southern legislatures? Hard to imagine how today’s defenders of original intent, like Justice Scalia, claim 14th Amendment protections for corporations.

Quite apart from the plight of freed slaves, those clever corporate railroad lawyers saw the 14th Amendment as simply a handy weapon in the fight against regulation. If they could just persuade the courts to declare that corporations were persons, then corporations could evade state regulation under Fourteenth Amendment protections, the same protections that any natural person . . . except a woman, of course . . . even a freed slave . . . could claim against state laws.

This new kind of legal assault began right away, in 1869. But the Supreme Court continued to reject the corporate claim to Fourteenth Amendment protections. It did so as late as 1880, when it upheld a state’s right to ban lotteries in *Stone v. Mississippi*. Isn’t that right, Judge Waite? You became Chief Justice in 1874. So, how did you vote in *Stone v. Mississippi*?

*(Waite rises.)*

**Waite:**

Yes, but that was an entirely different . . .

**Jim:**

Don’t bother. I looked it up. You not only concurred, you wrote the majority opinion. Your opinion even quoted Chief Justice Marshall (*Powerpoint of Waite’s Marshall quote*):

“ . . . the framers of the Constitution did not intend to restrain states in the regulation of their civil institutions, adopted for internal government, and . . . the instrument they have given us is not to be so construed.”

You may sit down, Mr. Waite.

**Waite (in protest):**

See here, now Professor . . .

**Jim:**

Mr. Waite, this is not your Court. This is the court of public opinion, in \_\_\_\_\_ (Cedar Rapids, Iowa; Chapel Hill, North Carolina; wherever). You must wait until we ask you to speak.

*(Waite sits down with a “Harumph.”)*

**Jim:**

Now comes the great puzzle. Why did the Court suddenly about-face on the momentous question of corporate personhood? Were YOU culpable, Judge Waite, as Chief Justice?

*(Waite rises to speak bombastically, but cannot form the words. He sits down.)*

About one hundred and twenty five years ago, in 1886, in a simple property tax case, the railroad hired guns got their opportunity in *Santa Clara County v. Southern Pacific Railroad*.

This simple tax case, about fences the railroad built along its rails, had nothing to do with corporate personhood. And yet, almost any professor of constitutional law will tell you that THIS case was the precedent for corporate personhood. *(Powerpoint of the Santa Clara decision, 1886--a cartoon of the Court holding a big umbrella over the corporations, while threatening the public with a gavel.)*

Ladies and gentlemen, it was that precedent in 1886 that gave corporations ALL the constitutional protections Congress meant for freed slaves when it wrote the Fourteenth Amendment.

ALL the constitutional rights that were intended by our founders for us, for We The People. Those of us who are human persons, that is.

It was this 1886 precedent that created the legal foundation for rights that enable today's owners of corporations to break free of regulation, avoid the monitoring of environmental protection agencies, and acquire the vast economic power that dominates our government, and permeates our culture.

In 1886 corporations usurped the rights of individual human persons. They have used those rights against us time and again. Indeed, it was that precedent that gave us *Citizens United* in the year 2010.

And you, Chief Justice Waite, you were part of that theft! Wasn't it your decision in *Santa Clara v. Southern Pacific* that established the precedent for corporate personhood?

*(Waite rises and jabs a finger at Jim.)*

**Waite:**

Absolutely not! I did nothing wrong! That was NOT our decision at all! Go back to school, Professor, and learn a little more Court history before you slander ME!"

*(A stunned silence ensues.)*

**Jim:**

Just a moment, your honor! *(Jim fumbles through his notes.)*

What about that famous quote of yours? It's here, in a note to you . . . from John Chandler Bancroft Davis, your Court Reporter in that case.

*(To the audience:)* It's probably no accident that Davis was a former railroad president.

