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IN THE COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NONHUMAN RIGHTS PROJECT, INC., on  
behalf of Mari and Vaigai, individuals,

Petitioner,

v.

CITY AND COUNTY OF HONOLULU,  
DEPARTMENT OF ENTERPRISE  
SERVICES and its DIRECTOR, DITA  
HOLIFIELD, and the HONOLULU ZOO  
DIRECTOR, LINDA SANTOS.

Respondents.

Civil No. \_\_\_\_\_

**PETITION FOR A COMMON LAW  
WRIT OF HABEAS CORPUS**

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Judge: \_\_\_\_\_

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## VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

Pursuant to the common law of Hawaii and Chapter 660 of the Hawaiian Revised Statutes, Petitioner Nonhuman Rights Project, Inc. (“NhRP”), hereby submits this Verified Petition for Writ of Habeas Corpus (“Petition”) on behalf of Mari and Vaigai, two Asian elephants unlawfully imprisoned and restrained of their liberty at the Honolulu Zoo in Honolulu, Hawaii, by Respondents City and County of Honolulu, Department of Enterprise Services and its Director, Dita Holifield, and the Honolulu Zoo Director, Linda Santos (“Respondents”).

### I. PRELIMINARY STATEMENT

#### A. Introduction

1. “Elephants are particularly unhappy in zoos, given their great size, social nature and cognitive complexity. Many suffer from arthritis and other joint problems from standing on hard surfaces; elephants kept alone become desperately lonely; and all zoo elephants suffer mentally from being cooped up in tiny yards while their free-ranging cousins walk up to 50 miles a day. Zoo elephants tend to die young. At least 20 zoos in the United States have already ended their elephant exhibits in part because of ethical concerns about keeping the species captive.” Emma Marris, *Modern Zoos Are Not Worth the Moral Cost*, N.Y. TIMES (June 11, 2021), <https://bit.ly/3tZBPcx> (emphasis added).<sup>1</sup>

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<sup>1</sup> See also *Nonhuman Rights. Project, Inc. v. Breheny*, 38 N.Y.3d 555, 642 *reargument denied*, 39 N.Y.3d 967 (2022) (Rivera, J., dissenting) (“Happy [the elephant]’s confinement by human beings has never been intended to benefit her but serves only to entertain and satisfy human curiosity, regardless of the loss of freedom to Happy. She is held in an environment that is unnatural to her and that does not allow her to live her life as she was meant to: as a self-determinative, autonomous elephant in the wild.”).



2. This case presents a question of first impression in Hawaii: Should a court recognize the common law right to bodily liberty protected by habeas corpus of two elephants based on their autonomy and extraordinary cognitive complexity?<sup>2</sup>
3. Habeas corpus is a common law action and in Hawaii, “courts in the face of changing conditions are not chained to ancient formulae but may enforce conditions deemed to have been wrought in the common law itself by force of changing conditions.” *Vierra v. Campbell*, 40 Haw. 86, 89 (1953) (citations omitted). In fact, “the common law is a system of legal logic rather than a code of rules, and [] its principles have been determined by the social needs of the community and have changed with changes in such needs.” *Territory of Hawaii v. Makaaa*, 43 Haw. 237, 240 (1959).
4. In June of 2022, the now Chief Judge, Rowan Wilson, and Judge Jenny Rivera, of the New York Court of Appeals—New York State’s highest Court—found that the common law writ of habeas corpus was available for an elephant to challenge her unjust imprisonment at a zoo. *See Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 577-626 (N.Y. 2022) (“*Breheny*”) (Wilson, J., dissenting); *id.* at 626-42 (Rivera, J., dissenting). They refuted the irrational and arbitrary notion that only members of the species *Homo Sapiens* may invoke the protections of the Great Writ, recognizing that as societal norms and knowledge about nonhuman animals evolve, so too must the common law.<sup>3</sup>

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<sup>2</sup> Supreme Court justice Michael Wilson recently emphasized that “the Hawai‘i State Supreme Court does not choose to ‘throw up [our] hands’” when confronted with complex legal issues that speak to humanity’s relationship with the world around us. *Matter of Hawai‘i Elec. Light Co., Inc.*, 152 Haw. 352, 367 (2023) (Wilson, J., concurring) (citation omitted).

<sup>3</sup> They also rejected the idea that the proverbial “slippery slope” or “floodgates” argument should be determinative of whether a nonhuman animal can seek habeas corpus relief. *See Breheny*, 38 N.Y.3d at 622 (Wilson, J., dissenting) (“common-law courts are especially good at developing doctrines to deal with slippery slope”); *id.* at 623-24 (“[T]he *Lemmon Slave Case* freed only the eight family members who petitioned in that case. It did not end slavery and did not produce a

5. By this Petition, Mari and Vaigai, two Asian elephants imprisoned at the Honolulu Zoo, beg this Court to extend to them the protection of the common law of Hawaii against the imprisonment and inhumanities that have for decades been routinely visited upon them. Forcibly removed from the community of elephants in which they were evolved to thrive, Mari and Vaigai have been imprisoned in an unnatural and unhealthy environment for the sole purpose of human profit. [The science](#) is clear: [like humans](#), elephants are autonomous and extraordinarily [cognitively complex](#) beings who possess [complex biological](#), psychological, and [social needs](#). The science is also clear that elephants [suffer greatly](#) because of their imprisonment at zoos. [Elephants are](#) meant to live as self-determinative, [autonomous beings](#) in the wild. The NhRP respectfully submits that it is time for the common law of Hawaii to evolve to allow Mari and Vaigai to obtain habeas corpus relief from their inherently unjust imprisonment.
6. The NhRP seeks this Court's recognition of the elephants' common law right to bodily liberty protected by habeas corpus and no other right. Upon recognizing the elephants' common law right to bodily liberty and determining that their imprisonment at the Honolulu Zoo violates this right, this Court must order them released to an elephant sanctuary accredited by the Global Federation of Animal Sanctuaries ("GFAS") where they can exercise their autonomy and extraordinary cognitive complexity to the greatest extent possible.
7. This Court does not need to initially determine that the elephants have the right to bodily liberty in order to issue a writ of habeas corpus or an order to show cause (and set a hearing on the

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flood of follow-on habeas petitions. The several habeas corpus petitions freeing women from abusive husbands or relocating children to better custodians also caused no great flood of filings. But if *Sommersett's Case*, the *Lemmon Slave Case* or the cases involving women and children had produced a flood of habeas petitions freeing victims of unjust confinement, would history view them with disapproval?").

merits of the Petition). Rather, to issue the writ or an order to show cause, this Court need only assume (without deciding) that the elephants could have the right. The merits of the case do not get decided at this stage.<sup>4</sup>

8. Respondents' imprisonment of Mari and Vaigai is unlawful because it violates the elephants' common law right to bodily liberty protected by habeas corpus—by depriving them of their ability to meaningfully exercise their autonomy and extraordinary cognitive complexity, including the freedom to choose where to go, what to do, and with whom to be.
9. That Respondents may be in compliance with animal welfare statutes does not render the elephants' imprisonment lawful, as those statutes do not address the right to bodily liberty. Regardless of the care the elephants are receiving, they remain imprisoned by Respondents at a zoo where their bodily liberty is being unjustly violated. It is precisely this violation that renders the elephants' imprisonment unlawful.
10. The fundamental common law principles of justice, liberty, and equality compel this Court to grant Mari and Vaigai their freedom. *See Vierra*, 40 Haw. at 89 (“This court has held that the common law consists of fundamental principles and not set rules.”); *Welsh v. Campbell*, 41 Haw. 106, 119 (1955) (citation and internal quotations omitted) (“The common law consists of those principles and maxims, usages and rules of action which observation and experience of the nature of man, the constitution of society and the affairs of life have commended to

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<sup>4</sup> The standard for obtaining a writ of habeas corpus and an order to show cause are the same, and for most purposes, the terms can be used interchangeably. However, as the NhRP does not demand that Respondents produce Mari and Vaigai, the NhRP seeks an issuance of an order to show cause rather than a writ of habeas corpus. Haw. Rev. Stat. Ann. § 660-7. *See also Grindling v. Martone*, 2012 WL 3776491, at \*7 (D. Haw. Aug. 29, 2012) (“a judge may issue an order to show cause directing the respondent to answer a petition for writ of habeas corpus *in lieu* of a writ commanding respondent to produce the body”); *In re Candido*, 31 Haw. 630, 635 (1930) (“In the order to show cause the respondents are commanded ‘to appear before this honorable court’ on a specified date to show cause why a writ of habeas corpus should not issue.”).

enlightened reason.”); *id.* at 119-20 (“The common law is but the crystallized conclusions of the judges arrived at from applying the principles of natural right and justice to facts actually experienced in cases before them.”) (internal quotations and citation omitted).

11. The Petition adheres to the pleading requirements set forth in Haw. Rev. Stat. § 660-5 and establishes (1) that the elephants have the common law right to bodily liberty protected by habeas corpus because they are autonomous and extraordinarily cognitively complex, and (2) their right has been violated because they cannot exercise their autonomy. Accordingly, the Petition goes beyond “general assertions” and makes a prima facie showing that the elephants are entitled to release, setting “the procedure of habeas corpus in motion.” *Petition of Scott*, 44 Haw. 52, 54 (1959) (internal quotations omitted). Accordingly, this Court “shall, without delay, award and issue the writ unless it appears from the application that the person detained is not entitled thereto or an order to show cause is issued under section 660-7.” Haw. Rev. Stat. § 660-6.

12. This Court would not be the first court in the United States to issue an order to show cause on behalf of a nonhuman animal. The NhRP secured habeas corpus orders to show cause in two prior cases, one on behalf of two chimpanzees imprisoned at a state university,<sup>5</sup> and one on behalf of an elephant imprisoned at a zoo.<sup>6</sup> While the courts in those cases ultimately denied habeas corpus relief, the respondents were required to justify the legality of the imprisonments at issue. This Court must require Respondents to do the same regarding their imprisonment of Mari and Vaigai.

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<sup>5</sup> See generally *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 748 (Sup. Ct. 2015).

<sup>6</sup> See Mallory Diefenbach, *Orleans County issues first habeas corpus on behalf of elephant*, The Daily News (Nov. 21, 2018), <https://bit.ly/3AwkCWV>.

13. To refuse to issue the writ or an order to show cause and not allow the case to proceed to a hearing on the merits would be a “refusal to confront a manifest injustice.” *Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery*, 31 N.Y.3d 1054, 1059 (N.Y. 2018) (Fahey, J., concurring) (“*Tommy*”). This is because “imprisoning [elephants] and putting them on display is undeniably cruel.” Ex. VI ¶ 20.

**B. Jurisdictional Statement**

14. No previous application for a writ of habeas corpus has been made on behalf of Mari and Vaigai. Venue is proper in this Court because the elephants are imprisoned at the Honolulu Zoo in Honolulu, HI.

15. Jurisdiction is proper in this Court pursuant to Haw. Rev. Stat. § 660-3 and Hawaiian case law. *See* Haw. Rev. Stat. § 660-3 (“The supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty.”); *see also Turner v. Hawaii Paroling Auth.*, 93 Haw. 298, 306 n.10 (Ct. App. 2000), *as amended* (May 9, 2000) (“Under HRS chapter 660, writs of habeas corpus may be issued by the court when a person is ‘unlawfully restrained of his or her liberty.’ . . . [T]he Hawai‘i Supreme Court indicated that ‘the kind of custody that will suffice for habeas corpus purposes is judged by a very liberal standard.’”) (citations omitted) (cleaned up); *Oili v. Chang*, 57 Haw. 411, 412 (1976) (citing Haw. Rev. Stat. § 660-3) (“We have concurrent jurisdiction with the circuit courts to issue writs of habeas corpus”).

**II. LIST OF EXHIBITS**

16. Seven of the world’s most renowned experts on elephant cognition and behavior have submitted Expert Scientific Declarations (“Expert Declarations”) in support of the Petition.

The Expert Declarations, listed below, are attached to the Petition, and incorporated herein by this reference:

- Exhibit I: June 1, 2023, and May 25, 2023, Joint Declaration of Richard M. Byrne, Ph.D., and Lucy Bates, Ph.D. (“Bates & Byrne Decl.”).
- Exhibit II: Oct. 18, 2023, Declaration of Keith Lindsay, Ph.D. (“Lindsay Decl.”).
- Exhibit III: May 24, 2023, Declaration of Joyce Poole, Ph.D. (“Poole Decl.”).
- Exhibit IV: Feb. 6, 2023, Declaration of Karen McComb, Ph.D. (“McComb Decl.”).
- Exhibit V: May 12, 2023, Declaration of Cynthia Moss, Sc.D. (“Moss Decl.”).
- Exhibit VI: May 13, 2023, Declaration of Bob Jacobs, Ph.D. (“Jacobs Decl.”).

### III. PARTIES

17. Petitioner NhRP is a 501(c)(3) non-profit corporation incorporated in the State of Massachusetts, with a principal address at 611 Pennsylvania Avenue SE #345, Washington, D.C. 20003. The NhRP is the only civil rights organization in the United States dedicated solely to securing legal rights for nonhuman animals. Since 1995, the NhRP has worked to obtain legal rights for autonomous nonhuman animals such as chimpanzees and elephants.

18. Mari and Vaigai are Asian elephants and the only elephants at the Honolulu Zoo:

- Mari is an approximately 48-year-old wild-born Asian elephant from India. She was forcibly removed from her home and from her family sometime between 1975 and 1982 and then imported to the Honolulu Zoo. She was a gift from the then-prime minister of India to the children of Hawaii. In 2020 Mari [suffered](#) from intestinal inflammation that required continuous veterinary care.
- Vaigai is an approximately 38-year-old wild-born Asian elephant from India. She was forcibly removed from her home and from her family sometime around 1992 and then

imported to the Honolulu Zoo. She was also a gift from the then-prime minister of India to the children of Hawaii.

19. Respondent City and County of Honolulu, Department of Enterprise Services, which oversees the Honolulu Zoo, is located at 777 Ward Avenue, Honolulu, Hawaii 96814; Respondent Dita Holifield is the Acting Director of the Department of Enterprise Services. The Honolulu Zoo is located at 151 Kapahulu Ave., Honolulu, Hawaii 96815; Respondent Linda Santos is the Honolulu Zoo Director.

#### IV. STANDING

20. The NhRP has standing to file this Petition on behalf of Mari and Vaigai. Haw. Rev. Stat. § 660-5 provides that a petition for a writ of habeas corpus needs to be “in writing, signed by the party for whose relief it is intended, or by some person in the party’s behalf.” This language is essentially unchanged from the statute’s original inception, Ch. 32, § 3 of the Laws of 1870 (“Application for such writ shall be made to the Court or Justice authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or some person in his behalf.”).
21. The 1870 habeas corpus statute, in turn, merely enshrined the traditional common law habeas corpus rule in effect for centuries in English-speaking jurisdictions—that ordinarily, anyone may seek habeas corpus on behalf of a detainee who is unlawfully deprived of their freedom.
22. “Any person is entitled to institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment.” 11 HALSBURY’S LAWS OF ENGLAND, § 1476, p. 783 (4th ed. 1976); *accord* JUDITH FARBEY ET AL., THE LAW OF HABEAS CORPUS 237 (3d ed. 2011) (“where a prisoner is being held in circumstances which do not allow for recourse to the courts . . . an application from a third party will be entertained”); ROLLIN C. HURD, A

TREATISE ON THE RIGHT OF PERSONAL LIBERTY, AND ON THE WRIT OF HABEAS CORPUS 211-12 (1858) (it “is not necessary that [the application] proceed from [the prisoner]. An agent or friend may make it on behalf of the prisoner . . . no legal relation is required to exist between the prisoner and the person making the application. It may be made by any one”). See *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990) (“As early as the 17th century, the English Habeas Corpus Act of 1679 authorized complaints to be filed by ‘any one on . . . behalf’ of detained persons . . . and in 1704 the House of Lords resolved ‘[T]hat every Englishman, who is imprisoned by any authority whatsoever, has an undoubted right, by his agents, or friends, to apply for, and obtain a Writ of Habeas Corpus, in order to procure his liberty by due course of law.’”) (citation omitted).<sup>7</sup>

23. Consistent with Haw. Rev. Stat. § 660-5, Hawaiian courts have generally not restricted who may file a habeas corpus petition on another’s behalf. See, e.g., *In re Tatsu*, 10 Haw. 701, 704 (1897) (“So far as we know, the authority of the person to make a petition in behalf of a party

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<sup>7</sup> See also *Lemmon v. People*, 20 N.Y. 562 (1860) (abolitionist stranger obtained a writ of habeas corpus on behalf of eight slaves); *In re Kirk*, 1 Edm.Sel.Cas. 315 (1846) (abolitionist stranger obtained a writ of habeas corpus on behalf of a slave); *Commonwealth v. Taylor*, 44 Mass. 72 (1841) (abolitionist stranger obtained a writ of habeas corpus on behalf of a child slave); *Commonwealth v. Aves*, 35 Mass. 193 (1836) (abolitionist stranger obtained a writ of habeas corpus on behalf of a child slave); *Truth about Motorways Pty Limited v. Macquarie Infrastructure Investment Management Limited*, HCA 11, 85 (2000) (High Court of Australia) (stranger may seek habeas corpus), <https://bit.ly/3xjAxc0>; *In re Ning Yi-Ching*, 34 Am. J. Int’l 347 (1940) (stranger China Campaign Committee obtained a writ of habeas corpus on behalf of four Chinese nationals), <https://bit.ly/3JyAyLI>; *Boudreau v. Thaw*, 13 D.L.R. 712 (Quebec Sup. Ct. 1913) (stranger obtained a writ of habeas corpus), <https://bit.ly/3xiATQ9>; *Gootoo and Inyokwana*, 35 Sol. Jo. 481 (1891) (stranger and member of antislavery society obtained a writ of habeas corpus on behalf of children destined for slavery abroad), <https://bit.ly/3uu9Ekl>; *Ex Parte West*, 2 Legge. 1475 (Supreme Court of New South Wales 1861) (stranger obtained a writ of habeas corpus on behalf of an aboriginal child), <https://bit.ly/3uu9Ekl>; *Case of Hottentot Venus*, 13 East 185, 104 Eng. Rep. 344 (K.B. 1805) (stranger abolitionist society obtained a writ of habeas corpus on behalf of an African woman), <https://bit.ly/3KIJsri>.



alleged to be in restraint has never been questioned or demanded to be known. . . . No legal relation is now held to be necessary between the prisoner and the applicant for the writ.”); *see also Ex parte Craig*, 20 Haw. 447, 453 (1911) (“The petition for a writ of habeas corpus was signed by one Frank B. Craig on behalf of the fifteen persons [and] alleges that this course was followed ‘for the reason that it is impossible to obtain the signatures or oaths of said parties.’”); *Application of Balucan*, 44 Haw. 271, 271 (1960) (“An amended petition for a writ of habeas corpus, or alternatively an order to show cause, having been filed in this court in behalf of a girl fifteen years of age, setting forth her imprisonment . . . and seeking her release.”).

