

EXHIBIT D

learning, mediational learning, mental state modeling, visual perspective-taking, cross-modal perception, the abilities to understand cause-and-effect and the experiences of others, to imagine, imitate, engage in deferred imitation, emulate, to innovate and to use and make tools, and who suffers from imprisonment the way a human suffers from imprisonment, a "person" under the New York common law of habeas corpus?

The Supreme Court stated that a chimpanzee is not a "person," but did not state whether this referred to the common law of habeas corpus or Article 70 or both.

3. Is a chimpanzee, who is a member of a species that possesses the capacities set out in Question 2, a "person" within the meaning of CPLR Article 70?

The Supreme Court stated that a chimpanzee is not a "person," but did not state whether this referred to the common law of habeas corpus or Article 70, or both.

4. Is the Petitioner/Appellant chimpanzee, who is imprisoned in a cement storefront building in the State of New York, entitled to have a common law writ of habeas corpus issued on his behalf against the Respondents to determine the legality of his restraint?

The Supreme Court refused to issue a common law writ of habeas corpus on behalf of the Petitioner/Appellant chimpanzee.

III. STATEMENT OF THE CASE

On December 3, 2013, Petitioners/Appellants filed a Verified Petition and Order to Show Cause for a common law writ of habeas corpus ("Petition"), pursuant to Article 70 of the CPLR on behalf of Kiko, a chimpanzee, in the Niagara County Supreme Court (R. 23). Petitioners/Appellants petitioned the court to issue a writ of habeas corpus and thereafter order the immediate release of Kiko, who was being unlawfully detained in the State of New York by Respondents (R. 23). In support of the Petition, Petitioners/Appellants filed a Memorandum of

Law (R. 452) and numerous and extensive Expert Affidavits (“Expert Affidavits”) attesting to the material facts described below (R. 186-450). On December 9, 2013, the court held a summary *ex parte* hearing by telephone (R. 5). On December 10, 2013, the Court entered an Order in the office of the County Clerk of Niagara County, refusing to issue the writ of habeas corpus (R. 4). On January 9, 2014, Petitioners/Appellants filed a timely Notice of Appeal pursuant to CPLR § 7011, which permits an appeal to be taken from a judgment refusing to grant a writ of habeas corpus or refusing an order to show cause issued under CPLR § 7003 (a) (R. 2).

IV. STATEMENT OF FACTS

Attached to the Petition were nine Expert Affidavits submitted by highly experienced chimpanzee researchers from around the world who have studied chimpanzees extensively, both in captivity and in the wild. They demonstrate in detail that chimpanzees are autonomous, self-determined, self-aware, highly intelligent, and emotionally complex beings who suffer from imprisonment.

Humans and chimpanzees share almost 99% of their DNA (R. 305-306 ¶10; R. 391-93 ¶11). Chimpanzees are more closely related to human beings, than to gorillas (R. 336-37 ¶11; R. 286 ¶12; R. 379 ¶11). Both brains and behavior are plastic, flexible, and heavily dependent upon learning (R. 391¶11a). Both possess the brain asymmetry associated with sophisticated communication and language-like capacities (R. 307 ¶12). Both share similar brain circuits involved in language and communication (R. 305-306 ¶10), and have evolved the large frontal lobes involved in insight and foreplanning (*Id.*). Broca’s Area and Wernicke’s Area, which enable human symbolic communication, have corresponding areas in chimpanzee brains (R. 393 ¶13).