*(To Waite:)* Let me refresh your memory, Chief Justice. It's dated May 25, 1886. *(Powerpoint*

*of Davis' note to Waite.)*

(Off stage/out of the spotlight, we hear another voice reading:)

“Dear Chief Justice, I have a memorandum in the California Cases Santa Clara County v Southern Pacific Railroad Company as follows. ‘In opening the Court stated that it did not wish to hear argument on the question whether the Fourteenth Amendment applies to such corporations as are parties in these suits. All the judges were of opinion that it does.’ Please let me know whether I correctly caught your words and oblige yours truly JCB Davis.”

**Waite** (*defensively*):

Yes. . . but that was just my passing comment, NOT part of the OPINION! You need to hear my complete reply to Court Reporter Davis. I happen to have a copy right here.

(Waite pulls a paper out of his pocket.) (*Powerpoint of Waite's answer to Davis.*)

I told Davis: “I think your memorandum in the California Railroad Tax Cases expresses with sufficient accuracy what was said before the argument began. I leave it to YOU to determine whether anything need be said about it in the report . . . inasmuch as we AVOIDED meeting the constitutional question in the decision.”

**Jim:**

You mean to say that your opinion in Santa Clara settled no constitutional question?

**Waite:**

That's exactly what I mean. We ruled in favor of Southern Pacific railroad, but very narrowly . . . on the question of TAXES.

Justice Harlan wrote the majority opinion. We found that Santa Clara County had made a trivial mistake in figuring the taxes owed by the railroad--it included some fences by mistake--and that was that. We made no ruling on corporate personhood, and we all knew that. Court Reporter Davis knew it too, but he chose to ADD that bit about 14th Amendment protections for corporations into his headnotes on the case.

**Jim:**

Eh, excuse me your honor, what are headnotes?

**Waite:**

Headnotes!?! Headnotes are . . . well, the Court Reporter writes up a kind of summary that lawyers find handy if they are too busy . . . or too lazy . . . to read the official opinion. The summary is called a headnote. It carries no legal weight whatsoever. It's the work of the Reporter, not the work of the Court. Everybody ought to know that!

**Jim:**

And long after your time, the Court made it official in 1906, when it ruled exactly that: Headnotes were the work of the Court Reporter, and not the Court (United States v. Detroit

Timber and Lumber Co.).

**Waite:**

Just so.

**Jim:**

So you are saying that John Davis' headnotes were misleading?

**Waite:**

They **MUST** have been! They seem to have misled plenty of law professors since then!

**Jim:**

Why do you think he wrote them the way he did?

**Waite:**

Your guess is as good as mine. I had good reason to trust Davis's judgment. Years before he had been my boss in an important case in an international court in Geneva, where we won a lot of money from the British for their support of the Confederacy during our Civil War.

**Jim:**

How much?

**Waite:**

About 15 million dollars! That's how I came to national attention.

Maybe I should have watched Davis more carefully, but I was so confoundedly busy with cases . . . and his credentials were impeccable. Son of a governor, brother of a Congressman. Harvard College, lawyer, journalist--he once interviewed Karl Marx! He was a diplomat, state legislator, railroad president . . . and related by marriage to a signer of the Constitution.

**Jim:**

A genuine member of the American establishment.

**Waite:**

Yes . . . ! (*More hesitantly, considering:*) . . . though now you mention it, I had some complaints about his accuracy.

**Jim:**

For example?

**Waite:**

Well . . . Let me see . . . Seems like I remember a commercial publisher of Supreme Court proceedings was worried about its reputation because of discrepancies between Davis' official records and their records. They stood by their own records.

**Jim:**

Anything else?

**Waite:**

Well, there were several cases missing from the official Court records. The Senate complained about it. I started to look into that one, but shed the mortal coil before I got very far.

**Jim:**

Several?! There were 250 cases missing!!! All right, but there is still another piece of this big puzzle. Why the huge change in Supreme Court sentiment?

**Waite:**

Sir?

**Jim:**

Well, in 1880 you're telling us officially, in a written Court decision, that the Constitution did NOT mean to restrain states in the regulation of corporations.

But just six years later you're all telling us unofficially, in the Santa Clara headnote, that corporations have 14th Amendment personhood protections! What really happened?

And before you answer, let me tell you that some modern scholars think it was Roscoe Conkling who turned you around.