24. The NhRP has filed seven habeas corpus petitions in New York on behalf of an elephant and four chimpanzees, and one habeas corpus petition in California on behalf of three elephants. No court has found that the NhRP lacked standing to seek habeas corpus relief on behalf of a nonhuman animal.<sup>8</sup> In two of the cases, the courts explicitly stated that the NhRP had standing. *See The Nonhuman Rights Project v. Breheny*, 2020 WL 1670735 \*1, \*7 (N.Y. Sup. Ct. 2020) (*Breheny (Trial Court)*) (“The NhRP has standing to file the Petition for habeas corpus on behalf of Happy.”); *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 756 (Sup. Ct. 2015) (“As [CPLR 7002(a)] places no restriction on who may bring a petition for habeas corpus on behalf of the person restrained, and absent any authority for the proposition that the statutory phrase ‘one acting on his behalf’ is modified by a requirement for obtaining

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<sup>8</sup> Like Haw. Rev. Stat. § 660-5, the New York and California procedural statutes governing the filing of habeas corpus petitions allow for a third party to bring a petition on anyone’s behalf. *See* CPLR § 7002(a) (a petition for a writ of habeas corpus may be brought by “one acting on . . . behalf of [a] person legally imprisoned or otherwise restrained in his liberty within the state.”); Cal. Penal Code § 1474(1) (“[a]pplication for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf”).

standing by a third party, petitioner has met its burden of demonstrating that it has standing” on behalf of two chimpanzees.).<sup>9</sup>

## V. THE EXPERT DECLARATIONS

### A. Elephants are autonomous and extraordinarily cognitively complex beings

25. The Expert Declarations demonstrate that elephants are autonomous and extraordinarily cognitively complex with complex physical, psychological, and social needs.<sup>10</sup> The cognitive abilities of elephants include: autonomy; empathy; self-awareness; self-determination; theory of mind (awareness others have minds); insight; working memory; extensive long-term memory that allows them to accumulate social knowledge; the ability to act intentionally and in a goal-oriented manner, and to detect animacy and goal directedness in others; understanding the physical competence and emotional state of others; imitating, including vocal imitation; pointing and understanding pointing; engaging in true teaching (taking the pupil’s lack of knowledge into account and actively showing them what to do); cooperating and building coalitions; cooperative problem-solving, innovative problem-solving, and behavioral flexibility; understanding causation; intentional communication, including vocalizations to

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<sup>9</sup> Two decisions of the Appellate Court of Connecticut erroneously held that the NhRP lacked standing to bring its habeas corpus petition on behalf of three elephants because “the elephants, not being persons, lacked standing in the first instance.” *Nonhuman Rights Project, Inc. v R.W. Commerford and Sons, Inc.*, 192 Conn.App. 36, 41 (2019); *Nonhuman Rights Project, Inc. v R.W. Commerford & Sons, Inc.*, 197 Conn.App. 353, 360 (2020) (“*Commerford Cases*”). Contrary to Connecticut Supreme Court precedent, the *Commerford Cases* resulted in merits determinations at the standing stage. *See, e.g., Maloney v. Pac*, 183 Conn. 313, 321 n.6 (1981) (“We emphasize that the question of standing is not an inquiry into the merits.”).

<sup>10</sup> References to elephants in the Expert Declarations are applicable to both African and Asian elephants. Declarant Dr. Joyce Poole notes: “If the general term ‘elephants’ is used with no specific delineation, it can be assumed the comment relates to the African species, though it is likely that it applies to the Asian species as well.” Declaration of Dr. Joyce Poole (“Poole Decl.”) ¶ 22. This is because “both African and Asian elephants share many key traits of autonomy with humans and like humans are [both] autonomous beings.” *Id.* at ¶ 69.

share knowledge and information with others in a manner similar to humans; ostensive behavior that emphasizes the importance of a particular communication; displaying a wide variety of gestures, signals, and postures; using specific calls and gestures to plan and discuss a course of action, adjusting their planning according to their assessment of risk, and executing the plan in a coordinated manner; complex learning and categorization abilities; and, an awareness of and response to death, including grieving behaviors.<sup>11</sup>

26. Elephants share numerous complex cognitive capacities with humans, such as self-awareness, empathy, awareness of death, intentional communication, learning, memory, and categorization abilities.<sup>12</sup> Many of these capacities have been erroneously considered unique to humans, and each capacity is a component of autonomy.<sup>13</sup>

27. Elephants are autonomous, as they exhibit self-determined behavior that is based on freedom of choice.<sup>14</sup> As a psychological concept, autonomy implies that the individual is directing their behavior based on some non-observable, internal cognitive process, rather than simply responding reflexively.<sup>15</sup>

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<sup>11</sup> *See generally* Poole Decl.

<sup>12</sup> Joint Declaration of Dr. Lucy Bates and Dr. Richard M. Byrne (“Bates & Byrne Decl.”) ¶ 37; Declaration of Dr. Karen McComb (“McComb Decl.”) ¶ 31; Declaration of Dr. Cynthia Moss (“Moss Decl.”) ¶ 25; Poole Decl. ¶ 29.

<sup>13</sup> *Id.*

<sup>14</sup> Bates & Byrne Decl. ¶ 30; McComb Decl. ¶¶ 24, 31, 54; Moss Decl. ¶¶ 18, 48; Poole Decl. ¶¶ 22, 69; Declaration of Keith Lindsay (“Lindsay Decl.”) ¶¶ 10, 33-34.

<sup>15</sup> Bates & Byrne Decl. ¶ 30; McComb Decl. ¶ 24; Poole Decl. ¶ 22; Moss Decl. ¶ 18.

28. Elephants possess the largest absolute brain of any land animal.<sup>16</sup> Even relative to their body sizes, elephant brains are large.<sup>17</sup> An encephalization quotient (“EQ”) of 1.0 means a brain is exactly the size expected for that body size; values greater than 1.0 indicate a larger brain than expected for that body size.<sup>18</sup> Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species).<sup>19</sup> This means an elephant’s brain can be more than twice as large as is expected for an animal of its size.<sup>20</sup> These EQ values are like those of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years.<sup>21</sup>
29. A large brain allows greater cognitive skill and behavioral flexibility.<sup>22</sup> Typically, mammals are born with brains weighing up to 90% of the adult weight.<sup>23</sup> This figure drops to about 50% for chimpanzees.<sup>24</sup> At birth, human brains weigh only about 27% of the adult brain weight and increase in size over a prolonged childhood period.<sup>25</sup> This lengthy period of brain development

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<sup>16</sup> Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20.

<sup>17</sup> Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20 (“Encephalization quotients (EQ) are a standardized measure of brain size relative to body size and illustrate by how much a species’ brain size deviates from that expected for its body size.”).

<sup>18</sup> Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20.

<sup>19</sup> Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20.

<sup>20</sup> Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20.

<sup>21</sup> Bates & Byrne Decl. ¶ 32; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20.

<sup>22</sup> Bates & Byrne Decl. ¶¶ 32-33; McComb Decl. ¶ 26; Poole Decl. ¶ 24; Moss Decl. ¶ 20.

<sup>23</sup> Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Poole Decl. ¶ 25; Moss Decl. ¶ 21.

<sup>24</sup> Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Poole Decl. ¶ 25; Moss Decl. ¶ 21.

<sup>25</sup> Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Poole Decl. ¶ 25; Moss Decl. ¶ 21.

(termed “developmental delay”) is a key feature of human brain evolution.<sup>26</sup> It provides a longer period in which the brain may be shaped by experience and learning, and plays a role in the emergence of complex cognitive abilities such as self-awareness, creativity, forward planning, decision making and social interaction.<sup>27</sup> At birth, elephant brains weigh only about 35% of their adult weight, and elephants accordingly undergo a similarly protracted period of growth, development and learning.<sup>28</sup> This similar developmental delay in the elephant brain is likewise associated with the emergence of analogous cognitive abilities.<sup>29</sup>

30. Elephant brains hold nearly as many cortical neurons as do human brains, and a much greater number than do chimpanzees or bottlenose dolphins.<sup>30</sup> Elephants’ pyramidal neurons—the class of neurons found in the cerebral cortex, particularly the pre-frontal cortex, which is the brain area that controls “executive functions”—are larger than in humans and most other species.<sup>31</sup> The term “executive function” refers to controlling operations, such as paying attention, inhibiting inappropriate responses, and deciding how to use memory search. These abilities develop late in human infancy and are often impaired in dementia. The degree of complexity of pyramidal neurons is linked to cognitive ability, with more complex connections

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<sup>26</sup> Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Poole Decl. ¶ 25; Moss Decl. ¶ 21.

<sup>27</sup> Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Poole Decl. ¶ 25; Moss Decl. ¶ 21.

<sup>28</sup> Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Poole Decl. ¶ 25; Moss Decl. ¶ 21.

<sup>29</sup> Bates & Byrne Decl. ¶ 33; McComb Decl. ¶ 27; Poole Decl. ¶ 25; Moss Decl. ¶ 21.

<sup>30</sup> Bates & Byrne Decl. ¶ 35; McComb Decl. ¶ 29; Moss Decl. ¶ 23; Poole Decl. ¶ 27 (“Humans:  $1.15 \times 10^{10}$ ; elephants:  $1.1 \times 10^{10}$ ; chimpanzees:  $6.2 \times 10^9$ ; dolphins:  $5.8 \times 10^9$ .”).

<sup>31</sup> Bates & Byrne Decl. ¶ 35; McComb Decl. ¶ 29; Poole Decl. ¶ 27; Moss Decl. ¶ 23.

between pyramidal neurons being associated with increased cognitive capabilities.<sup>32</sup> Elephant pyramidal neurons have many connections with other neurons for receiving and sending signals, known as a dendritic tree.<sup>33</sup>

31. Pyramidal neurons in elephants are just as complex as similar neurons in the human cortex, and like in humans, these neurons are also more complex in the frontal lobe (involved with higher cognitive function) than in the occipital lobe (involved in the early processing of incoming visual information).<sup>34</sup> These parallels are remarkable in terms of the overall complexity of neurons and their functional involvement.<sup>35</sup> Due to the length of their dendrites, elephant neurons sample a wide variety of information; this broad synthesis of information may contribute to elephants' contemplative nature—they often appear to be examining their surroundings and thinking very deeply about what is going on around them.<sup>36</sup>
32. Elephants, like humans, great apes, and some cetaceans, possess *Von Economo neurons*, or spindle cells, the so-called “air-traffic controllers for emotions,” in the anterior cingulate, fronto-insular, and dorsolateral prefrontal cortex areas of the brain.<sup>37</sup> In humans, these cortical areas are involved with the processing of complex social information, emotional learning and empathy, planning and decision-making, and self-awareness and self-control, among other

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<sup>32</sup> Bates & Byrne Decl. ¶ 35; McComb Decl. ¶ 29; Poole Decl. ¶ 27; Moss Decl. ¶ 23.

<sup>33</sup> Bates & Byrne Decl. ¶ 35; McComb Decl. ¶ 29; Poole Decl. ¶ 27; Moss Decl. ¶ 23.

<sup>34</sup> Declaration of Bob Jacobs (“Jacobs Decl.”) ¶ 9.

<sup>35</sup> Jacobs Decl. ¶ 9.

<sup>36</sup> Jacobs Decl. ¶ 9.

<sup>37</sup> Moss Decl. ¶ 24.

things.<sup>38</sup> The presence of spindle cells in the same brain locations in elephants and humans strongly implies that these higher-order brain functions, which are the building blocks of autonomous, self-determined behavior, are common to both species.<sup>39</sup>

33. Elephants have extensive and long-lasting memories.<sup>40</sup> Using experimental playback of long-distance contact calls in Amboseli National Park, Kenya, showed that African elephants remember and recognize the voices of at least 100 other elephants.<sup>41</sup> Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14 families in the population.<sup>42</sup> When the calls came from the test elephants' own family, they contact-called in response and approached the location of the loudspeaker; when they were from another non-related but familiar family, one that had been shown to have a high association index with the test group, they listened but remained relaxed.<sup>43</sup> However, when a test group heard unfamiliar contact calls from groups with a low association index with the test group, the elephants bunched together and retreated from the area.<sup>44</sup>
34. McComb et al. has demonstrated that this social knowledge accumulates with age, with older females having the best knowledge of the contact calls of other family groups, and that older

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<sup>38</sup> Moss Decl. ¶ 24.

<sup>39</sup> Moss Decl. ¶ 24.

<sup>40</sup> Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Poole Decl. ¶ 49; Moss Decl. ¶ 42; Lindsay Decl. ¶ 14.

<sup>41</sup> Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Poole Decl. ¶ 49; Moss Decl. ¶ 42.

<sup>42</sup> Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Poole Decl. ¶ 49; Moss Decl. ¶ 42.

<sup>43</sup> Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Poole Decl. ¶ 49; Moss Decl. ¶ 42.

<sup>44</sup> Bates & Byrne Decl. ¶ 54; McComb Decl. ¶ 48; Poole Decl. ¶ 49; Moss Decl. ¶ 42.

females are better leaders than younger elephants, with more appropriate decision-making in response to potential threats (in this case, in the form of hearing lion roars).<sup>45</sup> Younger matriarchs under-reacted to hearing roars from male lions, elephants' most dangerous predators.<sup>46</sup> Sensitivity to the roars of male lions increased with increasing matriarch age, with the oldest, most experienced females showing the strongest response to this danger.<sup>47</sup> These studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they age.<sup>48</sup> The experiences elephants gain over a lifetime are shared between members of their strongly bonded social groups through example, teaching, and learning.<sup>49</sup>

35. Further demonstration of elephants' long-term memory emerges from data on their movement patterns.<sup>50</sup> African elephants move over very large distances in their search for food and water.<sup>51</sup> Leggett (2006) used GPS collars to track the movements of elephants living in the Namib Desert, with one group traveling over 600 km in five months.<sup>52</sup> Viljoen (1989) showed

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<sup>45</sup> Bates & Byrne Decl. ¶ 55; McComb Decl. ¶ 49; Poole Decl. ¶ 50; Moss Decl. ¶ 43.

<sup>46</sup> Bates & Byrne Decl. ¶ 55; McComb Decl. ¶ 49; Poole Decl. ¶ 50; Moss Decl. ¶ 43.

<sup>47</sup> Bates & Byrne Decl. ¶ 55; McComb Decl. ¶ 49; Poole Decl. ¶ 50; Moss Decl. ¶ 43.

<sup>48</sup> Bates & Byrne Decl. ¶ 55; McComb Decl. ¶ 49; Poole Decl. ¶ 50; Moss Decl. ¶ 43.

<sup>49</sup> Lindsay Decl. ¶ 34.

<sup>50</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.

<sup>51</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.

<sup>52</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.



that elephants in the same region visited water holes approximately every four days, though some were more than 60 km apart.<sup>53</sup>

36. Elephants inhabiting the deserts of Namibia and Mali may travel hundreds of kilometers to visit remote water sources shortly after the onset of a period of rainfall, sometimes along routes that have not been used for many years.<sup>54</sup> These remarkable feats suggest exceptional cognitive mapping skills that rely upon the long-term memories of older individuals who may have traveled that same path decades earlier.<sup>55</sup> Thus, family groups headed by older matriarchs are better able to survive periods of drought.<sup>56</sup> These older matriarchs lead their families over larger areas during droughts than families headed by younger matriarchs, again drawing on their accrued knowledge, this time about the locations of permanent, drought-resistant sources of food and water, to better lead and protect their families.<sup>57</sup>

37. Studies reveal that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to “management” practices initiated by humans.<sup>58</sup> For example, South African elephants who experienced trauma decades earlier showed significantly reduced social knowledge.<sup>59</sup> As a result of archaic culling practices, these elephants had been forcibly

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<sup>53</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.

<sup>54</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.

<sup>55</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.

<sup>56</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.

<sup>57</sup> Bates & Byrne Decl. ¶ 56; McComb Decl. ¶ 50; Poole Decl. ¶ 51; Moss Decl. ¶ 44.

<sup>58</sup> Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Poole Decl. ¶ 52; Moss Decl. ¶ 45.

<sup>59</sup> Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Poole Decl. ¶ 52; Moss Decl. ¶ 45.

separated from family members and subsequently taken to new locations.<sup>60</sup> Two decades later, their social knowledge, skills, and decision-making abilities were impoverished compared to an undisturbed Kenyan population.<sup>61</sup> Disrupting elephants' natural way of life has substantial negative impacts on their knowledge and decision-making abilities.<sup>62</sup>

38. Elephants show sophisticated categorization of their environment, with skills on par with humans.<sup>63</sup> Dr. Bates, Dr. Byrne, Dr. Poole, and Dr. Moss experimentally presented the elephants of Amboseli National Park, Kenya with garments that gave olfactory or visual information about their human wearers, either Maasai warriors who traditionally attack and spear elephants as part of their rite of passage, or Kamba men who are agriculturalists and traditionally pose little threat to elephants.<sup>64</sup> In the first experiment, the only thing that differed between the cloths was the smell, derived from the ethnicity and/or lifestyle of the wearers.<sup>65</sup> The elephants were significantly more likely to run away when they sniffed cloths worn by Maasai men than those worn by Kamba men or no one at all.<sup>66</sup>

39. In a second experiment, they presented the elephants with two cloths that had not been worn by anyone; one was white (a neutral stimulus) and the other red, the color ritually worn by

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<sup>60</sup> Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Poole Decl. ¶ 52; Moss Decl. ¶ 45.

<sup>61</sup> Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Poole Decl. ¶ 52; Moss Decl. ¶ 45.

