

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus,

THE NONHUMAN RIGHTS PROJECT, INC., on
behalf of TOMMY,

Index No. 162358/15
(New York County)

Petitioner-Appellant,

-against-

PATRICK C. LAVERY, individually and as an officer
of Circle L Trailer Sales, Inc., DIANE LAVERY, and
CIRCLE L TRAILER SALES, INC.,

Respondents-Respondents.
-----x

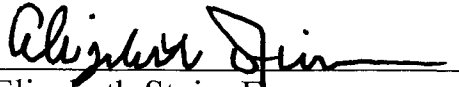
**NOTICE OF MOTION
FOR LEAVE TO FILE
RESPONSE OF
EDITOR-IN-CHIEF
OF *BLACK'S LAW
DICTIONARY*
REGARDING
ERRONEOUS
DEFINITION OF
"PERSON"**

PLEASE TAKE NOTICE, that upon the annexed affirmation of Elizabeth Stein, Esq. dated April 11, 2017 and the papers attached thereto, Petitioner-Appellant, the Nonhuman Rights Project, Inc. ("NhRP") will move this Court, at a term of the Appellate Division of the Supreme Court, First Judicial Department, at the Courthouse located at 27 Madison Avenue, New York, New York for an order granting leave to file: 1) Petitioner-Appellant's April 6, 2017 letter to Bryan Garner, editor-in-chief of *Black's Law Dictionary*, regarding the erroneous definition of "person" in that volume (a copy of the letter is annexed to the Affirmation of Elizabeth Stein as "Exhibit 2"); and 2) Mr. Garner's email response

dated April 6, 2016 (a copy of which is annexed to the Affirmation of Elizabeth Stein as “Exhibit 3”).

PLEASE TAKE FURTHER NOTICE, that the motion is returnable at 10 o'clock in the forenoon on, April 21, 2017, which is at least 9 days from the date of service of these papers.

Dated: April 11, 2017


Elizabeth Stein, Esq.
Attorney for Petitioner-Appellant
5 Dunhill Road
New Hyde Park, New York 11040
516-747-4726
liddystein@aol.com

NOTICE TO:

New York State Supreme Court
Appellate Division – First Department
27 Madison Avenue
New York, New York 10010
(212) 340-0400

Patrick C. Lavery, individually and as an officer of Circle L Trailer Sales, Inc.
3032 State Highway 30
Gloversville, New York 12078
(518) 661-5038

Diane Lavery, individually and as an officer of Circle L Trailer Sales, Inc.
3032 State Highway 30
Gloversville, New York 12078
(518) 661-5038

Circle L Trailer Sales, Inc.

3032 State Highway 30
Gloversville, New York 12078
(518) 661-5038

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus,

THE NONHUMAN RIGHTS PROJECT, INC., on
behalf of TOMMY,

Index No.: 162358/15
(New York County)

Petitioner-Appellant,

Attorney Affirmation

-against-

PATRICK C. LAVERY, individually and as an officer and
director of Circle L Trailer Sales, Inc., DIANE LAVERY,
and CIRCLE L TRAILER SALES, INC.,

Respondents-Respondents.

I, Elizabeth Stein, an attorney duly admitted to practice law in the State of
New York, affirms the following under the penalty of perjury:

1. I am an attorney of record for Petitioner-Appellant, the Nonhuman
Rights Project, Inc. (“NhRP”), in the above-captioned matter and am not a party in
this action.

2. I am fully familiar with the pleadings and proceedings in this matter,
have read and know the contents thereof, and submit this affirmation in support of
the within Motion for Leave to File Response of Editor-In-Chief of *Black’s Law
Dictionary* Regarding Erroneous Definition of “Person,” and the papers annexed
hereto.

3. On March 27, 2017, I submitted a letter to this Court which, among other things, brought to this Court's attention the erroneous definition of "person" in *Black's Law Dictionary*, upon which the Third Department in part based its ruling in *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 151-52 (3d Dept. 2014) in denying personhood to the chimpanzee, Tommy, whose appeal is before this Court (attached as "Exhibit 1" is a copy of that letter).

