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Preface

In 2005 my wife Tomi and I began to think about the history of corporate power in America. The stimulus was a recent study guide prepared by some farsighted members of the U.S. section of Women's International League for Peace and Freedom (founded by Jane Addams in 1915). Our study was revelatory. The expanding horizon drew us on, to the Madison Library of Congress, the Washington and Lee Law Library, and other great national archives.

Many thought the inquiry odd or obsessive. Our attempts at outreach were often rejected, ignored, or poorly attended. The climate suddenly changed in 2010, with the Supreme Court's 5-4 decision in *Citizens United v. Federal Election Commission*. That shot across the bow awakened the public to an alarming reality: In the name of free speech, big corporations might dominate federal elections by buying a louder bullhorn than anyone else. In a flood of corporate money, the 2012 elections confirmed that such corporations, left to do what they pleased, would try just that: to dominate our elections with the very loudest bullhorn money could buy.

Opponents of corporate power had best know something of its history. We had written papers and given talks on the subject, always with the sense that we could have done a better job of communication. At last a colleague suggested that I consider another method, and wrap our core content in a dramatic narrative. I thought it was worth a try, and in 2011 wrote three short plays.

The argument for constitutional protection of corporate speech, as equivalent to the personal speech clearly protected by the First Amendment, is often based on the notion of corporate personhood. The judicial precedent for that notion is usually traced to a 19th century Supreme Court decision. In actual fact, *Santa Clara v. Southern Pacific* (1886) settled no constitutional question at all. Its status as a precedent for corporate personhood is pure myth. "The Prosecution of Judge Waite" tells the story behind the myth by means of Gilded Age characters: Morrison Remick Waite, Chief Justice of the U.S. Supreme Court; J. C. Bancroft Davis, Court Reporter; Associate Justice Stephen Field; and Senator Roscoe Conkling.

Encouraged by audience response to the Waite play, I turned to Associate Justice Lewis Powell. Widely known as mastermind of the powerful counterattack against the regulatory reforms of the 1970s, he should also claim fame as a direct progenitor of *Citizens United*. The claim rests firmly on his majority 5-4 opinion in *Boston v. Bellotti* (1978), with his notion that the First Amendment protects speech independently of its source. In addition to him, the main characters in "Mr. Powell Writes a Memo" are broadcast journalist Edward R. Murrow--an old friend of Powell's; Ralph Nader; and Associate Justice William Rehnquist.

The final part of my corporate trilogy for the 99% is "What Corporations Do." A familiar conceit of corporate law is that a Michigan Supreme Court decision, *Dodge v. Ford* (1919), compels corporations to work solely to maximize shareholder profit. Here a professor leads four students to the truth of that decision. The four students are Henry Ford; Adam Smith; Milton Friedman; and James Madison.

I hope you enjoy these plays.