<sup>62</sup> Bates & Byrne Decl. ¶ 57; McComb Decl. ¶ 51; Poole Decl. ¶ 52; Moss Decl. ¶ 45.

<sup>63</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>64</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>65</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>66</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

Maasai warriors.<sup>67</sup> With access only to these visual cues, the elephants showed significantly greater, sometimes aggressive, reactions to red garments than white.<sup>68</sup> They concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e., “dangerous” or “low risk”) based on either olfactory or visual cues alone.<sup>69</sup>

40. It is further demonstrated that the same elephants distinguish human groups based on their voices.<sup>70</sup> The elephants reacted differently, and appropriately, depending on whether they heard Maasai or Kamba men speaking, and whether the speakers were male Maasai versus female Maasai (who also pose little threat).<sup>71</sup> Scent, sounds, and visual signs associated specifically with Maasai men are categorized as “dangerous,” while neutral signals are attended to but categorized as “low risk.”<sup>72</sup> These sophisticated, multi-modal categorization skills may be exceptional among non-human animals and demonstrate elephants’ acute sensitivity to the human world and how they monitor human behavior and learn to recognize when we might cause them harm.<sup>73</sup>

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<sup>67</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>68</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>69</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>70</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>71</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>72</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

<sup>73</sup> Bates & Byrne Decl. ¶ 59; McComb Decl. ¶ 53; Poole Decl. ¶ 54; Moss Decl. ¶ 47.

41. Human speech and language reflect autonomous thinking and intentional behavior.<sup>74</sup> Like humans, elephants vocalize to share knowledge and information.<sup>75</sup> Male elephants primarily communicate about their sexual status, rank, and identity, whereas females and dependents emphasize and reinforce their social units.<sup>76</sup> Call types are separated into those produced by the larynx (such as “rumbles”) and calls produced by the trunk (such as “trumpets”), with different calls in each category used in different contexts.<sup>77</sup> Field experiments have shown that African elephants distinguish between call types. For example, such contact calls as “rumbles” may travel kilometers and maintain associations between elephants, or “Estrus-Rumbles” may occur after a female has copulated, and these call types elicit different responses in listeners.<sup>78</sup>
42. Elephant vocalizations are not merely reflexive; they have distinct meanings to listeners and communicate in a manner similar to the way humans use language.<sup>79</sup> Elephants display more than 300 gestures, signals and postures that they use to communicate information to their audience.<sup>80</sup> Such signals are adopted in many contexts, such as aggressive, sexual or socially integrative situations; the signals are well-defined, carry a specific meaning both to the actor and recipient, result in predictable responses from the audience, and together demonstrate

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<sup>74</sup> Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Poole Decl. ¶ 42; Moss Decl. ¶ 38.

<sup>75</sup> Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Poole Decl. ¶ 42; Moss Decl. ¶ 38.

<sup>76</sup> Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Poole Decl. ¶ 42; Moss Decl. ¶ 38.

<sup>77</sup> Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Poole Decl. ¶ 42; Moss Decl. ¶ 38.

<sup>78</sup> Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Poole Decl. ¶ 42; Moss Decl. ¶ 38.

<sup>79</sup> Bates & Byrne Decl. ¶ 50; McComb Decl. ¶ 44; Poole Decl. ¶ 42; Moss Decl. ¶ 38.

<sup>80</sup> Poole Decl. ¶ 43; Bates & Byrne Decl. ¶ 52; McComb Decl. ¶ 46; Moss Decl. ¶ 40.

intentional and purposeful communication intended to share information and/or alter the others' behavior to fit their own will.<sup>81</sup>

43. Elephants use specific calls and gestures to plan and discuss a course of action.<sup>82</sup> These may be to respond to a threat through a group retreating or mobbing action (including a celebration of successful efforts), or planning and discussing where, when, and how to move to a new location. In group-defensive situations, elephants respond with highly coordinated behavior, both rapidly and predictably, to specific calls uttered and particular gestures exhibited by group members.<sup>83</sup> These calls and gestures carry specific meanings not only to elephant listeners but to experienced human listeners as well.<sup>84</sup> The rapid, predictable, and collective response of elephants to these calls and gestures indicates that elephants have the capacity to understand the goals and intentions of the signalling individual.<sup>85</sup> For example, elephants can detect alarm calls from some considerable distance and avoid the area where elephant killings by rural villagers or armed gangs take place.<sup>86</sup>

44. Elephant group defensive behavior is highly evolved and involves a range of different tactical maneuvers adopted by different elephants.<sup>87</sup> For example, matriarch Provocadora's

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<sup>81</sup> Bates & Byrne Decl. ¶ 52; McComb Decl. ¶ 46; Poole Decl. ¶ 43; Moss Decl. ¶ 40.

<sup>82</sup> Poole Decl. ¶ 44.

<sup>83</sup> Poole Decl. ¶ 45.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Lindsay Decl. ¶ 27.

<sup>87</sup> Poole Decl. ¶ 45.

contemplation of Dr. Joyce Poole’s team through “Listening” and “J-Sniffing,” followed by her purposeful “Perpendicular-Walk” toward her family (in relation to Dr. Poole’s team) and her “Ear-Flap-Slide,” clearly communicated that her family should begin a “Group-Advance” upon Dr. Poole’s team.<sup>88</sup> This particular elephant attack is a powerful example of elephant empathy, coalition, and cooperation.<sup>89</sup> Provocadora’s instigation of the “Group-Advance” led to a two-and-a-half minute “Group-Charge” in which the three other large adult females of the 36-member family took turns leading the charge, passing the baton, in a sense, from one to the next.<sup>90</sup> Once they succeeded in their goal of chasing Dr. Poole’s team away, they celebrated their victory by “High-Fiving” with their trunks and engaging in an “End-Zone-Dance.”<sup>91</sup> “High-Fiving” is also typically used to initiate a coalition and is both preceded by and associated with other specific gestures and calls that lead to goal-oriented, collective behavior.<sup>92</sup>

45. Ostensive communication refers to the way humans use behavior, such as tone of speech, eye contact, and physical contact, to emphasize that a particular communication is important.<sup>93</sup> Lead elephants in family groups use ostensive communication frequently to say, “Heads up—I am about to do something that you should pay attention to.”<sup>94</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at ¶ 36.

<sup>94</sup> *Id.*

46. In planning and communicating intentions regarding a movement, elephants use both vocal and gestural communication.<sup>95</sup> For example, Dr. Poole has observed that a member of a family will use the axis of her body to point in the direction she wishes to go and then vocalize every couple of minutes with a specific call known as a “Let’s-Go” rumble: “I want to go this way, let’s go together.”<sup>96</sup> The elephant will also use intention gestures—such as “Foot-Swinging”—to indicate her intention to move.<sup>97</sup> Such a call may be successful or unsuccessful at moving the group or may lead to a 45-minute (or longer) discussion (a series of rumble exchanges known as “Cadenced-Rumbles”) that researchers interpret as negotiation.<sup>98</sup> Sometimes such negotiation leads to disagreement that may result in the group splitting and going in different directions for a period of time.<sup>99</sup> In situations where the security of the group is at stake, such as when movement is planned through or near human settlement, all group members focus on the matriarch’s decision.<sup>100</sup> While “Let’s Go” rumbles are uttered, others adopt a “Waiting” posture until the matriarch, after much “Listening,” “J-Sniffing,” and “Monitoring,” decides it is safe to proceed; the elephants then bunch together and move purposefully at a fast pace in what’s called a “Group-March.”<sup>101</sup>

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<sup>95</sup> *Id.* at ¶ 46.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

47. Elephants typically move through dangerous habitat at high speed in a clearly goal-oriented manner known as “streaking,” which has been described and documented through the movements of elephants wearing satellite tracking collars.<sup>102</sup> The many different signals—calls, postures, gestures, and behaviors elephants use to contemplate and initiate such movement (including “Ear-Flap” and “Ear-Flap-Slide”)—are clearly understood by other elephants (just as they can be understood after a long-term study by human observers); they mean very specific things, and they indicate that elephants: 1) have a particular plan which they can communicate with others, 2) can adjust their plan according to their immediate assessment of risk or opportunity, and 3) can communicate and execute the plan in a coordinated manner.<sup>103</sup>

48. Elephants can vocally imitate sounds they hear, from the engines of passing trucks to the commands of human zookeepers.<sup>104</sup> Imitating another’s behavior is demonstrative of a sense of self because it is necessary to understand how one’s own behavior relates to the behavior of others.<sup>105</sup> African elephants recognize the importance of visual attentiveness on the part of an intended recipient, elephant or human, and of gestural communication, which further demonstrates that elephants’ gestural communications are intentional and purposeful.<sup>106</sup> This ability to understand the visual attentiveness and perspective of others is crucial for empathy,

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<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Bates & Byrne Decl. ¶ 51; McComb Decl. ¶ 45; Poole Decl. ¶ 47; Moss Decl. ¶ 39.

<sup>105</sup> Bates & Byrne Decl. ¶ 51; McComb Decl. ¶ 45; Poole Decl. ¶ 47; Moss Decl. ¶ 39.

<sup>106</sup> Bates & Byrne Decl. ¶ 53; McComb Decl. ¶ 47; Poole Decl. ¶ 48; Moss Decl. ¶ 41.



mental-state understanding, and “theory of mind” (the ability to mentally represent and think about the knowledge, beliefs, and emotional states of others while recognizing that these can be distinct from your own knowledge, beliefs, and emotions).<sup>107</sup>

49. As do humans, Asian elephants exhibit “mirror self-recognition” (“MSR”) using Gallup’s classic “mark test.”<sup>108</sup> MSR is the ability to recognize a reflection in the mirror as oneself, while the mark test involves surreptitiously placing a colored mark on an individual’s forehead that she cannot see or be aware of without the aid of a mirror.<sup>109</sup> If the individual uses the mirror to investigate the mark, the individual must recognize the reflection as herself.<sup>110</sup>
50. MSR is significant because it is a key identifier of self-awareness.<sup>111</sup> Self-awareness is intimately related to autobiographical memory in humans and is central to autonomy and being able to direct one’s own behavior to achieve personal goals and desires.<sup>112</sup> By demonstrating they can recognize themselves in a mirror, elephants must be holding a mental representation of themselves from another perspective and thus be aware that they are a separate entity from others.<sup>113</sup>

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<sup>107</sup> Bates & Byrne Decl. ¶¶ 40, 53; McComb Decl. ¶¶ 34, 47; Poole Decl. ¶¶ 32, 48; Moss Decl. ¶¶ 28, 41.

<sup>108</sup> Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Poole Decl. ¶ 30; Moss Decl. ¶ 26.

<sup>109</sup> Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Poole Decl. ¶ 30; Moss Decl. ¶ 26.

<sup>110</sup> Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Poole Decl. ¶ 30; Moss Decl. ¶ 26.

<sup>111</sup> Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Poole Decl. ¶ 30; Moss Decl. ¶ 26.

<sup>112</sup> McComb Decl. ¶ 32; Poole Decl. ¶ 30; Moss Decl. ¶ 26; Bates & Byrne Decl. ¶ 38 (“Autobiographical memory’ refers to what one remembers about his or her own life; for example, not that ‘Paris is the capital of France,’ but the recollection that you had a lovely time when you went there.”).

<sup>113</sup> Bates & Byrne Decl. ¶ 38; McComb Decl. ¶ 32; Poole Decl. ¶ 30; Moss Decl. ¶ 26.

51. One who understands the concept of dying and death must possess a sense of self.<sup>114</sup> Both chimpanzees and elephants demonstrate an awareness of death by reacting to dead family or group members.<sup>115</sup> Having a mental representation of the self, which is a pre-requisite for mirror-self recognition, likely confers an ability to comprehend death.<sup>116</sup>
52. Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals.<sup>117</sup> They have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals.<sup>118</sup> Although they do not give up trying to lift or elicit movement from a dead body immediately, elephants appear to realize that once dead, the carcass can no longer be helped; and instead they engage in more “mournful” or “grief-stricken” behavior, such as standing guard over the body with dejected demeanor and protecting it from predators.<sup>119</sup>
53. Wild African elephants have been observed to cover the bodies of their dead with dirt and vegetation.<sup>120</sup> Mothers who lose a calf may remain with the calf’s body for an extended period, but do not behave towards the body as they would a live calf.<sup>121</sup> Indeed, the general demeanor

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<sup>114</sup> Poole Decl. ¶ 31; Bates & Byrne Decl. ¶ 39; Moss Decl. ¶ 27.

<sup>115</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>116</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>117</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>118</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>119</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>120</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>121</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

of elephants attending to a dead elephant is one of grief and compassion, with slow movements and few vocalizations.<sup>122</sup> These behaviors are akin to human responses to the death of a close relative or friend and demonstrate that elephants possess some understanding of life and the permanence of death.<sup>123</sup>

54. Elephants' interest in the bodies, carcasses and bones of elephants who have passed is so marked that when one has died, trails to the site of death become worn into the ground by the repeated visits of many elephants over days, weeks, months, even years.<sup>124</sup> The accumulation of dung around the site attests to the extended time that visiting elephants spend touching and contemplating the bones.<sup>125</sup> Dr. Poole observed that, over years, the bones may become scattered over tens or hundreds of square meters as elephants pick up the bones and carry them away.<sup>126</sup> The tusks are of particular interest and may be carried and deposited many hundreds of meters from the site of death.<sup>127</sup>

55. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities.<sup>128</sup> Empathy is defined as identifying with and understanding another's experiences or feelings by relating personally to their situation.<sup>129</sup> Empathy is an

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<sup>122</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>123</sup> Bates & Byrne Decl. ¶ 39; McComb Decl. ¶ 33; Poole Decl. ¶ 31; Moss Decl. ¶ 27.

<sup>124</sup> Poole Decl. ¶ 31.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Poole Decl. ¶ 32; Moss Decl. ¶ 28.

<sup>129</sup> Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Poole Decl. ¶ 32; Moss Decl. ¶ 28.

important component of human consciousness and autonomy and is a cornerstone of normal social interaction.<sup>130</sup> It requires modeling the emotional states and desired goals that influence others' behavior, both in the past and future, and using this information to plan one's own actions; empathy is only possible if one can adopt or imagine another's perspective and attribute emotions to that other individual.<sup>131</sup> Thus, empathy is a component of the "theory of mind."<sup>132</sup>

56. Elephants frequently display empathy in the form of protection, comfort, and consolation, as well as by actively helping those in difficulty, such as assisting injured individuals to stand and walk or helping calves out of rivers or ditches with steep banks.<sup>133</sup> Elephants have been seen to react when anticipating the pain of others by wincing when a nearby elephant stretched her trunk toward a live wire and have been observed feeding those unable to use their own trunks to eat and attempting to feed those who have just died.<sup>134</sup>

57. In an analysis of behavioral data collected from wild African elephants over a 40-year continuous field study, Dr. Lucy Bates and colleagues concluded that, as well as possessing their own intentions, elephants can diagnose animacy and goal-directedness in others, understand the physical competence and emotional state of others, and attribute goals and mental states (intentions) to others.<sup>135</sup> This is borne out by examples such as:

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<sup>130</sup> Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Poole Decl. ¶ 32; Moss Decl. ¶ 28.

<sup>131</sup> Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Poole Decl. ¶ 32; Moss Decl. ¶ 28.

<sup>132</sup> Bates & Byrne Decl. ¶ 40; McComb Decl. ¶ 34; Poole Decl. ¶ 32; Moss Decl. ¶ 28.

<sup>133</sup> Bates & Byrne Decl. ¶ 41; McComb Decl. ¶ 35; Poole Decl. ¶ 33; Moss Decl. ¶ 29.

<sup>134</sup> Bates & Byrne Decl. ¶ 41; McComb Decl. ¶ 35; Poole Decl. ¶ 33; Moss Decl. ¶ 29.

<sup>135</sup> Bates & Byrne Decl. ¶ 42; McComb Decl. ¶ 36; Poole Decl. ¶ 34; Moss Decl. ¶ 30.

IB's family is crossing a river. The infant struggles to climb out of the bank after its mother. An adult female [not the mother] is standing next to the calf and moves closer as the infant struggles. The female does not push the calf out with its trunk but digs her tusks into the mud behind the calf's front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins the mother. At 11.10ish Ella gives a "let's go" rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp except for Elspeth and her calf [<1 year] and Eudora [Elspeth's mother]. At 11.25 Eudora appears to "lead" Elspeth and the calf to a good place to enter the swamp—the only place where there is no mud.<sup>136</sup>

58. In addition to the examples analyzed in Bates et al., Dr. Poole observed two adult females rush to the side of a third female who had just given birth, back into her, and press their bodies to her in what appeared to be a spontaneous attempt to prevent injury to the newborn.<sup>137</sup> In describing the situation, Dr. Poole wrote:

The elephants' sounds [relating to the birth] also attracted the attention of several males including young and inexperienced, Ramon, who, picking up on the interesting smells of the mother [Ella], mounted her, his clumsy body and feet poised above the newborn. Matriarch Echo and her adult daughter Erin, rushed to Ella's side and, I believe, purposefully backed into her in what appeared to be an attempt to prevent the male from landing on the baby when he dismounted.<sup>138</sup>

59. Such examples demonstrate that the acting elephant(s) (the adult female in the first example, Eudora in the second, and Erin and Echo in the third) were able to understand the intentions or situation of the other (the calf in the first case, Elspeth in the second, Ella's newborn and the male in the third), and could adjust their own behavior to counteract the problem being faced by the other.<sup>139</sup>

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<sup>136</sup> Bates & Byrne Decl. ¶ 42; McComb Decl. ¶ 36; Poole Decl. ¶ 34; Moss Decl. ¶ 30.

<sup>137</sup> Poole Decl. ¶ 34.

<sup>138</sup> *Id.*

<sup>139</sup> Bates & Byrne Decl. ¶ 42; McComb Decl. ¶ 36; Poole Decl. ¶ 34; Moss Decl. ¶ 30.