4. On April 6, 2017, the NhRP notified the editor-in-chief of *Black's Law Dictionary*, Bryan Garner, of *Black's* erroneous definition of "person" and requested the error be corrected to define a "legal person" as an entity who is the subject of "rights *or* duties," not "rights *and* duties" (attached as "Exhibit 2" is the letter to Mr. Garner from Kevin Schneider, Esq., including the referenced pages from the 10th edition of Salmond's *Jurisprudence*).


5. Mr. Garner responded by email on April 6, 2017, "I've marked it for correction in the 11th edition" (attached as "Exhibit 3" is a copy of the email communication).

6. The NhRP seeks to bring the above to the Court's attention as it directly bears upon the validity of the *Lavery* decision, which was deemed binding by the lower court in the case at bar.

7. Pursuant to 22 N.Y.C.R.R. §1301.1, I affirm that this action is not frivolous.

WHEREFORE, NhRP respectfully requests that this Court enter an order (i) granting it leave to submit the attached letter to Bryan Garner, editor-in-chief of *Black's Law Dictionary* ("Exhibit 2") and his email response ("Exhibit 3"), and (ii) granting such other and further relief as this Court deems just and proper.

Dated: April 11, 2016



Elizabeth Stein, Esq.
Attorney for Petitioner-Appellant
5 Dunhill Road
New Hyde Park, New York 11040
516-747-4726
liddystein@aol.com

Exhibit “1”

Elizabeth Stein, Esq.
5 Dunhill Road
New Hyde Park, NY 11040
(516) 747-4726
liddystein@aol.com
Attorney for Petitioner-Appellant

By Hand Delivery

March 27, 2017

Clerk of the Court
Susanna Rojas
Appellate Division, First Department
27 Madison Avenue
New York, New York 10010

Re: Nonhuman Rights Project, Inc., on behalf of Tommy v. Patrick C. Lavery, et al.
(162358/2015) (New York County) and *Nonhuman Rights Project, Inc., on behalf*
of Kiko v. Carmen Presti et al., (150149/2016) (New York County)

Dear Clerk Rojas:

Petitioner-Appellant, the Nonhuman Rights Project, Inc. (“NhRP”), hereby notifies this Court of three matters: (1) a relevant case rendered after oral argument in the above-captioned actions (which took place on March 16, 2017), (2) the publication of a relevant law review article, and (3) a mistake of law made by the Third Judicial Department in *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 151-52 (3d Dept. 2014) upon which the lower court in the present cases relied, that came to the NhRP’s attention immediately before oral argument, but which the NhRP was unable to bring to the attention of the Court during argument.

First, on March 20, 2017, the High Court of Uttarakhand declared two rivers in India — the Ganga and Yamuna — as “legal persons” with rights under the Constitution of India. *See Mohd. Salim v. State of Uttarakhand & Others*, (PIL) 126/2014 (High Court Uttarakhand, 03/20/2017) (enclosed). Relying heavily upon

*Salmond*¹ and *Paton*,² the court concluded that it would “define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights *or* duties may be attributed.” *Id.* at ¶14, ¶19 (emphasis added) (citing *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others*, AIR 2000 SC 1421 (Supreme Court of India, 2000)).

Second, the decision of the Third Department in *Lavery* is critiqued in the just-published Craig Ewasiuk law review article, “Escape Routes: The Possibility of Habeas Corpus Protection for Animals Under Modern Social Contract Theory,” 48.2 *The Columbia Human Rights Law Review* 69 (Winter 2017).

Third, the *Lavery* decision relied upon *Black’s Law Dictionary* (7th ed.) for the proposition that “the legal meaning of a ‘person’ is ‘a subject of legal rights *and* duties.’” Critically, however, the two supporting sources that *Black’s Law Dictionary* cites, the tenth edition of *Salmond on Jurisprudence* and Gray’s *The Nature and Sources of the Law*³ support the opposite proposition. **Both use the disjunctive “or” rather than the conjunctive “and,” making clear that a “person” may be the subject of rights “or” duties.** The NhRP only recently discovered this error when it finally was able to locate the tenth edition of *Salmond on Jurisprudence* at the Library of Congress.