**Waite** (*exasperatedly*):

They're still talking about Roscoe Conkling? (*Powerpoint photo of Roscoe Conkling.*)

**Jim:**

Why not? Lawyer, Congressman, Senator, two-time Supreme Court nominee, Republican Party leader, corner in a scandalous marital triangle--what's not to talk about? You remember the case he argued in 1882?

**Waite:**

San Mateo County v. Southern Pacific Railroad Company!

**Jim:**

Right. The case was a lot like Santa Clara. Remarkably, Conkling was a surviving member of the congressional committee that had drafted the 14th Amendment. Fancy that! A living authority on congressional intent! You remember his histrionics?

**Waite:**

Ha! How could I forget? During his argument he flourished that journal of his--he called it a Journal of the Drafting Committee--and claimed that the committee had wavered back and forth in its wording, draft after draft, between "person" and "citizen"--finally choosing "person" as the word more potentially inclusive of corporations.

A fine story, but it went for naught, because the Court made no decision! (*Waite looks at the*

*audience:)* You see, the case was rendered moot when the railroad went ahead and paid some of the taxes San Mateo claimed.

**Jim:**

Tell us honestly, your Honor, was it Conkling's version of history that turned your Court around?

**Waite:**

*(Long pause.)* I'd rather not say.

**Jim:**

Do you know that Conkling's story was a complete fraud?

**Waite:**

. . . No, but I'm not surprised. Conkling was a bit of a rascal. And a rich rascal at that. Powerful. There was talk of his turning down the Supreme Court nominations because he could make more money staying in New York!

**Jim:**

Of course you wouldn't know. The 'Conkling Journal' disappeared for a long time, but turned up in the 1930s, when a Stanford law librarian examined it and found none of that switching back and forth between "person" and "citizen." All drafts had used "person." Congress had never meant to protect corporations under the 14th Amendment. Not once!

Do you know how much Southern Pacific paid Conkling for his performance?

**Waite:**

A lot.

**Jim:**

\$10,000. The average annual wage was about \$500. And worth every single penny to Southern Pacific, if the impact showed up four years later in the Santa Clara headnote. Judge Waite?

**Waite:**

I resent your implication, sir!

**Jim:**

No doubt about it, the railroads knew how to spend their huge Civil War profits to best advantage. They rented the very best lawyers with the very best connections, like Conkling; and they curried favor with the most important judges, such as you.

**Waite:**

No comment.

**Jim:**

Judge Waite, a man like you acquires many important papers in the course of his career. Many

of yours are stored in the Library of Congress. My wife and I examined yours, dated 1884 through 1888--the year you died.

**Waite:**

Did you indeed?!

**Jim:**

Sir, we did. One thing we learned was how common it was for railroads to provide favors to you and other judges even as you adjudicated railroad cases. For example, it was customary for railroads, early each year, to send you and other judges a free pass for that year.

You were especially favored: When you took a long trip you often had a private Pullman car at your disposal. And of course you left the travel details to your son, a railroad executive himself.

**Waite:**

What of it? These kinds of considerations are very common. Even in your own time, I should say. (*Powerpoint photos of Scalia and Thomas in re Koch brothers.*) I've heard such talk recently about Justices Thomas and Scalia accepting favors from some Oklahoma tycoons . . . the Koch Brothers. No one likes it, but it's a fact of life.

**Jim:**

When word got around, some citizens took it amiss. They complained about conflict of interest. Be that as it may, Congress put an end to the practice when it passed the Interstate Commerce Act in 1887. It was an era of reform, an end to corruption on the bench . . . supposedly.

**Waite:**

We got little notes from the railroads asking us to return our 1887 passes.

**Jim:**

Yes, we saw one among your papers. But let's go back one year, to 1886 . . . before your passes were revoked.

In January, 1886 you received at least three annual passes.

That same month, your court heard arguments in *Santa Clara County v. Southern Pacific Railroad Company*. The decision came on May 10, 1886. On May 25 Court Reporter Davis wrote his note to you about 14th Amendment protection for corporations.