60. In raw footage filmed in the Massai Mara of Kenya by Dr. Poole’s brother, an “allo-mother” (an elephant who cares for an infant and is not the infant’s mother or father) moves a log from under the head of an infant in what appears to be an effort to make him more comfortable.<sup>140</sup> In a further example of the ability to understand the goal-directedness of others, elephants appear to understand that vehicles drive on roads or tracks and they further appear to know where these tracks lead.<sup>141</sup> In the Gorongosa National Park of Mozambique, where elephants exhibit a culture of aggression toward humans, charging, chasing, and attacking vehicles, adult females anticipate the direction the vehicle will go and attempt to cut it off by taking shortcuts before the vehicle has begun to turn.<sup>142</sup>
61. Empathic behavior begins early in elephants. In humans, rudimentary sympathy for others in distress has been recorded in infants as young as 10 months old; young elephants similarly exhibit sympathetic behavior.<sup>143</sup> For example, during fieldwork in the Maasai Mara in 2011, Dr. Poole filmed a mother elephant using her trunk to assist her one-year-old female calf up a steep bank. Once the calf was safely up the bank, the calf turned around to face her five-year-old sister, who was also having difficulties getting up the bank. As the older calf struggled to clamber up the bank the younger calf approached her and first touched her mouth (a gesture of reassurance among family members) and then reached her trunk out to touch the leg that had been having difficulty. Only when her sibling was safely up the bank did the calf turn to follow

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<sup>140</sup> Poole Decl. ¶ 34.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

her mother.<sup>144</sup>

62. Captive African elephants attribute intentions to others, as they follow and understand human pointing gestures.<sup>145</sup> The elephants understood that the human experimenter was pointing to communicate information to them about the location of a hidden object.<sup>146</sup> Attributing intentions and understanding another’s reference point is central to both empathy and “theory of mind.”<sup>147</sup>
63. There is evidence of “natural pedagogy,” or true teaching—whereby a teacher considers the immediate knowledge of the learner as she passes on relevant information—in elephants. Dr. Bates, Dr. Byrne, and Dr. Moss’s analysis of simulated “oestrus behaviours”<sup>148</sup> in African elephants—whereby a non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive even though she is not ready to mate or breed again—demonstrates that these knowledgeable females can adopt false “oestrus behaviours” to show naïve young females how to attract and respond appropriately to suitable males.<sup>149</sup> The experienced females may be taking the youngster’s lack of knowledge into account and

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<sup>144</sup> *Id.*

<sup>145</sup> Bates & Byrne Decl. ¶ 43; McComb Decl. ¶ 37; Poole Decl. ¶ 35; Moss Decl. ¶ 31.

<sup>146</sup> Bates & Byrne Decl. ¶ 43; McComb Decl. ¶ 37; Poole Decl. ¶ 35; Moss Decl. ¶ 31.

<sup>147</sup> Bates & Byrne Decl. ¶ 43; McComb Decl. ¶ 37; Poole Decl. ¶ 35; Moss Decl. ¶ 31.

<sup>148</sup> Bates & Byrne Decl. ¶ 44 (“Ostension is the way that we can ‘mark’ our communications to show people that is what they are. If you do something that another copies, that’s imitation; but if you deliberately indicate what you are doing to be helpful, that’s ‘ostensive’ teaching. Similarly, we may ‘mark’ a joke, hidden in seemingly innocent words; or ‘mark’ our words as directed towards someone specific by catching their eye. Ostension implies that the signaler knows what they are doing.”).

<sup>149</sup> Bates & Byrne Decl. ¶ 44; McComb Decl. ¶ 38; Poole Decl. ¶ 36; Moss Decl. ¶ 32.

actively showing them what to do—a possible example of true teaching as it is defined in humans.<sup>150</sup> This evidence, coupled with the data showing they understand the ostensive cues in human pointing, suggests that elephants understand the intentions and knowledge states (minds) of others.<sup>151</sup>

64. Coalitions and cooperation have been frequently documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when one family group tries to “kidnap” a calf from an unrelated family.<sup>152</sup> These behaviors are generally preceded by gestural and vocal signals, typically given by the matriarch, and acted upon by family members, and are based on one elephant understanding the emotions and goals of a coalition partner.<sup>153</sup>

65. Cooperation is evident in captive Asian elephants, who demonstrate they can work together in pairs to obtain a reward, but also understand the pointlessness of attempting the task if their partner was not present or could not access the equipment.<sup>154</sup> Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal and the sequence of behaviors that is required to achieve that goal; it is based on (at the very least) short-term action planning.<sup>155</sup>

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<sup>150</sup> Bates & Byrne Decl. ¶ 44; McComb Decl. ¶ 38; Poole Decl. ¶ 36; Moss Decl. ¶ 32.

<sup>151</sup> Bates & Byrne Decl. ¶ 44; McComb Decl. ¶ 38; Poole Decl. ¶ 36; Moss Decl. ¶ 32.

<sup>152</sup> Bates & Byrne Decl. ¶ 45; McComb Decl. ¶ 39; Poole Decl. ¶ 37; Moss Decl. ¶ 33.

<sup>153</sup> Bates & Byrne Decl. ¶ 45; McComb Decl. ¶ 39; Poole Decl. ¶ 37; Moss Decl. ¶ 33.

<sup>154</sup> Bates & Byrne Decl. ¶ 46; McComb Decl. ¶ 40; Poole Decl. ¶ 38; Moss Decl. ¶ 34.

<sup>155</sup> Bates & Byrne Decl. ¶ 46; McComb Decl. ¶ 40; Poole Decl. ¶ 38; Moss Decl. ¶ 34.



66. Wild elephants have frequently been observed engaging in such cooperative problem-solving as retrieving calves kidnapped by other groups, helping calves out of steep, muddy river banks, rescuing a calf attacked by a lion (calling to elicit help from others), and navigating through human-dominated landscapes to reach a desired destination such as a habitat, salt-lick, or waterhole.<sup>156</sup> These behaviors demonstrate the purposeful and well-coordinated social system of elephants and show that elephants can collectively hold specific aims in mind, then work together to achieve those goals.<sup>157</sup> Such intentional, goal-directed action forms the foundation of an independent agency, self-determination, and autonomy.<sup>158</sup>
67. Elephants also show innovative problem-solving in experimental tests of insight, defined as the “a-ha” moment when a solution to a problem suddenly becomes clear.<sup>159</sup> A juvenile male Asian elephant demonstrated such a spontaneous action by moving a plastic cube and standing on it to obtain previously out-of-reach food.<sup>160</sup> After solving this problem once, he showed flexibility and generalization of the technique to other similar problems by using the same cube in different situations, or different objects in place of the cube when it was unavailable.<sup>161</sup> This experiment demonstrates that elephants can choose an appropriate action and incorporate it

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<sup>156</sup> Bates & Byrne Decl. ¶ 47; McComb Decl. ¶ 41; Poole Decl. ¶ 39; Moss Decl. ¶ 35.

<sup>157</sup> Bates & Byrne Decl. ¶ 47; McComb Decl. ¶ 41; Poole Decl. ¶ 39; Moss Decl. ¶ 35.

<sup>158</sup> Bates & Byrne Decl. ¶ 47; McComb Decl. ¶ 41; Poole Decl. ¶ 39; Moss Decl. ¶ 35.

<sup>159</sup> McComb Decl. ¶ 42; Poole Decl. ¶ 40; Moss Decl. ¶ 36; Bates & Byrne Decl. ¶ 48 (“In cognitive psychology terms, insight is the ability to inspect and manipulate a mental representation of something, even when you can’t physically perceive or touch the something at the time. Or more simply, insight is thinking and using only thoughts to solve problems.”).

<sup>160</sup> Bates & Byrne Decl. ¶ 48; McComb Decl. ¶ 42; Poole Decl. ¶ 40; Moss Decl. ¶ 36.

<sup>161</sup> Bates & Byrne Decl. ¶ 48; McComb Decl. ¶ 42; Poole Decl. ¶ 40; Moss Decl. ¶ 36.

into a sequence of behavior to achieve a goal they kept in mind throughout the process.<sup>162</sup>

68. Asian elephants demonstrate the ability to understand goal-directed behavior.<sup>163</sup> When presented with food that was out of reach, but with some bits resting on a tray that could be pulled within reach, elephants learned to pull only those trays baited with food.<sup>164</sup> Success in this kind of “means-end” task demonstrates causal knowledge, which requires understanding not just that two events are associated with each other, but that some mediating force connects and affects the two which may be used to predict and control events.<sup>165</sup> Understanding causation and inferring object relations may be related to understanding psychological causation, which is an appreciation that others are animate beings who generate their own behavior and have mental states (e.g., intentions).<sup>166</sup>

69. Attempts to mitigate or eliminate human-elephant conflicts have been met with mixed success, in large part because elephants are able to respond and find ways around them.<sup>167</sup> For example, when electric fences are erected to keep elephants out of crop fields, elephants have responded to the hazard of electric shocks by handling the 'hot' wire with non-conducting tusks and breaking fences by pushing other elephants into them; both approaches demonstrate their higher cognitive ability and autonomy.<sup>168</sup> The most effective responses to human-elephant

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<sup>162</sup> Bates & Byrne Decl. ¶ 48; McComb Decl. ¶ 42; Poole Decl. ¶ 40; Moss Decl. ¶ 36.

<sup>163</sup> Bates & Byrne Decl. ¶ 49; McComb Decl. ¶ 43; Poole Decl. ¶ 41; Moss Decl. ¶ 37.

<sup>164</sup> Bates & Byrne Decl. ¶ 49; McComb Decl. ¶ 43; Poole Decl. ¶ 41; Moss Decl. ¶ 37.

<sup>165</sup> Bates & Byrne Decl. ¶ 49; McComb Decl. ¶ 43; Poole Decl. ¶ 41; Moss Decl. ¶ 37.

<sup>166</sup> Bates & Byrne Decl. ¶ 49; McComb Decl. ¶ 43; Poole Decl. ¶ 41; Moss Decl. ¶ 37.

<sup>167</sup> Lindsay Decl. ¶ 29.

<sup>168</sup> *Id.* at ¶ 31.

conflicts treat elephants as autonomous beings and work with their biological nature to achieve solutions that promote coexistence.<sup>169</sup> It is now increasingly recognized by conservation workers that coexistence can be achieved by humans entering into ‘negotiation’ with elephants.<sup>170</sup>

**B. Zoo captivity physically and psychologically harms elephants**

70. Long-lived, large-brained mammals—like cetaceans and elephants—who possess large, complex brains integral to their intricate sociobehavioral existence cannot function normally in captivity.<sup>171</sup> Given that the brains of large mammals have a lot in common across species, “there is no logical reason to believe that the large, complex brains of animals such as elephants . . . would react any differently to a severely stressful environment than does the human brain.”<sup>172</sup> Elephants experience permanent damage to their brains as a result of the trauma endured in impoverished environments.<sup>173</sup>

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<sup>169</sup> *Id.* at ¶ 29.

<sup>170</sup> *Id.* at ¶ 33.

<sup>171</sup> Jacobs Decl. ¶¶ 8, 16.

<sup>172</sup> *Id.* at ¶ 14.

<sup>173</sup> *Id.* at ¶ 14-19, citing Bob Jacobs et al., *Putative neural consequences of captivity for elephants and cetaceans*, REVIEWS IN THE NEUROSCIENCES 4 (2021), which notes:

In terms of behavior, a prevalent abnormality is stereotypic behavior, which consists of aberrant, repetitive movements (e.g., limb swaying, and rocking) induced by the frustration of natural impulses. It is estimated that 47–85% of elephants in zoos and 100% of those in circuses exhibit stereotypies. Captive elephants also exhibit hyperaggression, in part because there is no opportunity for physical distancing during heightened intragroup stress. Medically, captive elephants suffer from both gastrointestinal diseases and nutritional/metabolic disorders because of their captive diet and lack of exercise, with obesity being a serious issue. Across North American zoos, 74% of elephants were found to be overweight with 34% believed to be clinically obese. Skin issues (e.g., inflammation, lesions, and

71. An elephant's cerebral cortex is negatively affected by an impoverished environment.<sup>174</sup> These effects include "a thinner cerebral cortex, decreased blood supply, smaller neuronal cell bodies with few glial ('helper') cells for metabolic support, decreased dendritic branching for synthesizing information, fewer dendritic spines (indicating fewer connections with other neurons), and smaller, less efficient synapses."<sup>175</sup>
72. A crucial component to an enriched environment is exercise, which increases the supply of oxygenated blood to the brain and enhances cognitive abilities through a series of complex biochemical cascades.<sup>176</sup> Captive/impoverished elephants living in small enclosures are severely deprived of exercise, especially when one considers that elephants in the wild travel tens of kilometers a day (sometimes more than 100 kilometers).<sup>177</sup> Captive/impoverished elephants possess cortical neurons that are "less complex, receive less metabolic support, and process information less efficiently than cortical neurons from animals in an enriched, more natural environment."<sup>178</sup>

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pressure sores) are common as are foot-related disorders (e.g., hyperkeratosis, cracked nails, and abscesses). Osteoarthritis in the feet, exacerbated by locomotor stereotypies and obesity, occurs prematurely in captive elephants and can lead to euthanasia. Finally, captive elephants are particularly susceptible to several infectious diseases (e.g., *Mycobacterium tuberculosis*, TB, the endotheliotropic herpesvirus, EEHV), which are highly contagious. TB is deadly in elephants and treatment is often unsuccessful.

<sup>174</sup> *Id.* at ¶ 14.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at ¶ 15.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

73. Other areas of the elephant brain that are negatively affected by the chronic frustration, boredom, and stress rampant in captive/impoverished environments are two subcortical (beneath the cortex) brain structures known as the (1) hippocampus, which is involved primarily in declarative (i.e., facts and events) and spatial memory formation, and the (2) amygdala, which is involved in emotional processing.<sup>179</sup> Prolonged stress results in chronically elevated levels of glucocorticoids (i.e., stress hormones).<sup>180</sup> Chronic exposure to glucocorticoids contributes to wide-ranging neurodegeneration, including neuronal damage/death in the hippocampus, which results in memory deficits, as well as neuronal damage/death in the amygdala, which results in emotional processing deficits.<sup>181</sup>
74. In a natural environment, the body's stress-response system is designed for "quick activation" to escape dangerous situations; in captivity, where animals have a near total lack of control over their environment, there is no escape, and such situations foster learned helplessness.<sup>182</sup> The stress that humans experience under similar conditions is associated with a variety of neuropsychiatric diseases such as anxiety/mood disorders, including major depression and post-traumatic stress disorder.<sup>183</sup>
75. Captivity and the psychological stress it engenders also have negative effects on the complex circuitry between the basal ganglia and cerebral cortex.<sup>184</sup> The basal ganglia regulates the two

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<sup>179</sup> *Id.* at ¶ 16.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at ¶ 16.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at ¶ 18.

pathways involved in movement: the direct pathway and the indirect pathway.<sup>185</sup> Normal movement depends on a delicate balance between these two pathways, and stress can result in stereotypic behavior, which is invariably associated with an imbalance in the direct/indirect pathways.<sup>186</sup> Behavioral stereotypies may represent a coping strategy to mitigate the overwhelming effects of psychological stress.<sup>187</sup> As long as elephants have been studied in their natural habitats there has never been a recorded case of an elephant exhibiting such stereotypies, which reflects underlying disruptions of neural mechanisms in captive/impoverished elephants<sup>188</sup>

76. From a neural perspective, imprisoning elephants and putting them on display is “undeniably cruel.”<sup>189</sup> Holding elephants captive and confined “prevents them from engaging in normal, autonomous behavior and can result in the development of arthritis, osteoarthritis, osteomyelitis, boredom, and stereotypical behavior.”<sup>190</sup> When held in isolation, “elephants become bored, depressed, aggressive, catatonic, and fail to thrive.”<sup>191</sup> And “[h]uman caregivers are no substitute for the numerous, complex social relationships and the rich gestural and vocal communication exchanges that occur between free-living elephants.”<sup>192</sup> It is now accepted that

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.* at ¶ 20.

<sup>190</sup> Poole Decl. ¶ 56.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

elephants experience permanent brain damage as a result of the trauma endured in impoverished environments.<sup>193</sup>

**C. The Honolulu Zoo is an unacceptable place for elephants**

77. Mari and Vaigai, who were both ripped from their matriarchal, multi-generational family groups in the Asian wilds, have been the only elephants at the Honolulu Zoo since 1987 when Jothi, a female Asian elephant died at the age of 5 years old (captive elephants have greatly reduced lifespans compared to their free-roaming counterparts; note that one zookeeper at the Honolulu Zoo blatantly and incorrectly proclaimed that elephants live longer in captivity: <https://bit.ly/45Twml4>).<sup>194</sup>

78. Elephant family groups share a fission-fusion structure, separating and merging with larger groups of up to several hundred elephants.<sup>195</sup> At the Honolulu Zoo, the social “group” consists of only Mari and Vaigai who spend considerable time apart from each other and thus in virtual isolation.<sup>196</sup> This occurs even though it is recommended that zoos should aim to simulate free-ranging elephants’ natural social structure.<sup>197</sup> The Honolulu Zoo is clearly not simulating the complex social world of elephants and thus causing socioemotional deprivations and disruptions that profoundly affect Mari and Vaigai’s corticolimbic structures, which results in continued emotional distress.<sup>198</sup>

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<sup>193</sup> Lindsay Decl. ¶ 62.

<sup>194</sup> Jacobs Decl. ¶ 22(a).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

79. The facilities and their management at the Honolulu Zoo fall far short of fulfilling the physical and psychological needs of Mari and Vaigai.<sup>199</sup> The barn is completely unsuitable for keeping Mari and Vaigai confined for more than a brief amount of time.<sup>200</sup> The outdoor exhibit (which is divided into two yards) and the training/management areas come to a total of less than one-and-a-half acres.<sup>201</sup> The maximum linear distance available for directional walking within the largest exhibit yard is little more than 65 yards.<sup>202</sup> It is obvious that Mari and Vaigai can explore every square meter of their surroundings within a few minutes.<sup>203</sup> By comparison, elephants in their natural habitats have expansive home ranges, extending from 10 to 10,000 km<sup>2</sup>.<sup>204</sup>
80. Although the amount of space is a critical element of an elephant's enclosure, that space's quality is equally important.<sup>205</sup> The sensory environment should be composed of a variety of sounds, smells, sights, and tactile and taste sensations.<sup>206</sup> At the Honolulu Zoo, much of the ground in Mari and Vaigai's enclosure is bare, compact soil.<sup>207</sup> The terrain is flat with little stimulation or room to explore.<sup>208</sup> In fact, it is rather shocking to see land in Hawaii that is

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<sup>199</sup> Lindsay Decl. ¶ 48.