Every edition of *Salmond on Jurisprudence*, including the tenth edition, repeats: “a person is any being whom the law regards as capable of legal rights *or* duties.”⁴ Gray’s states that “[o]ne who has rights *but not duties*, or has duties but no rights, is ... a person.”⁵

¹ *Id.* at ¶14, ¶16 (citing John Salmond, *Salmond on Jurisprudence* (Patrick John Fitzgerald, Sweet & Maxwell, 12 ed. 1966) 305-306).

² *Id.* at ¶14 (citing George Whitecross Paton, *A Textbook of Jurisprudence* (3rd ed. 1964) 349-350).

³ ch. II at 27 (Quid Pro Books 2012) (2d ed. 1921), and p. 39 (1st ed. 1909).

⁴ John Salmond, *Salmond on Jurisprudence* (Patrick John Fitzgerald, Sweet & Maxwell, 12 ed. 1966) 299; John Salmond, *Salmond on Jurisprudence* (Glanville Williams, London, Sweet & Maxwell, Limited, 11th ed. 1957) 350; Glanville L. Williams, *Salmond on Jurisprudence* 318 (10th ed. 1947); John Salmond, *Jurisprudence* (C.A.W. Manning, London: Sweet & Maxwell, Limited, 8th ed. 1930) 329; John Salmond, *Jurisprudence*, 7th ed. (London: Sweet & Maxwell, Limited, 1924) 329; John Salmond, *Jurisprudence*, 6th ed. (London: Sweet & Maxwell, Limited, 1920) 272; John Salmond, *Jurisprudence*, 4th ed. (London, Stevens and Haynes, 1913) 272; John Salmond, *Jurisprudence*, 2nd ed. (London: Stevens and Haynes 1907) 275; and John Salmond, *Jurisprudence or The Theory of the Law* (London, Stevens & Haynes 1902) 334 (emphasis added).

⁵ Gray, at 27 (emphasis added).

Likewise, most of the few cases cited in *Lavery* to support the holding that personhood is contingent upon the ability to shoulder duties *and* responsibilities also rely upon the same erroneous *Black's Law Dictionary* definition. See *Western Sur. Co. v ADCO Credit, Inc.*, 251 P3d 714, 716 (Nev. 2011); *State of Washington v A.M.R.*, 147 Wash. 2d 91, 94, 51 P3d 790, 791 (2002); *State of West Virginia v Zain*, 207 W. Va. 54, 65, 528 SE2d 748, 755 (1999), *cert den.*, 529 US 1042 (2000)); *Amadio v Levin*, 501 A2d at 1098; *Western Sur. Co.*, 251 P3d at 716; *State of Washington v A.M.R.*, 51 P3d at 791; *State of West Virginia v Zain*, 528 SE2d at 755.

Sincerely,

Elizabeth Stein, Esq.
Attorney for Petitioner-Appellant

Encl.

Cc:

Patrick C. Lavery, individually and as an officer of Circle L Trailer Sales, Inc.
3032 State Highway 30
Gloversville, New York 12078
Phone – 518-661-5038
Respondent-Respondent

Diane Lavery
3032 State Highway 30
Gloversville, New York 12078
Phone – 518-661-5038
Respondent-Respondent

Circle L Trailer Sales, Inc.
3032 State Highway 30
Gloversville, New York 12078
Phone – 518-661-5038

Respondent-Respondent

Carmen Presti, individually and as an officer of The Primate Sanctuary, Inc.
2764 Livingston Avenue
Niagara Falls, NY 14303
Phone – 716-284-6118
kikoapeman@roadrunner.com
Respondent-Respondent

Christie E. Presti, individually and as an officer of The Primate Sanctuary, Inc.
2764 Livingston Avenue
Niagara Falls, NY 14303
Phone – 716-284-6118
kikoapeman@roadrunner.com
Respondent-Respondent

