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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,

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