<sup>200</sup> *Id.* at ¶ 52.

<sup>201</sup> *Id.* at ¶ 53; Jacobs Decl. ¶ 22(b).

<sup>202</sup> Lindsay Decl. ¶ 54.

<sup>203</sup> Jacobs Decl. ¶ 22(b).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.* at ¶ 22(c).

<sup>206</sup> *Id.*

<sup>207</sup> Lindsay Decl. ¶ 55.

<sup>208</sup> *Id.*



(virtually) devoid of vegetation but that is the case for where Mari and Vaigai spend their lives.<sup>209</sup>

81. Furthermore, there is some shade and a pond in each exhibit, but neither appears to be deep enough to support the elephant's body weight in order to take weight off their feet.<sup>210</sup> The landscaping appears to be designed to project a feeling of a quasi-natural environment to visitors and provides nothing meaningful to the elephants.<sup>211</sup> Elephants in their natural habitat travel across a large variety of terrains as they forage, which itself is comprised of over 20 different socio-cognitive activities; Mari and Vaigai do not have this option.<sup>212</sup> Accordingly, the usable space provided for Mari and Vaigai is simply insufficient, especially year after year, decade after decade.<sup>213</sup> This means these elephants are existing in an impoverished environment, which has comprehensively negative effects on the brain.<sup>214</sup> But that is not all.

82. The elephant exhibit is located very close to the high-density tourist area of Waikiki Beach and appears to be barely 300 yards from the main high-rise apartment complex and tourist hotels on the Waikiki waterfront.<sup>215</sup> There is a housing development only 325 yards to the East and an entertainment venue (the Tom Moffat Waikiki Shell), maybe 200 yards to the South.<sup>216</sup> The

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<sup>209</sup> Jacobs Decl. ¶ 22(c)

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> Jacobs Decl. ¶ 22(b).

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at ¶ 22(c).

<sup>215</sup> Lindsay Decl. at ¶ 50.

<sup>216</sup> *Id.*

venue has a seating capacity of 6,000 and regularly hosts concerts both in the daytime and the evening.<sup>217</sup> There are also roads running past the zoo at all its boundaries.<sup>218</sup>

83. The placement of the elephant exhibit in a high-density tourist area is undoubtedly causing Mari and Vaigai unending psychological harm because elephants depend a great deal on sound for communication, both vocally and seismically.<sup>219</sup> Their feet have a high number of Pacinian corpuscles (skin receptors sensitive to vibration), which makes them very sensitive to low-frequency (subsonic to human hearing) sounds and vibrations.<sup>220</sup> The abundance of anthropogenic (human-generated) noise is greatly disturbing to Mari and Vaigai because they may perceive it to be a potential risk or threat.<sup>221</sup> Such noise cannot help but be a relentless source of psychological stress if not acoustic trauma.<sup>222</sup>

84. The elephants are moved into the barn when zoo staff goes off duty, spending at least half their day (and probably longer) in the close confines of the barn.<sup>223</sup> On cold days they are kept in the barn all day.<sup>224</sup> This is exceedingly concerning because confinement in sterile environments leads to foot and joint damage from standing on hard substrate, and psychological damage

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<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> Jacobs Decl. ¶ 22(f).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> Lindsay Decl. at ¶ 56.

<sup>224</sup> *Id.*

from noise, and the frustration of prevented choice and movement.<sup>225</sup> As elephants in the wild are actively moving for up to 18 hours in every 24-hour period, Mari and Vaigai’s involuntary confinement at the Honolulu Zoo (and especially in the barn), is both physically and psychologically harmful.<sup>226</sup>

85. For example, such a small enclosure precludes Mari and Vaigai from having adequate exercise.<sup>227</sup> Both elephants are obese.<sup>228</sup> The NhRP has video and audio of a zookeeper informing the public that Mari weighs over 10,000 lbs., which is jarring when one understands the normal weight for a female Asian elephant is ~ 7,700 lbs.<sup>229</sup> As for psychological harm, Mari and Vaigai exhibit stereotypical behavior.<sup>230</sup> Stereotypical behavior (e.g., bobbing, swaying, rocking) is a direct reflection of the dysregulation of motor control circuitry in the brain; in other words, brain damage.<sup>231</sup> Thus, although stereotypical behavior is observable, it also represents a direct window into a dysfunctional brain.<sup>232</sup>

86. The elephant keepers at the Honolulu Zoo exert considerable control over Mari and Vaigai’s movements and placement in exhibit areas.<sup>233</sup> There is an emphasis placed on “enrichment,”

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<sup>225</sup> *Id.* at ¶ 52.

<sup>226</sup> *Id.* at ¶ 56.

<sup>227</sup> Jacobs Decl. ¶ 22(d).

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Jacobs Decl. ¶ 22(h).

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> Lindsay Decl. ¶ 57.

which intends to provide novelty and stimulation to the elephants' minds but this intervention is imposed on the elephants, with all vestiges of autonomy having been removed.<sup>234</sup> Thus, Mari and Vaigai's behavioral repertoire is extremely limited, widely divergent from that of free-ranging elephants, and indicative of the pathology of zoo husbandry.<sup>235</sup>

87. When the elephants are not simply standing and feeding, they can be seen walking between the front and back yards on the same path every time.<sup>236</sup> Mari and Vaigai's lives are nothing but a succession of boring and frustrating days, damaging to their bodies and minds, and punctuated only by interaction with their keepers.<sup>237</sup> Their physical and psychological health has been severely compromised by the sustained deprivation of their autonomy and freedom of movement.<sup>238</sup> They spend at least half, if not more, of each day in a barn with very little cushioning for their feet and joints.<sup>239</sup> When allowed outside, they are commonly unable to walk more than 65 yards in any direction, they have limited shade from the sun, and only shallow water features that are not deep enough to allow proper bathing.<sup>240</sup> The elephants receive predictable enrichment activities, are unable to communicate over large distances, and their acute hearing is bombarded by constant auditory disturbances from the hotel complex,

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<sup>234</sup> *Id.* at ¶ 60.

<sup>235</sup> *Id.* at ¶ 58.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at ¶ 64.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

the housing area, the nearby entertainment venue, and the visitors who can approach them closely.<sup>241</sup>

88. It is now accepted that elephants experience permanent damage to their brains because of the trauma endured in impoverished environments and the Honolulu Zoo is the epitome of such an environment.<sup>242</sup> It is no surprise that the internationally recognized animal advocacy group, In Defense of Animals, has repeatedly ranked the Honolulu Zoo as one of the worst zoos for elephants in North America.<sup>243</sup> Accordingly, Mari and Vaigai should be moved to a “rewilding” facility in their native Asia or to a suitable elephant sanctuary in the United States or Brazil as soon as possible.<sup>244</sup> The Honolulu Zoo should never again be permitted to confine elephants for public display or for any other purpose.<sup>245</sup>

**D. A “rewilding” center or elephant sanctuary is the only acceptable place for the elephants**

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<sup>241</sup> *Id.*

<sup>242</sup> *Id.* at ¶ 62.

<sup>243</sup> Jacobs Decl. ¶ 22(b) (“In their 2016 report, they noted the following: ‘Violations at Honolulu Zoo included too little shade provided for the elephants from the direct sun, inadequately tested and brackish water, a notable absence of habitat enrichment, and unsafe rocks that posed a danger to elephants’ feet. A primary key reason cited for the loss of accreditation was the Zoo’s long history of lacking funds and support from the City and County of Honolulu, the Zoo’s legally bound administrators. Hawaii voters recently approved an amendment to prop up the failing zoo through tax revenues.’”).

<sup>244</sup> Lindsay Decl. at ¶ 65.

<sup>245</sup> *Id.*

89. As Mari and Vaigai suffer immensely each day they are at the zoo, they should be moved, as soon as possible, to a “rewilding” facility in their native Africa or to a suitable elephant sanctuary in the United States or Brazil.<sup>246</sup>
90. The orders of magnitude of greater space offered at sanctuaries allow elephants to exercise their autonomy, develop more healthy social relationships, and to engage in a near-natural movement, foraging, and repertoire of behavior.<sup>247</sup> Elephants need a choice of social partners, and the space to permit them to be with the ones they want, when they want, and to avoid particular individuals, when they want.<sup>248</sup> The delight that elephants experience when they are allowed to forage naturally is the default situation in the wild, and in good sanctuaries.<sup>249</sup> Authentic sanctuaries report improved physical and psychological health in elephants after their arrival, including decreased frequency or extinction in stereotypies, reduced aggression toward keepers, muscle tone gain, and formation of social bonds between elephants with different social histories, including elephants who were abused, traumatized, or solitary for decades.<sup>250</sup>
91. Elephants with serious physical or psychological problems in zoos have usually become more normal functioning when given more appropriate space in an elephant sanctuary.<sup>251</sup> For example:

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<sup>246</sup> *Id.* ¶ 65.

<sup>247</sup> Poole Decl. ¶ 57.

<sup>248</sup> *Id.* at ¶ 58.

<sup>249</sup> Lindsay Decl. ¶ 63.

<sup>250</sup> Jacobs Decl. ¶ 20.

<sup>251</sup> Poole Decl. ¶ 60.

- Maggie was considered to be an anti-social, aggressive elephant and by the time she was moved from the Alaska Zoo to the Performing Animal Welfare Society (“PAWS”) she was in such poor condition she could barely stand. She is now a thriving, socially active elephant and considered to be PAWS’ most social elephant.<sup>252</sup>
- Ruby was transferred from the Los Angeles Zoo in California to the Knoxville Zoo in Tennessee where she did not successfully integrate with the Knoxville elephants. When she was moved to PAWS, she integrated easily with the other elephants and has become a respected leader of her group.<sup>253</sup>
- Sissy is another classic example: she had been transferred four times and had spent a decade and a half alone before being sent to the Houston Zoo where she was labeled autistic and antisocial. She was returned to her solitary zoo where she killed a person, which resulted in her being moved to the El Paso Zoo where she was beaten because she was a killer elephant. In 2000 she was transferred to The Elephant Sanctuary in Tennessee (“TES”) and within six months of arrival she was calm and cooperative, becoming a leader and putting all elephants at ease. In 2000 the United States Department of Agriculture had given Sissy only a year to live; twenty years later she is still going strong.<sup>254</sup>
- Bunny was 47 years old and had spent 40 years alone when she arrived at TES. She had been transferred four times and had only known less than a half-acre exhibit. Within

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<sup>252</sup> *Id.* at ¶ 61.

<sup>253</sup> *Id.* at ¶ 62.

<sup>254</sup> *Id.* at ¶ 63.

24 hours of arriving at the sanctuary, she was completely and seamlessly integrated into the group.<sup>255</sup>

- Maia and Guida, the first two elephants at the Global Sanctuary for Elephants–Brazil, had lived together for 40 years. For most of these years, Maia was aggressive to Guida, knocking her over, pushing her down, and pinning her to the ground. Within 12 hours of arriving at the sanctuary, the gates were opened between the two elephants and from that day forward no further aggression was seen.<sup>256</sup>

## VI. ISSUING THE ORDER TO SHOW CAUSE

92. Chapter 660 governs the procedure applicable to common law writs of habeas corpus. The statute is purely procedural and does not, as it cannot, curtail substantive entitlement to the writ. *See Ex parte Apuna*, 6 Haw. 732, 735–36 (1869) (“The writ of habeas corpus enjoyed here is the same in substance with the original writ as secured and vivified by the English Acts, Bills and Charters. Anything less than this would make the provisions therefor in our Constitution and Statutes hollow and meaningless, and be contrary to sound rules of legal construction.”); *In re Cambridge*, 1 Haw. 191, 192 (1855) (“The [Habeas Corpus Act of 1679] . . . restored the writ of *habeas corpus* to all its efficacy at common law, in cases in which that statute applied, but it was confined to commitments on criminal charges, leaving *all other* cases of unjust imprisonment to the *habeas corpus* at common law. See Blackstone’s Com., Vol. 3, page 128.”); *id.* at 193 (The power to issue writs of habeas corpus “implies and includes the

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<sup>255</sup> *Id.* at ¶ 64.

<sup>256</sup> *Id.* at ¶ 65.



power to do whatever justice may seem to require in the premises, after we have finished our inquiry.”).

**A. The standard for issuing an order to show cause**

93. Haw. Rev. Stat. § 660-5 provides the pleading requirements for the issuance of “the writ or an order to show cause.” Specifically, the complaint “shall be made to the court or judge authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or by some person in the party’s behalf, setting forth:

- (1) The person by whom, and the place where, the party is imprisoned or restrained, naming the party and the person detaining the party, if their names are known, and describing them if they are not known;
- (2) The cause or pretense of imprisonment or restraint, according to the knowledge and belief of the applicant;
- (3) If the imprisonment or restraint is by virtue of any warrant or other process, an annexed copy thereof, unless it is made to appear that a sufficient reason exists for not annexing the same;
- (4) That there has been no determination of the legality of the imprisonment on a prior application for a petition for a writ of habeas corpus, or, if there has been a previous determination, the new grounds, if any, not presented and determined upon the previous application.

The facts alleged shall be verified by the oath of some credible person, to be administered by any person authorized to administer oaths.” *Id.*

94. The Petition is signed by the NhRP on behalf of Mari and Vaigai and it sets forth:

- (1) Mari and Vaigai are unlawfully imprisoned at the Honolulu Zoo by the City and County of Honolulu’s Department of Enterprise Services, its Acting Director Rita Holifield, and Honolulu Zoo Director, Linda Santos;
- (2) Based on the NhRP’s knowledge and belief, Mari and Vaigai are imprisoned for no criminal matter solely because they are elephants;
- (3) Mari and Vaigai’s import permits, to the extent they ever existed, cannot be found;

(4) There has been no determination of the legality of Mari and Vaigai's imprisonment at the Honolulu Zoo on a prior application for a petition for a writ of habeas corpus.

95. Additionally, Haw. Rev. Stat. § 660-6 provides in part: "The court or judge to whom the complaint is made shall, without delay, award and issue the writ unless it appears from the application that the person detained is not entitled thereto or an order to show cause is issued under section 660-7." Petitioners in habeas corpus proceedings are entitled to the issuance of an order to show cause unless the petition fails to show a prima facie case. *See Petition of Scott*, 44 Haw. at 54.<sup>257</sup>

96. The Petition adheres to the pleading requirements set forth in Haw. Rev. Stat. § 660-5 and shows entitlement to an order to show cause by establishing (1) that the elephants have the common law right to bodily liberty protected by habeas corpus because they are autonomous and extraordinarily cognitively complex, and (2) their right has been violated because holding Mari and Vaigai "captive and confined prevents them from engaging in normal, autonomous behavior." Poole Decl. ¶ 56. Accordingly, the NhRP has satisfied the pleading requirements of Chapter 660 and made a prima facie case.

97. Upon the issuance of the order to show cause, the burden shifts to the Respondents to demonstrate that their imprisonment of Mari and Vaigai is lawful. Haw. Rev. Stat. § 660-17.

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<sup>257</sup> Types of allegations that fail to make a prima facie case include "general assertions," *Petition of Scott*, 44 Haw. at 54, or "allegations [that] are 'vague, conclusory or palpably incredible.'" *Russell v. Blackwell*, 53 Haw. 274, 284 (1972). As two judges on New York's highest court would have extended habeas corpus protections to an elephant, the allegations in this Petition are far from vague, conclusory, or incredible. *See Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting) (reasons for refusing to extend habeas corpus to an elephant "are groundless and inconsistent with its role as 'the historic writ of liberty'"); *id.* at 628 (Rivera, J., dissenting) ("Happy should not be denied the opportunity to pursue and obtain appropriate relief by writ of habeas corpus.").

98. Importantly: To issue an order to show cause, this Court need only assume (without deciding) that the elephants could have the common law right to bodily liberty protected by habeas corpus. *See, e.g., Stanley*, 49 Misc.3d at 755 (“Given the important questions raised here, I signed the petitioner’s order to show cause, and was mindful of petitioner’s assertion that ‘the court need not make an initial judicial determination that [chimpanzees] Hercules and Leo are persons in order to issue the writ and show cause order.’”).

**B. Mari and Vaigai’s imprisonment is unlawful under the common law regardless of Respondents’ compliance with animal welfare statutes**

99. Respondents’ imprisonment of the Mari and Vaigai is unlawful because it violates their common law right to bodily liberty protected by habeas corpus. Habeas corpus is rooted in the protection of an individual’s liberty interest regardless of whether that interest is protected by a statute, a constitutional provision, or the common law.

100. That Respondents may be in compliance with federal, state, or local animal welfare laws in their imprisonment of the elephants is irrelevant because those laws do not address the elephants’ right to bodily liberty.<sup>258</sup> *See Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting) (“historically, the Great Writ of habeas corpus was used to challenge detentions that violated no statutory right and were otherwise legal but, in a given case, unjust”); *id.* at 642 (Rivera, J., dissenting) (“Captivity is anathema to Happy because of her cognitive abilities and behavioral modalities—because she is an autonomous being. Confinement at the Zoo is harmful, not because it violates any particular regulation or statute relating to the care of elephants, but

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<sup>258</sup> Nor is it relevant that the Honolulu Zoo may be in compliance with the elephant-specific standards of the Association of Zoos and Aquariums, which are wholly inadequate for meeting the needs of elephants. Poole Decl. ¶ 59; Lindsay Decl. ¶¶ 35-40.

because an autonomous creature such as Happy suffers harm by the mere fact that her bodily liberty has been severely—and unjustifiably—curtailed.”).

101. This habeas corpus case is neither an “animal protection” nor an “animal welfare” case, just as a habeas corpus case brought on behalf of a detained human would not be a “human protection” or “human welfare” case. *See Breheny*, 38 N.Y.3d at 637 (Rivera, J., dissenting) (“Critically, respondent failed to address the Nonhuman Rights Project’s core argument that the writ should issue because Happy’s confinement at the Zoo was a violation of her right to bodily liberty as an autonomous being, regardless of the care she was receiving.”).

102. It is Mari and Vaigai’s imprisonment itself (not the conditions of their imprisonment) that the NhRP claims is unlawful. *See Stanley*, 49 Misc. 3d at 749 (“The conditions under which Hercules and Leo are confined are not challenged by petitioner . . . and it advances no allegation that respondents are violating any federal, state or local laws . . . nor does it 'seek improved welfare for Hercules or Leo,' [rather] the sole issue is whether Hercules and Leo may be legally detained at all.”).