**Waite:**

Yes. That timing sounds right.

**Jim:**

During that same period, you and your daughter prepared for a trip to Alaska. Your son had been arranging free transportation with various railroads and steamship lines. One of the railroads was Southern Pacific.

*(Waite looks stricken. He sits down, a little shakily.)*

You and your daughter arrived in California in late August. Your host in San Francisco was Mr. Leland Stanford: former governor, U.S. Senator, President of Southern Pacific Railroad. He extended every courtesy: He gave you letters addressed to his railroad employees, directing them to do all they could to make you and your daughter more comfortable in your travels; he even sent muskmelons grown on his ranch.

Stanford arranged an excursion to Monterey for you and several California judges. You wrote a letter home on Sept. 3 that described the excursion; you referred to a private railroad car and abundant Chinese servants everywhere you went.

Another letter on Sept. 15: More railroad travel in California, this time northeast to Truckee, with luminaries of law, government, and the Mormon Church. Finally a steamship to Alaska, where an entrepreneur tried to interest your daughter in a lucrative business venture.

We figure the cost of first class travel alone was over twice the average annual wage . . . at least a thousand dollars! Plus the cost of those private cars, which often came with kitchen, cook and a servant or two. Plus the excursions to Monterey and Truckee.

Judge Waite, allowing that the times were different then, this practice was virtually like giving you justices your own private jet planes, fully staffed!

**Waite:**

All right! We did travel in comfort. But I never allowed any of that to affect my judicial decisions.

**Jim:**

*(Pauses, surveys the audience as if to measure its reaction, and continues:)* Perhaps not. It's hard to tell. But it didn't look so good. It looked awfully like conflict of interest at best, and graft at worst. And eventually Congress did put an end to such things with the Interstate Commerce Act.

**Waite:**

So they did.

**Jim:**

Let's talk about a fellow Supreme Court Justice, Stephen Field. *(Powerpoint photo of Field.)*

**Waite:**

Must we?

**Jim:**

I know you loathed each other, but I need to tell you some things you don't know about the man.

**Waite:**

I think I know enough. Now THERE was a genuine railroad lackey.

We were all favorable to the railroads; most of us had been railroad lawyers! But Field was a complete lickspittle. He was always after me to let him write every opinion that touched on railroad interests. Everything.

I finally had to take him aside and explain how bad it would look for him to write an opinion that dealt directly with his personal railroad friends. The man had no shame at all when it came to railroads. And everybody knew he was in their pocket.

**Jim:**

Judge Waite, you have no idea. He did his worst in 1889, the year after you died. It was another railroad case, Minneapolis & St. Louis Railway Company v. Beckwith.

The Court actually ruled against the railroad, saying you railroad guys owe Mr. Beckwith some money because your locomotive killed three of his hogs, plus punitive damages to the state of Iowa.

The case has nothing to do with corporate personhood. But Field is writing the majority opinion, and guess what he does?! He throws in a completely gratuitous citation of Santa Clara as a precedent for corporate personhood.

That first citation in a majority opinion made it official. And he did it knowing full well that Santa Clara was no such thing, that personhood was in the headnote, not the opinion.

How can we say that? For one thing, he was there, just as you were there.

For another thing, he complained at the time that the majority opinion in Santa Clara had settled no constitutional issue. His complaint was even published in a Fresno newspaper!

**Waite:**

Humbug! I have to agree with you. I never would have thought a Supreme Court Justice could sink that low, not even Field. Completely reprehensible!

**Jim:**

But Field was not alone. Sitting with Field on the same Court that disposed of Beckwith's hogs were six fellow veterans of the Santa Clara Court: Miller. Bradley. Harlan. Matthews. Gray. Blatchford.

**Waite:**

My God, what a dark day for the Supreme Court of the United States!

**Jim:**

Justice Waite, it almost seems that--had you been there--maybe you could have kept them on the straight and narrow.

**Waite:**

As God as my witness, yes. I do hope so.

**Jim:**

Justice Waite, do you appreciate irony?

**Waite:**

Less and less.