The Primate Sanctuary, Inc.
2764 Livingston Avenue
Niagara Falls, NY 14303
Phone – 716-284-6118
kikoapeman@roadrunner.com
Respondent-Respondent

Exhibit “2”

Kevin Schneider, Esq.
68 West 107th St. #62
New York, NY 10025
kschneider@nonhumanrights.org

By Regular Mail and Email

April 6, 2017

Bryan Garner
c/o LawProse, Inc.
14180 Dallas Parkway
Suite 280
Dallas, TX 75254
Email to: bgarner@lawprose.org and info@lawprose.org

Re: Serious error in Black's Law Dictionary (Definition of "Person")

Dear Mr. Garner:

I am a New York attorney and the Executive Director of the Nonhuman Rights Project, Inc. ("NhRP"). I am writing to call your attention to a serious error in *Black's Law Dictionary*, specifically, its definition of "person." This error has had grave implications for the NhRP's litigation to secure habeas corpus rights for chimpanzees. *See People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 151-52 (3d Dept. 2014) (chimpanzees cannot be "legal persons" because they are unable to bear correlative duties and responsibilities).

The *Lavery* court, in partial reliance upon *Black's Law Dictionary* (7th ed.), quoted a passage from the 10th edition of Salmond's *Jurisprudence* that was alleged to support the proposition that "legal personhood has consistently been defined in terms of both rights *and* duties." *Id.* (emphasis in original). In *Black's*, the passage reads in part: "So far as legal theory is concerned, a person is any being whom the law regards as capable of **rights and duties**."

However, that is not what *Jurisprudence* stated.¹ In the original quote—as can be seen in the attached scanned pages of Salmond's *Jurisprudence* (10th ed.) which attorney Spencer Lo obtained from the Library of Congress—the conjunctive "and" does not appear; rather, the disjunctive "or" is used in the phrase "**rights or duties**." Every edition of Salmond's *Jurisprudence* repeats: "a person is any being whom the law regards as capable of rights or duties."² This "rights and duties" error persists even in the latest edition of *Black's Law Dictionary*.

¹ The court erred in citing Gray's *Nature and Sources of Law* at 27, as well. However, Gray states that "[o]ne who has rights *but not duties*, or has duties but no rights, is ... a person."

² John Salmond, *Salmond on Jurisprudence* (Patrick John Fitzgerald, Sweet & Maxwell, 12 ed. 1966) 299; John Salmond, *Salmond on Jurisprudence* (Glanville Williams, London, Sweet & Maxwell, Limited, 11th ed. 1957) 350; Glanville L. Williams, *Jurisprudence* 318 (10th ed. 1947); John Salmond, *Jurisprudence* (C.A.W. Manning, London: Sweet & Maxwell, Limited, 8th ed. 1930) 329; John Salmond, *Jurisprudence*, 7th ed. (London: Sweet & Maxwell, Limited, 1924) 329; John Salmond, *Jurisprudence*, 6th ed. (London: Sweet & Maxwell, Limited, 1920)

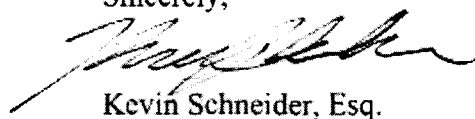
Likewise, some of the very few cases *Lavery* cited to support its statement that personhood is contingent upon the ability to shoulder duties *and* responsibilities unfortunately relied upon the same erroneous *Black's Law Dictionary* definition. See *Western Sur. Co. v ADCO Credit, Inc.*, 251 P3d 714, 716 (Nev. 2011); *State of Washington v A.M.R.*, 147 Wash. 2d 91, 94, 51 P3d 790, 791 (2002); *Amadio v Levin*, 501 A2d at 1098.