**C. Judge Rowan Wilson and Judge Jenny Rivera found that Happy the elephant made a prima facie showing entitling her to habeas corpus relief**

103. In a similar habeas corpus case brought by the NhRP on behalf of Happy (an elephant imprisoned at the Bronx Zoo), Judge Rowan D. Wilson and Judge Jenny Rivera of the New York Court of Appeals found that Happy made a prima facie showing entitling her to release to an elephant sanctuary. *See Breheny*, 38 N.Y.3d at 617 (Wilson, J., dissenting); *id.* at 628 (Rivera, J., dissenting).

104. Judge Wilson’s prima facie evaluation began by “taking the information Happy has submitted as true, and granting every possible reasonable inference in her favor.” *Id.* at 618. (Wilson, J., dissenting). He considered: “what does the information submitted by [Happy] tell

us about [her]?’ [and] ‘what does the information submitted by [Happy] tell us about the confinement?’” *Id.* at 621-22. “What was unknown about animal cognizance and sentience a century ago is particularly relevant to whether Happy should be able to test her confinement by way of habeas corpus, because we now have information suggesting that her confinement may be cruel and unsuited to her well-being.” *Id.* at 607. Judge Wilson accepted “as true the (largely unchallenged) expert affidavits submitted on behalf of Happy” and found that “Happy and elephants like her ‘possess complex cognitive abilities of a great number’:

Among those myriad qualities and abilities include “autonomy; empathy; self-awareness; self-determination; theory of mind (awareness that others have minds); insight; working memory; [and] an extensive long-term memory that allows them to accumulate social knowledge.” They are able to “act intentionally and in a goal-oriented manner,” “understand the physical competence and emotional state of others,” “engage in true teaching,” “cooperate and build coalitions,” engage in “cooperative” and “innovative problem-solving,” “understand causation,” and engage in “intentional communication.” They have “complex learning and categorization abilities,” and they understand death, practicing grieving behaviors that “are akin to human responses to the death of a close relative or friend” when they have lost a companion.

*Id.* at 618-19.

105. Next, Judge Wilson evaluated the nature of Happy’s imprisonment. He found that it is “miniscule fraction of the size of elephants’ typical environments” in the wild,” and is “causing her deep physical and emotional suffering because it is so unnaturally different from conditions that meet the needs of elephants.” *Id.* at 619-20. Accepting all the information submitted as true, Judge Wilson concluded: “Happy has very substantial cognitive, emotional and social needs and abilities, and that those qualities coupled with the circumstances of her particular confinement establish a prima facie case that her present confinement is unjust.” *Id.* at 626.

106. Judge Rivera took a similar approach in evaluating the NhRP’s case on behalf of Happy, concluding that the NhRP “made the case for Happy’s release and transfer to an elephant

sanctuary, and the writ should therefore be granted.” *Id.* at 634 (Rivera, J., dissenting). She recognized that the NhRP, as in the instant case, “submitted affidavits from several internationally renowned elephant experts to establish Happy’s autonomy and the inherent harm of her captivity in the zoo.” *Id.* at 634. That expert evidence demonstrated:

Captivity is anathema to Happy because of her cognitive abilities and behavioral modalities—because she is an autonomous being. Confinement at the Zoo is harmful, not because it violates any particular regulation or statute relating to the care of elephants, but because an autonomous creature such as Happy suffers harm by the mere fact that her bodily liberty has been severely—and unjustifiably—curtailed. . . . Her captivity is inherently unjust and inhumane. It is an affront to a civilized society, and every day she remains a captive—a spectacle for humans—we, too, are diminished.

*Id.* at 642.

**D. Writs of habeas corpus have been issued on behalf of individuals whose right to bodily liberty was previously unrecognized**

107. Against the long-entrenched background of legally sanctioned slavery, “the courts of England and the United States worked, through the Great Writ, to secure liberty for those deemed chattel, equated, at most, with animals.” *Id.* at 592 (Wilson, J., dissenting). This included the landmark case of *Somerset v. Stewart*, 1 Lofft. 1, 98 Eng. Rep. 499 (K.B. 1772), available at: <http://bit.ly/3jpLmkH>, where Lord Mansfield assumed (without deciding) that an enslaved Black man, James Somerset, could possess the common law right to bodily liberty protected by habeas corpus when he famously issued the writ requiring the respondent to justify Somerset’s detention—before ultimately granting Somerset his freedom.<sup>259</sup>

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<sup>259</sup> *Somerset* is part of Hawaiian law and has never been abrogated or overruled. *See* Haw. Rev. Stat. § 1-1 (“The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage.”).

108. In *In re Kirk*, 1 Edm.Sel.Cas. 315, 332 (1846), a New York court recognized its duty to issue the writ of habeas corpus on behalf of an enslaved Black child imprisoned on a docked ship by a Georgia slaveholder: “I was bound to allow the writ of habeas corpus, even if I had been fully convinced of the legality of the imprisonment, and . . . it becomes my duty to consider and decide it--a duty from which I am not at liberty to shrink.” The court added: “I approach this with all the caution becoming the gravity of the case, yet with a lively sense of what is due to personal liberty.”<sup>260</sup> *Id.* at 335.

109. In late 1855, a slaveholder from Mississippi living in San Bernardino, California “attempted to force all of the blacks he claimed as his slaves to go with him to Texas, where slavery was vigorously enforced, and where he might attempt to sell them.” BRIAN MCGINTY, *ARCHY LEE’S STRUGGLE FOR FREEDOM* 30 (2020). “One of the blacks [‘Biddy’] objected strenuously to the move. She managed to get a petition for habeas corpus filed before a district judge in Los Angeles named Benjamin Hayes.”<sup>261</sup> *Id.* “In a written decision filed on January 19, 1856, Hayes ruled that ‘Biddy’ and all of the other blacks that Smith claimed as his slaves [14 in total] did not have to go to Texas.” *Id.* Hayes wrote, “all of the said persons of color are entitled to their freedom, and are free and cannot be held in slavery or involuntary servitude,” and “they are . . . free forever.” (1856) *Mason v. Smith (The Bridget “Biddy” Mason Case)*, BLACKPAST, <https://bit.ly/3VRvvgq> (last visited Jul. 12, 2022). His reasoning hinged on the

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<sup>260</sup> See also *Lemmon*, 20 N.Y. at 617; *Aves*, 35 Mass. at 193; *Jackson v. Bulloch*, 12 Conn. 38, 39 (1837); *Republica v. Blackmore*, 2 Yeates 234, 234 (Pa. 1797).

<sup>261</sup> Benjamin Hayes was “a learned man with a brilliant legal mind,” and his “inspiring rulings are still cited in that state’s courts.” *Benjamin Ignatius Hayes, Lawyer, and Judge*, AFRICAN AMERICAN REGISTRY, <https://bit.ly/3jvvpfC> (last visited Feb. 2, 2023).

fact that had Black people been allowed to be removed from California to Texas, their “free will and consent,” along with “their liberty,” would be “greatly jeopardized.” *Id.*

110. Some courts have issued writs of habeas corpus though they ultimately denied relief. For example, in *In re Perkins*, 2 Cal. 424, 429 (1852), the Supreme Court of California issued the writ for three enslaved Black men brought to California from out of state, although subsequently determined that they were not entitled to their freedom and remanded them to their owner. In *Matter of Archy*, 9 Cal. 147, 147 (1858), that same court issued the writ for Archy Lee, an enslaved Black man brought to California from out of state, before remanding Archy to his owner's custody.<sup>262</sup>

**E. Habeas corpus orders to show cause have been issued on behalf of nonhuman animals**

111. Recently, courts have issued habeas corpus orders to show cause on behalf of nonhuman animals even though relief was ultimately denied:

- In 2015, the NhRP secured the first-ever habeas corpus order to show cause on behalf of a nonhuman animal in the United States.<sup>263</sup> The court held a hearing during which the New York State Attorney General's Office was required to justify the imprisonment of the chimpanzees Hercules and Leo. *See Stanley*, 49 Misc.3d at 755.
- In 2018, the NhRP secured the world's first habeas corpus order to show cause on behalf of an elephant.<sup>264</sup> Following a transfer of venue, a trial court heard thirteen hours

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<sup>262</sup> Archy's “attorney had won the Supreme Court case on the law, but lost it on the final order delivered by the judges.” MCGINTY at 58.

<sup>263</sup> In New York, like Hawaii, the issuance of an “order to show cause” in the habeas context is the equivalent of “a writ of habeas corpus,” but without the requiring the detainee's presence. *See* CPLR § 7003(a).

<sup>264</sup> Andrea Morris, *Judge To Rule On Historic Case Of Whether An Elephant Is A Person*, FORBES (Nov. 19, 2018), <https://bit.ly/2Z4MCmx>; Debra Cassens Weiss, *Judge takes first step to decide*



of oral argument over three days and concluded that the NhRP’s arguments were “extremely persuasive for transferring Happy from her solitary, lonely one-acre exhibit at the Bronx Zoo, to an elephant sanctuary on a 2300 acre lot.” *Breheny (Trial Court)*, 2020 WL 1670735 at \*10.

112. To refuse to issue the order to show cause and allow the case to proceed to a hearing on the merits would be a “refusal to confront a manifest injustice.” *Tommy*, 31 N.Y.3d at 1059 (Fahey, J. concurring).

## VII. ARGUMENT

### A. Habeas corpus has long been used in novel situations to remedy unjust infringements upon liberty

113. “[T]he great and efficacious writ, in all manner of illegal confinement, is that of habeas corpus ad subjiciendum.”<sup>265</sup> *In re Cambridge*, 1 Haw. at 192 (citation omitted) (emphasis added). It is “a writ antecedent to statute, ... throwing its root deep into the genius of our common law.” *Rasul v. Bush*, 542 U.S. 466, 473 (2004) (citation omitted). “The writ of habeas corpus is the remedy which the law gives for the enforcement of the civil right of personal liberty.” *Ex parte Mankichi*, 13 Haw. 570, 571–72 (1901) (quoting *Ex parte Tom Tong*, 108 U.S. 556, 559 (1883)). Its importance is unparalleled:

The writ of habeas corpus has always been considered among Englishmen and their descendents in the United States and the world over, as the great safeguard of personal liberty—the Magna Charta of their dearest rights,—the noblest and most

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*whether Happy the elephant should be released from Bronx Zoo*, ABA J. (Nov. 20, 2018), <https://bit.ly/3EnKSVy>.

<sup>265</sup> “[W]hen the words ‘habeas corpus’ are used alone, they have been considered a generic term understood to refer to the common-law writ of habeas corpus ad subjiciendum, which was the form termed the ‘great writ.’ *Preiser v. Rodriguez*, 411 U.S. 475, 484 n. (1973).

revered of all the bulwarks of civil freedom, without a parallel among the nations of antiquity[.]

*In re Webster*, 1 Haw. 56, 57 (Super. 1852).

114. “The writ of habeas corpus enjoyed here is the same in substance with the original writ as secured and vivified by the English Acts, Bills and Charters,” *Ex parte Apuna*, 6 Haw. 732, 735-36 (1869), and its use “to secure release from unlawful physical confinement, whether judicially imposed or not, [is] an integral part of our common-law heritage.” *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973). “It must never be forgotten that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired.” *Bowen v. Johnston*, 306 U.S. 19, 26 (1939).

115. The Great Writ’s history “demonstrates that courts have used and should use it to enhance liberty when a captivity is unjust, even when the captor has statutory or common law rights authorizing such captivities in general.” *Breheny*, 38 N.Y.3d at 580 (Wilson, J., dissenting). It “is an innovative writ—one used to advocate for relief that was slightly or significantly ahead of the statutory and common law of the time.” *Id.* at 589.

116. As Judge Wilson of the New York Court of Appeals explained:

Most fundamentally, the writ was used to grant freedom to slaves, who were considered chattel with no legal rights or existence. . . . Similarly, the writ was used to grant freedom to wives and children, who, though not chattel, had few or no legal rights and legally were under the dominion of husbands and fathers. . . . Not only does the history of the writ's usage destroy the foundations of the majority's contention [that it cannot apply to an elephant], it shows how the writ was used by enlightened judges to nudge advances in the law.

*Id.* at 588-89. In short, habeas corpus has long been available in novel situations to safeguard the liberty of individuals with few or no rights.

117. Two seminal cases “show how the Great Writ was flexibly used by the courts as a tool for innovation and social change.” *Id.* at 592. The first is the famous English case of *Somerset v.*

*Stewart*, 1 Lofft. 1 (K.B. 1772), available at: <https://bit.ly/3jpLmkH>, brought on behalf of an enslaved Black man, James Somerset, who was being privately detained by a white man, Charles Stewart. Lord Mansfield on the Court of King’s Bench ordered Somerset freed, ruling that “[t]he state of slavery is . . . so odious, that nothing can be suffered to support it” under the common law.<sup>266</sup> *Id.* at 19.

118. The second case is the famous New York Court of Appeals decision in *Lemmon v. People*, 20 N.Y. 562 (1860), where the court, relying on *Somerset*, affirmed a decision granting a habeas corpus petition brought on behalf of eight slaves.<sup>267</sup> It ruled that “slavery is repugnant to natural justice and right, has no support in any principle of international law, and is antagonistic to the genius and spirit of republican government.”<sup>268</sup> *Id.* at 617. The case “illustrates how courts have used and should use the common law writ of habeas corpus to expand liberty interests that were not just controversial at the time, but denied by ‘positive’ law legitimizing slavery.”

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<sup>266</sup> Lord Mansfield famously stated, “fiat justitia, ruat ccelum” (“let justice be done though the heavens may fall”). *Somerset*, 1 Lofft. at 17. “The heavens did not fall, but certainly the chains of bondage did for many slaves in England.” Paul Finkelman, *Let Justice Be Done, Though the Heavens May Fall: The Law of Freedom*, 70.2 CHI.-KENT L. REV. 326 (1994). See also STEVEN M. WISE, *THOUGH THE HEAVENS MAY FALL: THE LANDMARK TRIAL THAT LED TO THE END OF HUMAN SLAVERY* 225 (Da Capo Press, Reprint ed. 2006) (“That black chattel slavery was so odious the common law would never support it was *Somerset’s* chief legacy. . . . *Somerset’s* principles have begun to radiate beyond humanity, as some lawyers are insisting today that at least the most cognitively complex nonhuman animals should no longer be treated as slaves.”).

<sup>267</sup> The *Lemmon* court noted: “The judgment in *Somerset’s* case and the principles announced by Lord MANSFIELD, were standing admonitions that even a temporary restraint of personal liberty by virtue of a title derived under the laws of slavery, could not be sustained where that institution did not exist by positive law, and where the remedy by *habeas corpus*, which was a cherished institution of this country as well as in England, was established.” 20 N.Y. at 605.

<sup>268</sup> Other courts have also used habeas corpus to secure the freedom of enslaved humans. See, e.g., *Jackson*, 12 Conn. at 41-42; *Aves*, 35 Mass. at 193; *In re Belt*, 2 Edm.Sel.Cas. 93 (N.Y. Sup. Ct. 1848); *In re Kirk*, 1 Edm.Sel.Cas. at 315.

*Breheny*, 38 N.Y.3d at 594 (Wilson, J., dissenting) (explaining that *Lemmon* directly conflicted with the United States Supreme Court’s infamous decision in *Dred Scott v. Sandford*, 60 U.S. 393 (1857)).<sup>269</sup>

119. The history of habeas corpus powerfully supports extending the Great Writ’s use here.<sup>270</sup>

That the Writ has yet to be extended to an elephant in Hawaii—as it had, at one time, yet to be extended to enslaved humans in England and New York—only demonstrates that this case is novel. However, the case’s novelty does not render it without merit. For example:

[A] novel habeas case freed an enslaved person; a novel habeas case removed a woman from the subjugation of her husband; a novel habeas case removed a child from her father’s presumptive dominion and transferred her to the custody of another. More broadly, novel common law cases—of which habeas is a subset—have advanced the law in countless areas. The . . . argument—“this has never been done before”—is an argument against all progress, one that flies in the face of legal history. The correct approach is not to say, “this has never been done” and then quit, but to ask, “should this now be done even though it hasn’t before, and why?”

*Breheny*, 38 N.Y.3d at 582 (Wilson, J., dissenting). *See also id.* at 629 (Rivera, J., dissenting) (“[N]ovel questions merely present opportunities to develop the law. . . . I write to emphasize my view that prior decisions do not foreclose Happy’s petition and instead compel our acknowledgment of the availability of the writ to a nonhuman animal to challenge an alleged

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<sup>269</sup> *Lemmon*, while a non-binding authority, has persuasive value. *See Ex parte Apuna*, 6 Haw. at 736 (“I must, therefore, be guided . . . by the decisions of English and American Courts, concerning the law of habeas corpus; and I think the practice of this Court has never been opposed to this view.”).

<sup>270</sup> The notion that the protections of habeas corpus should extend to certain nonhuman animals is well grounded in jurisprudential literature. *See generally*, Steven M. Wise, *The Struggle for the Legal Rights of Nonhuman Animals Begins—the Experience of the Nonhuman Rights Project in New York and Connecticut*, 25 ANIMAL L. 367 (2019); Steven M. Wise, *A New York Appellate Court Takes A First Swing at Chimpanzee Personhood: And Misses*, 95 DENV. L. REV. 265 (2017); Craig Ewasiuk, *Escape Routes: The Possibility of Habeas Corpus Protection for Animals Under Modern Social Contract Theory*, 48 COLUM. HUM. RTS. L. REV. 69 (2017).

unjust confinement.”); *Fergerstrom v. Hawaiian Ocean View Estates*, 50 Haw. 374, 376 (1968) (“[t]he common law system would have withered centuries ago had it lacked the ability to expand and adapt to the social, economic, and political changes inherent in a vibrant human society”).