**Jim:**

Forgive me, but this is too good to pass up. Do you remember who appointed Field to the Supreme Court?

**Waite:**

Of course. It was Abraham Lincoln. Lincoln needed political support out West, where there wasn't much support for the Union. Field was a Californian, and a strong Union man. He came highly recommended by Leland Stanford. So Lincoln put Field on the bench.

**Jim:**

Do you know what Lincoln thought about corporations?

**Waite:**

Well, I know that he did some important work for the railroads long before he became president. Plenty of lawyers did. I've heard that he would have preferred to work for the other side, but that the other side never had the gumption or the money to hire him.

**Jim:**

I've heard the same thing. One of Lincoln's letters from 1864 put a fine point on it.

*(Powerpoint of Lincoln quote, part 1--the quote is in two parts.)*

*(A voice from offstage and out of the spotlight reads:)*

“As a result of the war, corporations have been enthroned and an era of corruption in high places will follow,”

*(Powerpoint of Lincoln quote, part 2.)*

“and the money power of the country . . . will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed.” “Letter to Col. William F. Elkins, Nov. 21, 1864.”

**Jim:**

And it was Lincoln who put Field on the bench. Talk about unintended consequences.

**Waite:**

But what were they after, Field and his colleagues, that drove them to such an extreme? They were not destitute men and had no pressing debts that I know of. It's hard to fully comprehend

that level of corruption.

**Jim:**

I think it had to be more than money. Maybe money, ideology, and fear. Field was no intellectual, but he had a friend who was. *(Powerpoint photo of Pomeroy.)*

His name was John Norton Pomeroy, a professor at Hastings Law College in San Francisco who had helped Field with briefs. Pomeroy said this about the Fourteenth Amendment:

*(A voice from offstage and out of the spotlight reads:)*

“The Fourteenth Amendment may prove to be the only bulwark and safeguard by which to protect the great railroad systems of the country against the spirit of communism which is everywhere threatening their destruction or confiscation.”

**Jim:**

Money, ideology, and fear. Even one can move mountains. Think what you can do with all three . . . plus a little luck.

**Waite:**

Seems like that’s a lesson for your time as well! Enough greed and ideology and fear to go around, eh?

**Jim:**

Mr. Chief Justice, do you have any advice for the Roberts Court, for the five Supremes who gave us Citizens United in 2010? *(Powerpoint cartoon of the Supremes, with corporate logos on the five majority Justices.)*

**Waite (standing tall):**

I do. Stop citing our Santa Clara ruling as a ruling for corporate personhood or any of its constitutional protections. Read the full decision, not just the headnote. My comment about the 14th Amendment was only an obiter dictum, a remark in passing, which they know very well is not the same as an opinion.

One reason we made no constitutional ruling on 14th Amendment protections for railroads is that we could not construct a rationale. We were up against seven or eight decades of case law that drew a clear distinction between natural persons and artificial creations of the government: Constitutional protections were for the former, and not for the latter. Government could regulate corporations any way it pleased, because corporations were the creatures of government. They had no natural rights, unlike people, who enjoyed the natural rights guaranteed by the Constitution. I could never imagine a plausible rationale for overturning those decades of well reasoned case law. Neither could anyone else!

*(Turning to address the audience:)*

You must understand: The U.S. Supreme Court is not supposed to issue dictates unaccompanied by sound legal argument. But apparently it did in 1889! It did much worse than that: It pretended that our 1886 Court had offered a sound legal rationale for corporate personhood.

Despicable. Unforgivable. I'm glad I wasn't around to witness it.

For the Roberts Court to claim any precedent for corporate personhood protections is to sign up with Field and his gang of 1889. How can they claim our respect unless they mend their ways?

Do they think any branch of government can function as it should without the respect of those it governs? Let the members of the judiciary branch say 'Shame on us.'

Let them turn their hands to the reversal of this damnable error, and let them do it NOW. That is my advice to the Roberts Court.

*(Waite starts to sit down, then rises again:)* Just one more thing . . . to the Roberts Court . . . and every other court!

