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By Regular Mail and Email

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Bryan Garner
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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.