120. The NhRP does not equate humans with elephants or other nonhuman animals, and in referring to “humans who were denied full rights under the law to demonstrate the flexibility of the historical uses of the writ,” we “do not undermine in any way the dignity of those individuals or diminish their struggles for equality and the right to live free.” *Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting). Rather, the legal and moral point is that the “Great Writ serves to protect against unjust captivity and to safeguard the right to bodily liberty,” and “those protections are not the singular possessions of human beings.” *Id.*

121. It is “a proper judicial use of the writ to employ it to challenge conventional laws and norms that have become outmoded or recognized to be of dubious or contested ethical soundness.” *Id.* at 602 (Wilson, J., dissenting). As Judge Rivera explained:

If an enslaved human being with no legal personhood, a Native American tribal leader whom the federal government argued could not be considered a person under law, a married woman who could be abused by her husband with impunity, a resident of Puerto Rico who is a United States citizen deprived of full rights because of Puerto Rico's colonial status, and an enemy combatant as defined by the federal government can all seek habeas corpus relief, so can an autonomous nonhuman animal. Indeed, if a corporation—a legal fiction created to benefit some humans—can have constitutional rights protected in our courts, then the law can recognize an autonomous animal's right to judicial consideration of their claim to be released from an unjust captivity.

*Id.* at 631 (citations omitted).

**B. The question before the Court is whether it should recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus and not whether the elephants are “persons”**

122. Haw. Rev. Stat. § 660-3 provides that “[t]he supreme court, the justices thereof, and the circuit courts may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty.” Consistent with the fact that habeas corpus is a common law writ, “person” is undefined by the procedural statute. It is for this Court to answer the substantive question of who can use habeas corpus to challenge unlawful deprivations of liberty interests. The question of whether the elephants may employ habeas corpus is a matter for this Court to decide in accordance with the fundamental principles of the common law.<sup>271</sup> *See, infra* §§ (VII)(C)-(E).

123. The focus of this Court’s substantive inquiry must be on whether Mari and Vaigai have the common law right to bodily liberty protected by habeas corpus. The Court’s recognition of

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<sup>271</sup> Haw. Rev. Stat. § 1-19 of the General Provisions, defines “person” as “individuals . . . corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally.” It does not provide additional guidance here because there is an absence of language manifesting a legislative intent to exclude nonhuman animals, such as elephants, from the definition of “person.” Furthermore, the Supreme Court of Hawaii has noted that an “‘individual’ in relevant part” is defined as “a particular being or thing as distinguished from a class, species, or collection” and includes both “a single human being” and “a single organism.” *Castro v. Melchor*, 142 Hawai’i 1, 30 (2018) (citing Merriam-Webster’s Collegiate Dictionary (10th ed. 1993)). In turn, “organism” is defined as “a form of life considered as an entity [including] an animal.” *Organism*, Dictionary.com, <https://shorturl.at/dfuxG> (last visited Sept. 13, 2023). Thus, since the definition of “individual” can include an animal, the term “person” in Haw. Rev. Stat. § 1-19 is inclusive of elephants, or at least does not exclude them. However, even in statutory interpretation cases where the term “person” is undefined or non-exhaustively defined, courts have not limited the meaning of “person” to the legislative intent at the time the statute was enacted. For example, the Supreme Court of Connecticut held that the term “persons” in a statute regarding the admission of attorneys to the bar included women and Black men, even though no legislator at the time contemplated the statute applying to those individuals. *See generally In re Hall*, 50 Conn. 131 (1882). That court explained: “All progress in social matters is gradual. We pass almost imperceptibly from a state of public opinion that utterly condemns some course of action to one that strongly approves it. . . . When the statute we are now considering was passed it probably never entered the mind of a single member of the legislature that black men would ever be seeking for admission under it. Shall we now hold that it cannot apply to black men?” *Id.* at 132-33.

their right necessarily makes them “persons” for purposes of Hawaii’s habeas corpus procedural statute because the term “person” is merely a designation that attaches to any individual or entity with a legal right.

124. In other words, a “person is any being whom the law regards as capable of rights or duties,” and “[a]ny being that is so capable is a person, whether a human being or not.” *Person*, BLACK’S LAW DICTIONARY (11th ed. 2019) (quoting JOHN SALMOND, JURISPRUDENCE 318 (10th ed. 1947)); *see also* IV ROSCOE POUND, JURISPRUDENCE 197 (1959) (“The significant fortune of legal personality is the capacity for rights.”).<sup>272</sup> Accordingly, “animals may conceivably be legal persons” if they possess legal rights, and there may be “systems of Law in which animals have legal rights.” JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW 42-43 (2d ed. 1963) (“GRAY”). Still, being a “person” for one purpose does not entail being a “person” for other purposes (e.g., having the right to bodily liberty does not entail having the right to vote).<sup>273</sup>

125. In Happy’s case, Judge Wilson and Judge Rivera understood that the question of whether a nonhuman animal can employ the protections of habeas corpus is not answered by focusing

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<sup>272</sup> *See also* Richard Tur, *The “Person” in Law*, in PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY 121-22 (Arthur Peacocke & Grant Gillett eds. 1987) (“[L]egal personality can be given to just about anything. . . . It is an empty slot that can be filled by anything that can have rights or duties.”); Bryant Smith, *Legal Personality*, 37 YALE L.J. 283, 283 (1928) (“To confer legal rights or to impose legal duties . . . is to confer legal personality.”); J.-R. Trahan, *The Distinction Between Persons and Things: An Historical Perspective*, 1 J. CIVIL L. STUD. 9, 14 (2008) (“First, the modern theory (re-) defines ‘person’ as the ‘subject of rights and duties,’ in the sense of that which is ‘capable of being ‘subjected’ to duties and/or of being ‘invested’ with rights.”).

<sup>273</sup> *See* *Byrn v. New York City Health & Hosps. Corp.*, 31 N.Y.2d 194, 200 (1972) (while “unborn children” have rights “in narrow legal categories,” they “have never been recognized as persons in the law in the whole sense”); 1 ENGLISH PRIVATE LAW § 3.24, 146 (Peter Birks ed. 2000) (“A human being or entity . . . capable of enforcing a particular right, or of owing a particular duty, can properly be described as a person *with that particular capacity*,” though not necessarily “a person *with an unlimited set of capacities*.”).

on whether the nonhuman animal is a “person.” *See Breheny*, 38 N.Y.3d at 582 (Wilson, J., dissenting) (explaining that the undefined term “person” in CPLR article 70, New York’s habeas corpus procedural statute, “was meant to have no substantive component,” and “[j]ust as ‘person’ is used in a juridical sense to refer to any entity, real or fictional, as to which a statute or rule of the common law applies, ‘person’ in CPLR article 70 is irrelevant to whether the writ can extend beyond humans”); *id.* at 633 (Rivera, J., dissenting) (“While CPLR article 70 sets forth the *procedure* to seek habeas relief, it does not create the right to bodily liberty nor determine who may seek such relief. . . . [I]t is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought.”).

126. In the NhRP’s chimpanzee case, Judge Fahey wrote that the right to bodily liberty must be the focus of the court’s substantive inquiry, rather than the definition of “person”:

The better approach in my view is to ask not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by habeas corpus. That question, one of precise moral and legal status, is the one that matters here. Moreover, the answer to that question will depend on our assessment of the intrinsic nature of chimpanzees as a species.

*Tommy*, 31 N.Y.3d at 1057 (Fahey, J., concurring).

127. It is also well-established that personhood is not limited to human beings. As a theoretical matter, “[l]egal personality may be granted to entities other than individual human beings, e.g. a group of human beings, a fund, and idol.” GEORGE WHITECROSS PATON, A TEXTBOOK OF JURISPRUDENCE 351 (3d ed. 1964). There is even “no difficulty giving legal rights to a supernatural being and thus making him or her a legal person.” GRAY at 39. The same is true of nonhuman animals: “Indeed, if a corporation—a legal fiction created to benefit some humans—can have constitutional rights protected in our courts, then the law can recognize an



autonomous animal's right to judicial consideration of their claim to be released from an unjust captivity.” *Breheny*, 38 N.Y.3d at 631 (Rivera, J., dissenting).<sup>274</sup>

128. Significantly, many nonhuman animals are rightsholders recognized by law and thus “persons.” That includes domestic and pet animals in Hawaii, who are “persons” because they can be beneficiaries of fully enforceable trusts with the statutory right to the trust corpus. *See* Haw. Rev. Stat. § 554D-408(a) (“A trust for the care of one or more designated domestic or pet animals shall be valid.”). Other states have also made certain nonhuman animals beneficiaries—granting them trust beneficiary rights—and therefore recognized their personhood for trust purposes, including California (Cal. Prob. Code § 15212), Colorado (C.R.S. § 15-11-901), Massachusetts (M.G.L. 203E § 408), Nevada (Nev. Rev. Stat. § 163.0075), New York (EPTL § 7-8.1), and Virginia (Va. Code § 64.2-726). And as will be discussed, courts around the world have recognized that many nonhuman animals possess various legal rights.<sup>275</sup>

129. In short, being a “person” is merely the necessary consequence of being a rightsholder. The focus of this Court’s substantive inquiry must be on determining whether Mari and Vaigai have the common law right to bodily liberty protected by habeas corpus, not whether they fall within the purview of the term “person” in Hawaii’s habeas corpus procedural statute. Once this Court

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<sup>274</sup> *See also People v. Graves*, 78 N.Y.S.3d 613, 617 (4th Dept. 2018) (“[I]t is common knowledge that personhood can and sometimes does attach to nonhuman entities like corporations or animals.”) (citations omitted).

<sup>275</sup> In late September 2023, the Ojai City Council, in Ojai, California, passed a historic ordinance—the first of its kind—recognizing the right to bodily liberty for elephants. Brad Mattews, *Southern California city grants elephants the right to freedom, first in the nation*, THE WASH. TIMES (Sept. 28, 2023), <https://bit.ly/3RGDk9x>. Of course, although the legislature can expand legal protections for nonhuman animals, that is no reason for this Court to deflect its duty to change archaic common law. “[I]t is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought.” *Breheny*, 38 N.Y. at 633 (Rivera, J., dissenting).

recognizes that these elephants possess the right to bodily liberty, they are necessarily “persons” solely for purposes of habeas corpus.

**C. Justice and changing societal norms require that this Court recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus because they are autonomous and extraordinarily cognitively complex**

130. There is “no justification for the deprivation of autonomy and free movement that results” from keeping elephants in captivity. Poole Decl. ¶ 56. In fact, “there is no logical reason to believe that the large, complex brains of animals such as elephants would react any differently to a severely stressful environment than does the human brain.” Jacobs Decl. ¶ 17. “Thus, elephants should either remain free (and protected) or, if already in captivity, they should be released into well-designed sanctuaries.” *Id.* at 21. *See* Moss Decl. ¶ 25 (“evidence demonstrates that along with these common brain and life-history characteristics, elephants share many behavioural and intellectual capacities with humans”).

131. As the world’s foremost elephant cognition scientists have established, it is wrong to continue the imprisonment of Mari and Vaigai at the Honolulu Zoo. “Justice is not always served by slavish adherence to limited applications of established doctrines,” such as imprisoning elephants. *Lee v. Corregedore*, 83 Haw. 154, 178 (1996) (Levinson, J., and Klein, J., dissenting).

132. The common law consists of “broad and comprehensive principles based on justice, reason, and common sense,” and “these principles are susceptible of adaptation to new conditions, interests, relations, and usages as the progress of society may require.” *Welsh*, 41 Haw. at 120 (citation omitted). “Where there are no governing provisions of the written law, the court in all matters coming before them endeavor to administer justice ‘according to the promptings of reason and common sense.’” *Id.* at 121.

133. Defined as the “quality of being fair or reasonable,” justice is a fundamental principle of the common law. *Justice*, BLACK’S LAW DICTIONARY (11th ed. 2019); see *Welsh*, 41 Haw. at 119 (The common law’s “principles are developed by *judicial decisions* as necessities arise from time to time demanding the application of those principles to particular cases in the administration of justice.”) (citation omitted). The law “cannot be divorced from morality in so far as it clearly contains . . . the notion of right to which the moral quality of justice corresponds.” *Justice*, BLACK’S LAW DICTIONARY (11th ed. 2019) (quoting PAUL VINOGRADOFF, COMMON SENSE IN LAW 19-20 (H.G. Hanbury, 2d ed. 1946)).<sup>276</sup> In other words, “according to the most comprehensive and intelligible definition,” the law is a rule of action “commanding what is right, and prohibiting what is wrong.”<sup>277</sup> *Woodruff v. Trapnall*, 51 U.S. 190, 202 (1850).

134. In considering whether a chimpanzee could invoke the protections of habeas corpus, Judge Eugene Fahey asked: “Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional

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<sup>276</sup> See also BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 150 (1921) (“I think that when a rule, after it has been duly tested by experience, has been found to be inconsistent with the sense of justice . . . there should be less hesitation in frank avowal and full abandonment.”); Jack B. Weinstein, *Every Day Is a Good Day for a Judge to Lay Down His Professional Life for Justice*, 32 FORDHAM URB. L.J. 131, 131 (2004) (The “moral judge” “embraces his professional life most fully when he is prepared to fight—and be criticized or reversed—in striving for justice.”).

<sup>277</sup> See, e.g., *Territory v. Alford*, 39 Haw. 460, 466 (1952) (The “common law is not immutable but flexible and by its own principles adapts itself to varying conditions. . . . [T]he court at all times in the application of any rule of evidence should give heed to present-day standards of wisdom and justice.”); *Welsh*, 41 Haw. at 121 (“the courts of Hawaii can continue to declare, as they have in the past, the common law of Hawaii based upon justice and sound reason”).

question, but a deep dilemma of ethics and policy that demands our attention.” *Tommy*, 31 N.Y.3d at 1058 (Fahey, J., concurring). The same is true in this case.

135. At its core, this case is about “whether society's norms have evolved such that elephants . . . should be able to file habeas petitions to challenge unjust confinements.” *Breheny*, 38 N.Y.3d. at 588 (Wilson, J., dissenting). “Whether an elephant could have petitioned for habeas corpus in the eighteenth century is a different question from whether an elephant can do so today because we know much more about elephant cognition, social organization, behaviors and needs than we did in past centuries, and our laws and norms have changed in response to our improved knowledge of animals.” *Id.* at 603.

136. The time has come for the common law to reflect the modern, irrefutable understanding that elephants are autonomous and extraordinarily cognitively complex beings, and the deprivation of their bodily liberty, through their wholly unnatural confinement at the Honolulu Zoo, is unjust. *See* Poole Decl. ¶ 56 (“Active more than 20 hours each day [wild] elephants move many miles across landscapes . . . . Holding them captive and confined prevents them from engaging in normal, autonomous behavior and can result in the development of arthritis, osteoarthritis, osteomyelitis, boredom, and stereotypical behavior.”). This injustice, along with changing societal norms and the evolving legal status of nonhuman animals, compels the recognition of Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus.<sup>278</sup>

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<sup>278</sup> “In the common-law system, there is often not a sharp boundary between doctrine and policy – that is, between existing law (‘what do the cases say?’) and an analysis of the social effects of the law (‘what legal rule would be a good idea in our society?’). In fact, considerations of policy – along with other types of analysis, like considerations of morality and experiential knowledge – are one of the primary motivations for the creation and ongoing development of legal

**i. Mari and Vaigai’s imprisonment at the Honolulu Zoo is unjust**

137. It was long wrongly believed that nonhuman animals are unable to think, believe, remember, reason, and experience emotion. *See generally* RICHARD SORABJI, *ANIMAL MINDS & HUMAN MORALS: THE ORIGINS OF THE WESTERN DEBATE* 1-96 (1993). As infamously posited by the seventeenth-century philosopher René Descartes, nonhuman animals are neither rational nor conscious creatures. *See generally, Breheny*, 38 N.Y.3d at 607 (Wilson, J., dissenting) (citing Peter Harrison, *The Virtues of Animals in Seventeenth-Century Thought*, 59 J. OF THE HIST. OF IDEAS 463, 463 (1998)). But “[g]iven what we know today, it would be even more absurd to allow Descartes's views” to factor in this case since “human understanding of elephant cognition, social behavior, capabilities and needs demonstrates the absurdity of those ancient, uninformed views.” *Id.* at 609. Indeed, “[s]cientific knowledge about elephant intelligence has been increasing rapidly in the past decade: what we currently know is only a tiny fraction of what elephant brains are likely capable of, and yet more amazing abilities are still likely to be discovered.” Poole Decl. ¶ 69.<sup>279</sup>

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doctrine.” SHAWN BAYERN, *AUTONOMOUS ORGANIZATIONS* 135-36 (2021) (citing MELVIN EISENBERG, *THE NATURE OF THE COMMON LAW* 14-19 (1988)).

<sup>279</sup> “More recently, hard science has begun to reveal just how radically the elephant’s outwardly plodding appearance belies the exquisiteness of its senses and sensibilities. Neuroimaging has shown that elephants possess in their cerebral cortex the same elements of neural wiring we long thought exclusive to us, including spindle and pyramidal neurons, associated with higher cognitive functions like self-recognition, social awareness and language. This same circuitry, of course, renders elephants susceptible to the various psychic pathologies that afflict imprisoned humans: extreme boredom and depression, stereotypical behaviors like manic pacing and rocking and heightened aggression.” Charles Siebert, *Zoos Called It a ‘Rescue.’ But Are the Elephants Really Better Off?*, N.Y. TIMES (July 9, 2019), <https://nyti.ms/3qmjuRJ>.

138. There is no question that Mari and Vaigai’s imprisonment at the Honolulu Zoo is unjust. The Expert Declarations prove that elephants are autonomous and extraordinarily cognitively complex beings with intricate physical, psychological, and social needs. *See, supra* (V)(A). To live as elephants should, they need to travel, forage, communicate, socialize, plan, live, and choose (i.e., be autonomous). *See, supra* §§ (V)(B)-(C). Yet, Mari and Vaigai are forced to live a life that deprives them of their ability to be autonomous and they suffer immense physical and psychological harm as a consequence. *See, e.g.*, Jacobs Decl. ¶ 15 (“In Asian elephants, cortisol levels negatively correlate with locomotion and positively correlate with stereotypies. Overall, these findings imply that cortical neurons in impoverished/captive animals are less complex, receive less metabolic support, and process information less efficiently than cortical neurons from animals in an enriched, more natural environment.”) (citation omitted); *id.* at ¶ 21(d) (“Given that elephants in their native habitat normally travel many kilometers a day, it is clearly not possible for the Honolulu elephant[s] to exercise properly . . . . Both Mari and Vaigai are obese . . . Mari weighs over 10,000 lbs.—the normal weight for a female Asian elephant is ~7,700 lbs.”).