Next time some mogul invites you to the Bohemian Grove; next time some potentate offers a ride in his private jet for a weekend of duck hunting with his friends at their lodge; think twice. Above all, think: Why me?

*(Waite gestures with his right hand, as if taking the oath, and sits down.)*

**Jim:**

Chief Justice Waite, I thank you. I came here today to hold you to account for this travesty of justice that has corrupted our courts, usurped the rights of the people, drowned out their voice, and now threatens our Republic and its democratic institutions.

But now I find I must thank you. Your honorable example restores some hope that the Court can be worthy of our founders, and one that serves the people.

Do too many of us believe that our history has no connection with problems of today? Do too many Americans have the collective cultural memory of a gnat? Do we imbue our leaders with godlike abilities? Are we too enthralled with our childhood story of democracy?

We must share Jefferson's conviction that a democracy cannot endure without an informed and educated electorate.

I go one step further. We must be informed and educated, yes, but also engaged. Never have we needed so much a participatory democracy. The nation cannot survive without informed citizens acting for the common good. Remember: We may not have the money, but we still have the numbers, hands down!

With thanks and respect, I rest my case.

**Master of Ceremonies:**

Thank you Jim. Thank you to \_\_\_\_\_ who so ably portrayed and defended Chief Justice Morrison Remick Waite, and to \_\_\_\_\_, our off stage voice.

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### **Author's notes:**

The action may or may not be followed by Q & A, depending on local preference. However, past experience is that the play stimulates much discussion among the audience.

Also depending on local preference, the play may or may not be presented in the context of a call to action by WILPF, Move To Amend, or some similar group. For example, in Cedar Rapids and Chapel Hill the preamble introduced "Move To Amend" and its nationwide petition campaign to amend the Constitution to declare that corporations are not persons, that money is not speech, and that we the people have a constitutional right to vote. The preamble also explained the procedures required to amend the Constitution, and gave encouraging examples of previous amendments. Move To Amend petitions available in the theater allowed members of the audience to take immediate action if they wished.

I would like to offer some observations on the Powerpoint illustrations assembled by Marybeth Gardam. In the productions mounted thus far, these were projected on a screen behind the actors in the order indicated in the script. My personal opinion is that these illustrations greatly enhance the production. Not all viewers share that opinion. Some think the illustrations distract from the proceedings on stage. Some think they complement the proceedings. Some say they were so absorbed by the action that they hardly noticed the projections. Some say they liked the illustrations, but might have preferred fewer. The illustrations enumerated in the script are my personal choice, a large subset of Marybeth's collection. I hope future producers will make their own choices in accordance with preference and circumstance.

My thanks and admiration to Marybeth for all of her contributions to "The Prosecution of Justice Waite."

### **Useful Sources**

An animated powerpoint, **The Democracy Crisis**, sheds more light on the historic power grab of corporations through the judiciary. Truly, the road to the demise of our democracy is paved with court complicity. You can download **The Democracy Crisis**, free, at [www.UltimateCivics.org](http://www.UltimateCivics.org). Show it to groups of any size, and get folks engaged with Move to Amend.

People can sign the Move To Amend petition at [MoveToAmend.org](http://MoveToAmend.org). At the same site they can download the paper by Allison and Allison on which "The Prosecution of Judge Waite" was based.

### **Useful Actions**

Work locally on resolutions and ordinances that address corporate constitutional rights and abolish corporate personhood.

Write OpEds and letters to the editor that help connect your branch's issues to how corporate rights trump your voices.

Offer a kitchen table “Democracy School” by means of the WILPF Corporate Study Course.  
([www.wilpf.org](http://www.wilpf.org))

On behalf of Move To Amend, consider your role in keeping the rule of law an even playing field, in pursuing a Constitutional Amendment which declares that Corporations Are Not People, that Money Is Not Speech, and that guarantees the right to vote. **CORPORATIONS ARE NOT PERSONS, MONEY IS NOT SPEECH, GUARANTEED RIGHTS TO VOTE.** Join this grassroots movement to defend democracy. Your democracy needs you!