Other courts, which did not rely upon *Black's*, have correctly applied personhood to entities able to bear rights *or* duties. The latest example was on March 20, 2017, when the High Court of Uttarakhand declared two rivers in India — the Ganga and Yamuna — “legal persons” with rights under the Constitution of India. See *Mohd. Salim v. State of Uttarakhand & Others*, (PIL) 126/2014 (High Court Uttarakhand, 03/20/2017). The judge subsequently enlarged the order to extend legal personhood to the glaciers which feed the Ganga and Yamuna rivers (the Gangotri & Yamunotri), as well as connected rivers, streams, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls. Relying in part upon the 12th edition of *Salmond on Jurisprudence*³ the court stated that it would “define a person for the purpose of jurisprudence as any entity (not necessarily a human being) to which rights *or* duties may be attributed.” *Id.* at ¶14, ¶19 (emphasis added) (citing *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass & others*, AIR 2000 SC 1421 (Supreme Court of India, 2000)).

This erroneous definition of legal personhood in *Black's* has the potential to wreak more havoc. In his *amicus curiae* brief in support of NhRP's ongoing habeas corpus litigation in New York, Professor Laurence H. Tribe argued that the “court in *Lavery* reached its conclusion on the basis of a fundamentally flawed definition of legal personhood.”⁴ He explained that this “definition, which would appear on its face to exclude third-trimester fetuses, children, and comatose adults (among other entities whose rights as persons the law protects), importantly misunderstood the relationship among rights, duties, and personhood.” *Id.*

I urge that you correct this serious error to make plain in *Black's Law Dictionary* that a “legal person” can be the subject of “rights *or* duties,” not “rights *and* duties,” so that this erroneous definition may not be cited by courts in the future.

Sincerely,



Kevin Schneider, Esq.

Encl.

272; John Salmond, *Jurisprudence*, 4th ed. (London, Stevens and Haynes, 1913) 272; John Salmond, *Jurisprudence*, 2nd ed. (London: Stevens and Haynes 1907) 275; and John Salmond, *Jurisprudence or The Theory of the Law* (London, Stevens & Haynes 1902) 334 (emphasis added).

³ *Id.* at ¶14, ¶16 (citing John Salmond, *Salmond on Jurisprudence* (Patrick John Fitzgerald, Sweet & Maxwell, 12 ed. 1966) 305-306).

⁴ See “Brief of Amicus Curiae Laurence H. Tribe in Support of Petitioner-Appellant,” at pg. 2, available at: https://www.nonhumanrightsproject.org/content/uploads/2016_150149_Tribe_ITMO-The-NonHuman-Right-Project-v.-Presti_Amicus-1-2.pdf.

JURISPRUDENCE

BY

SIR JOHN SALMOND

A JUDGE OF THE SUPREME COURT OF NEW ZEALAND

TENTH EDITION

BY

GLANVILLE L. WILLIAMS, LL.D. (CANTAB.)

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; READER IN
ENGLISH LAW IN THE UNIVERSITY OF LONDON

LONDON:

SWEET AND MAXWELL, LIMITED

2 & 3 CHANCERY LANE, W.C.2

TORONTO:
THE CARSWELL COMPANY,
LIMITED

SYDNEY, MELBOURNE, BRISBANE:
THE LAW BOOK COMPANY OF
AUSTRALASIA PTY LIMITED

1947

(Printed in England)

CHAPTER 15

PERSONS

§ 111. The Nature of Personality

THE purpose of this chapter is to investigate the legal conception of personality. It is not permissible to adopt the simple device of saying that a person means a human being, for even in the popular or non-legal use of the term there are persons who are not men. Personality is a wider and vaguer term than humanity. Gods, angels, and the spirits of the dead are persons, no less than men are. And in the law this want of coincidence between the class of persons and that of human beings is still more marked. In the law there may be men who are not persons; slaves, for example, are destitute of legal personality in any system which regards them as incapable of either rights or liabilities. Like cattle, they are things and the objects of rights; not persons and the subjects of them. Conversely there are, in the law, persons who are not men. A joint-stock company or a municipal corporation is a person in legal contemplation. So also, in Hindu law, idols are legal persons, and this has been recognised by the Privy Council (a). What, then, is the legal meaning of a "person"?

So far as legal theory is concerned, a person is any being whom the law regards as capable of rights or duties (b). Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition.

Persons as so defined are of two kinds, distinguishable as natural and legal. A natural person is a human being. Legal persons are beings, real or imaginary, who for the purpose of

(a) *Pramatha Nath Mullick v. Pradyumna Kumar Mullick* (1925), L. R. 52 Ind. App. 215. See Duff, "The Personality of an Idol" (1927), 3 C. L. J. 42; Vesey-Fitzgerald, "Idolon Fori" (1925), 41 L. Q. R. 419.

(b) For a full discussion see Alexander Nékám, *The Personality Conception of the Legal Entity* (1938).

legal reasoning are treated in greater or less degree in the same way as human beings (c).

§ 112. The Legal Status of the Lower Animals

The only natural persons are human beings. Beasts are not persons, either natural or legal. They are merely things—often the objects of legal rights and duties, but never the subjects of them. Beasts, like men, are capable of acts and possess interests. Yet their acts are neither lawful nor unlawful; they are not recognised by the law as the appropriate subject-matter either of permission or of prohibition. Archaic codes did not scruple, it is true, to punish with death in due course of law the beast that was guilty of homicide. "If an ox gore a man or a woman that they die: then the ox shall be surely stoned and his flesh shall not be eaten" (d). A conception such as this pertains to a stage that is long since past; but modern law shows us a relic of it in the rule that a trespassing beast may be distrained damage feasant, and kept until its owner or some one else interested in the beast pays compensation (e). Distress damage feasant does not, however, in modern law involve any legal recognition of the personality of the animal.

A beast is as incapable of legal rights as of legal duties, for its interests receive no recognition from the law. *Hominum causa omne jus constitutum* (f). The law is made for men, and allows no fellowship or bonds of obligation between them and the lower animals. If these last possess moral rights—as utilitarian ethics at least need not scruple to admit—those rights are not recognised by any legal system. That which is done to the hurt of a beast may be a wrong to its owner or to the society of mankind, but it is no wrong to the beast. No animal can be the owner of any property, even through the medium of a human trustee. If a testator vests property in trustees for the maintenance of his favourite horses or dogs, he will thereby create no valid trust enforceable in any way by or on behalf of these non-human beneficiaries. The only effect of such provisions is to authorise the trustees, if they think fit, to expend the property

(c) Legal persons are also termed fictitious, juristic, artificial, or moral.

(d) Exodus xxi. 28. To the same effect see Plato's *Laws*, 873.

(e) Williams, *Liability for Animals*, chaps. 1, 7.

(f) D. 1. 5. 2.

Exhibit “3”



Kevin Schneider <kschneider@nonhumanrights.org>

Serious Error in Black's Law Dictionary (Definition of "Person")

Bryan <bgarner@lawprose.org>

Thu, Apr 6, 2017 at 11:53 PM

To: Kevin Schneider <kschneider@nonhumanrights.org>

Kevin—

Thank you for this. I've marked it for correction in the 11th edition. Many thanks.

Sincerely,
BryanBryan A. Garner
LawProse, Inc.
14180 Dallas Parkway
Suite 280
Dallas, TX 75254
214-691-8588
Fax: 214-691-8588Distinguished Research Professor of Law
Southern Methodist Universitybgarner@lawprose.org
Twitter: @bryanagarner

On Apr 6, 2017, at 13:38, Kevin Schneider <kschneider@nonhumanrights.org> wrote:

Dear Mr. Garner,

Please find attached, in PDF, a copy of the letter I mailed to you today as well as the referenced pages from Salmond's *Jurisprudence* (10th ed.).

Best regards,

--

Kevin Schneider, Esq.
Executive Director
Nonhuman Rights Project
www.nonhumanrights.org
857-991-4148

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<Letter to Black's re Def. of Person 4.6.17.pdf>

<Salmond 10th Ed Person as Subject of Rights OR Duties.pdf>