139. Their life at the Honolulu Zoo is nothing but a succession of boring and frustrating days, damaging to their bodies and minds.<sup>280</sup> There is no variety in their lives, no challenge to employ their mental capacity for exploration, spatial memory, or problem-solving; and no opportunity to employ their wide range of vocalizations in order to communicate and interact with a range of other elephants over distance.<sup>281</sup>

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<sup>280</sup> Lindsay Decl. ¶ 64.

<sup>281</sup> Lindsay Decl. ¶ 58.

140. Mari and Vaigai’s imprisonment is especially cruel considering they are both females who would likely be living in “matriarchal, multi-generational family groups of two to 10 adult females and juveniles,” had they never been forcibly removed from the wild. Jacobs Decl. ¶ 22(a). Female elephants especially “continue to learn and remember information about their environment throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they grow older.” Poole Decl. ¶ 50. At the Honolulu Zoo, Mari and Vaigai have neither the opportunity for continued learning nor the ability to create, live with, or lead their own families.

141. To remedy the injustice of Mari and Vaigai’s imprisonment at the Honolulu Zoo, this Court must “declare . . . the common law of Hawaii based upon justice and sound reason.” *Welsh*, 41 Haw. at 121. Where, as here, “there is no express law, the Judges are bound to proceed and decide according to equity, applying necessary remedies to evils that are specifically contemplated by law, and conserving the cause of morals and good conscience. And, to decide equitably, an appeal is to be made to natural law and reason, or to received usage, and resort may be had to the laws and usages of other countries.” *Kake v. Horton*, 2 Haw. 209, 212 (1860).

142. To meet this lofty and binding mandate, this Court needs to recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus so that they can spend the rest of their lives in a GFAS-accredited elephant sanctuary where their proven autonomy and extraordinary cognitive complexity will be respected to the greatest extent possible. “[A]n autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life.” *Breheny*, 38 N.Y.3d at 629 (Rivera, J., dissenting).

**ii. Courts have recognized the injustice of confining elephants in zoos**

143. In *Breheny (Trial Court)*, as in the instant case, the NhRP submitted scientific evidence from “some of the most prominent elephant scientists in the world” demonstrating that “elephants are autonomous beings possessed of extraordinary cognitively complex minds.” 2020 WL 1670735 at \*6. The trial court found that Happy “is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.” *Id.* at \*10. Although the trial court felt “[r]egrettably” bound by precedent to rule against Happy, it recognized the injustice of her confinement at the Bronx Zoo, calling it Happy’s “plight.” *Id.* at \*8-\*9.

144. On appeal, Judge Wilson concluded that the scientific evidence submitted by the NhRP shows that “Happy is a being with highly complex cognitive, social and emotional abilities. She has self-awareness, social needs and empathy. . . . Happy has established a prima facie case that her confinement at the Bronx Zoo stunts her needs in ways that cause suffering so great as to be deemed unjust.” *Breheny*, 38 N.Y.3d at 620 (Wilson, J., dissenting). He aptly observed: “Driving many of the changing social norms about wild animals is our vastly enhanced understanding of their cognitive abilities, needs and suffering when in captivity.” *Id.* at 606. For example: “Elephant mothers whose calves perish will often mourn their loss for days, attempt to revive the dead and stand guard over the body for days at a time. Elephants’ ritualistic funeral practices further offer support for the notion that they are mentally and socially complex beings: when a member of an elephant family dies, elephants have been seen gathering around the deceased, smelling, moving and interacting with the deceased’s bones.” *Id.* at 608 (citation omitted).

145. Judge Rivera similarly recognized the injustice of continuing “Happy’s decades-long confinement in an unnatural habitat where she is held for the sole purpose of human



entertainment.” *Id.* at 628 (Rivera, J., dissenting). Based on the expert evidence establishing Happy’s autonomy and the inherent harm of her confinement, Judge Rivera concluded: “Captivity is anathema to Happy because of her cognitive abilities and behavioral modalities—because she is an autonomous being. . . . Her captivity is inherently unjust and inhumane.” *Id.* at 642.<sup>282</sup>

146. A California court found that three elephants confined at the Los Angeles Zoo were “neither thriving, happy, nor content.”<sup>283</sup> *Leider v. Lewis*, Case No. BC375234 at 30 (L.A. Cnty. Sup. Ct. July 23, 2012), available at: <https://bit.ly/3KRQfln>. The injustice of the elephants’ imprisonment was clear as their life was “empty, purposeless, boring, and occasionally painful.” *Id.* at 45. The court added: “Captivity is a terrible existence for any intelligent, self-aware species, which the undisputed evidence shows elephants are. To believe otherwise, as some high-ranking zoo employees appear to believe, is delusional.” *Id.* at 30 (emphasis added).

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<sup>282</sup> “A deepening pool of scientific research gives clear evidence that elephants and other animals are smarter, more aware, and more emotional than previously thought. . . . Elephants are intelligent and empathetic. They use tools, have close family ties, comfort their friends, and even appear to mourn their dead.” Rachel Fobar, *A person or a thing? Inside the fight for animal personhood*, NAT. GEO. (Aug. 4, 2021), <https://on.natgeo.com/3Fqukwg>. One of many examples showing the advanced cognition of elephants can be seen in the response elephants have to the murder of their own kind. Specifically, “[a] herd as far away as a hundred miles from a cull – the brutal practice of gunning down elephants in those areas where their numbers interfere with human settlements – can both emit and hear alarm calls outside our ears’ register about the unfolding cataclysm. In the aftermath of such slaughters, when the body parts are locked away in sheds for later sale, other elephants have been known to return to break in and retrieve the remains for proper burials.” Charles Siebert, *Zoos Called It a ‘Rescue.’ But Are the Elephants Really Better Off?*, N.Y. TIMES (July 9, 2019), <https://nyti.ms/3qmjuRJ>.

<sup>283</sup> The California Supreme Court reversed on legal grounds because “the Legislature did not intend to overturn the long-established law governing equitable relief for violations of penal law.” *Leider v. Lewis*, 2 Cal.5th 1121, 1137 (2017).

147. Finally, the Islamabad High Court ordered the release of an elephant named Kaavan from the Marghazar Zoo to an elephant sanctuary after finding that Kaavan had been subjected to “unimaginable pain and suffering for the past three decades.” *Islamabad Wildlife Mgmt. Bd. v. Metropolitan Corp. Islamabad*, W.P. No. 1155/2019 at 62 (H.C. Islamabad, Pakistan May 21, 2020), available at: <https://bit.ly/3tXu4zT>. The court recognized the “exceptional abilities” of elephants and that the “needs of this innocent creation cannot be met in the captive environment of a zoo.” *Id.* at 12-13.

**iii. Societal norms are changing with respect to elephant captivity, and the legal status of nonhuman animals continues to evolve**

148. Whether Mari and Vaigai can challenge their imprisonment through a writ of habeas corpus “arises within our country's history of evolving norms and knowledge about animals. Those evolving norms and our deepening understanding about animals, along with legal developments that reflect them, provide the essential context for deciding this case.” *Breheny*, 38 N.Y.3d at 610 (Wilson, J., dissenting). Societal norms towards keeping elephants in captivity as well as the legal status of nonhuman animals more generally have changed. It is time for the common law to evolve to reflect these changes, which do not comport with the elephants’ imprisonment at the Honolulu Zoo.

149. There is a growing societal recognition that confining elephants is unjust, given the well-documented horrifying effects of captivity: “The physical ailments that afflict captive elephants — foot sores and infections, joint disorders, a high incidence of tuberculosis — have been well known for years. . . . [A] 2012 Seattle Times investigation found that 390 elephants had died in accredited zoos in the previous 50 years, a majority of them from captivity-related injuries and diseases.” Charles Siebert, *Zoos Called It a ‘Rescue.’ But Are the Elephants Really Better Off?*, N.Y. TIMES (July 9, 2019), <https://nyti.ms/3qmjuRJ> (emphasis added).

150. Since 1991, more than thirty American zoos have closed their elephant exhibits or are in the process of doing so.<sup>284</sup> Lion Country Safari, for example, closed its elephant exhibit in 2006, with its director of wildlife explaining: “If we can’t keep elephants in captivity properly, we shouldn’t . . . . And we’ve proven that we can’t.”<sup>285</sup>
151. In Happy’s case before the New York Court of Appeals, one hundred and forty-six distinguished scholars, habeas corpus experts, philosophers, lawyers, and theologians submitted amicus briefs in support of her freedom to a sanctuary,<sup>286</sup> prompting the majority in *Breheny* to observe: “this case garnered extraordinary interest from amici curiae and the public—a testament to the complicated and ever-evolving relationship between human beings and other animals.”<sup>287</sup> 38 N.Y.3d at 577.
152. Historian Jill Lepore described Happy’s habeas corpus case as the “most important animal-rights case of the 21st century,” observing that her “misery comprises forms of distress that many humans, just now, understand better than they used to. In this 21st-century *Planet of the Apes* moment, humans have so ravaged the planet that many feel themselves caged, captive, isolated, and alone, dreading each dawn . . . seeing in Happy a reflection of their own despair.”

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<sup>284</sup> *Closed or closing elephant zoo exhibits*, IN DEFENSE OF ANIMALS, <https://bit.ly/30P8hjI>.

<sup>285</sup> Jill Lepore, *The Elephant Who Could Be A Person*, THE ATLANTIC (Nov. 16, 2021), <https://bit.ly/3oDpw0M>.

<sup>286</sup> *Amicus Support for the fight to #FreeHappy*, NONHUMAN RIGHTS BLOG (Apr. 25, 2022), <https://bit.ly/3Mm5Z0U>.

<sup>287</sup> A Change.org petition to free Happy has gathered nearly 1.5 million signatures, of which almost 1 million had been added since the NhRP filed its habeas petition on behalf of Happy. Available at: <https://bit.ly/3qgkx1Y>.

Jill Lepore, *The Elephant Who Could be a Person*, Atlantic, (Nov. 16, 2021), <https://bit.ly/41IGIOg>.<sup>288</sup>

153. In a radio interview, Lepore added: “I have come — in looking at [Happy’s] case carefully, to believe it is a necessary part of the political journey and the history of humankind toward granting rights to more than just the people in power. . . . We are in a long moral journey as a species and I think we have taken some terribly, terribly bad turns on this road.” Jill Lepore (interviewed by Melissa Harris-Perry), *Happy the Elephant Could Change the Face of Animal Rights*, WYNC STUDIOS: THE TAKEAWAY (Dec. 14, 2021), <https://bit.ly/3s3CJlw>.

154. Courts around the world have begun recognizing the rights of some nonhuman animals, and this Court may “resort . . . to the laws and usages of other countries.” *Kake*, 2 Haw. at 212.

For example:

- In 2014, the Supreme Court of India held that all nonhuman animals possess certain constitutional and statutory rights. *Animal Welfare Board v. Nagaraja*, MANU/SC/0426/2014 at paras. 32, 54, 56, 62, 77 (Supreme Court of India, July 5, 2014), available at: <https://bit.ly/3JbHdMP>.
- In November 2016, an Argentinian court granted habeas corpus relief to an imprisoned chimpanzee named Cecilia, declared her a “nonhuman legal person,” and ordered her transferred from the Mendoza Zoo to a Brazilian sanctuary. *Presented by A.F.A.D.A. About the Chimpanzee “Cecilia” – Nonhuman Individual*, File No. P.72.254/15 at 32

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<sup>288</sup> Jill Lepore is a prize-winning professor of American History at Harvard University, an award-winning author, a staff writer at *The New Yorker*, a prolific essayist, and a past president of the Society of American Historians, among other notable achievements. *Biography*, HARVARD UNIVERSITY, <https://bit.ly/3t1rwCr>.

(Third Court of Guarantees, Mendoza, Argentina, Nov. 3, 2016) [English translation], available at: <https://bit.ly/3mkkSmy>.

- In 2017, the Civil Cassation Chamber of the Colombia Supreme Court granted habeas corpus relief to an imprisoned spectacled bear named Chucho and ordered him transferred from the Barranquilla City Zoo to the Río Blanco Natural Reserve. *Luis Domingo Gomez Maldonado contra Corporacion Autonoma Regional de Caldas Corpocaldas*, AHC4806-2017 at 17 (Supreme Court of Colombia, Civil Cassation Chamber, July 26, 2017) [English translation], available at: <https://bit.ly/3GUb0rw>. That decision was subsequently nullified on due process grounds and the nullification was confirmed by the Colombian Constitutional Court in a 7-2 decision. *Tutela Action Filed by the Botanical and Zoological Foundation of Barranquilla (FUNDAZOO) against the Supreme Court of Justice*, SU016/20 (Constitutional Court of Colombia, Jan. 23, 2020) [English translation], available at: <https://bit.ly/3yzWTog> (“Tutela Action”). Magistrate Diana Fajardo Rivera powerfully dissented on the basis of the Great Writ’s history, concluding that Chucho is “the holder of the right to animal freedom, understood as conditions in which he is better able to express his vital behavioral patterns,” and possesses “intrinsic value.” *Id.* at ¶¶ 117, 118 (Fajardo, J., dissenting).<sup>289</sup> An official court announcement regarding the Tutela Action indicated that Magistrate Alberto Rojas Ríos partially dissented because “the concept of person is not synonymous with human being and that personality is not merely a biological

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<sup>289</sup> Magistrate Fajardo cited the NhRP and its President and Founder, Steven Wise, ten times. *Tutela Action* at ¶ 41 and fns. 90, 91, 96, 114, 155, 177, 187, 189 (Fajardo, J., dissenting); *Tutela Action* at ¶¶ 57-58 (Annex to Fajardo, J., dissent). She also cited with approval Judge Fahey’s concurrence in *Tommy. Tutela Action* at ¶ 75 and fns. 163, 168 (Fajardo, J., dissenting).

- concept,” and that nonhuman animals, “according to their autonomy, should have basic rights which can be protected.” *Report No. 03*, SU016/20 at 7 (Constitutional Court of Colombia, Jan. 23, 2020) [English Translation], available at: <https://bit.ly/3GZgocT>.
- In 2020, the Islamabad High Court ordered the release of an imprisoned Asian elephant named Kaavan from the Marghazar Zoo to an elephant sanctuary, stating “without any hesitation” that Kaavan is the subject of “legal rights.” *Islamabad Wildlife Mmgt. Bd. v. Metropolitan Corp. Islamabad*, W.P. No. 1155/2019 at 59, 62 (H.C. Islamabad, Pakistan, May 21, 2020), available at: <https://bit.ly/3tXu4zT>.
  - In 2022, Ecuador’s highest court—the Constitutional Court—decided an appeal from the denial of a writ of habeas corpus for a chorongó monkey named Estrellita.<sup>290</sup> *Judgment No. 253-20-JH/22 Rights of Nature and animals as subjects of rights, ‘Estrellita Monkey’ Case* (Constitutional Court of Ecuador, 2022) [English Translation], <https://bit.ly/3MhkBw6>. By a 7-2 vote, the Court ruled: “Animals are subjects of rights protected by the rights of Nature.” *Id.* at ¶ 181, p. 55. Regarding the availability of habeas corpus for wild nonhuman animals, the Court wrote:

[T]he rights of a wild animal must be protected objectively, taking its life, freedom and integrity as their own inherent rights, and not based on the claims, desires or intentions of third parties. In these cases, if the judges prove that the deprivation or restriction of the freedom of a wild animal is unlawful, they must provide the most suitable alternative for the preservation of the life, freedom, integrity and other related rights of the victim; they may order, without being restrictive, its reinsertion

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<sup>290</sup> In 2020, the Constitutional Court selected this case for appeal in order to “develop case law determining the scope of a motion for *habeas corpus* with respect to the protection of other living beings, and if these can be considered as subjects entitled to rights covered by the laws of nature.” Selection Court of the Constitutional Court of Ecuador re: Case No. 253-20-JH at para. 9 (Dec. 22, 2020) [English translation], available at: <https://bit.ly/3LYoMf8>.

in its natural ecosystem, its translocation to shelters, sanctuaries, aquariums, eco zoos, or its treatment in animal rehabilitation centers.

*Id.* at ¶ 173, p. 53.<sup>291</sup>

155. In endeavoring “to administer justice ‘according to the promptings of reason and common sense,’” *Welsh*, 41 Haw. at 121, this Court can “resort, for light, to the laws of those countries, to whose authority and opinions we yield the highest veneration,” and evolve the common law in “accordance with justice and with sentiments and circumstances of an enlightened age.” *Kake*, 2 Haw. at 212.

**D. As a matter of liberty, this Court must recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus because they are autonomous and extraordinarily cognitively complex**

156. “No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Campbell v. H. Hackfeld & Co.*, 20 Haw. 245, 250-51 (1910) (citing *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891)). “The only part of the conduct of any one, for which he is amenable to society, is that which concerns *others*. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.” *State v. Mallan*, 86 Hawai’i 440, 457 (1998) (Levinson, J., dissenting) (quoting JOHN STUART MILLS, ON LIBERTY (1859)). “Personal sovereignty places an absolute duty on lawmakers not to cross its boundaries.” *Id.* at 488 (citation omitted).

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<sup>291</sup> The Constitutional Court relied upon a joint amicus brief submitted by the NhRP and Harvard Law School’s Animal Law & Policy Program, citing it ten times. Judgment No. 253-20-JH/22 at ¶ 5, p. 3; ¶¶ 10-13, pp. 4-5; ¶ 68, p. 22; ¶ 86 n.89, p. 28; ¶ 126 n.117, p. 38; ¶ 128, pp. 38-39; ¶ 132 n.125, p. 41; ¶ 136 n.129, p. 42; ¶ 143 n.133, p. 44; ¶ 144, pp. 44-45. The joint amicus brief is available at <https://bit.ly/3F0QViM>.

157. Autonomy is the foundation of the common law right to bodily liberty. *See, e.g., State v. Abella*, 145 Hawai'i 541, 553 (2019) (“the right to refuse life-sustaining medical treatment, a right that is incident to the rights to privacy, bodily autonomy, and self-determination,” has “common law origins”); *Matter of Nora D.*, 485 P.3d 1058, 1065 (Alaska 2021) (“the common law recognizes that important interests of dignity, self-determination, autonomy, and privacy are implicated by an individual's ability to make personal medical decisions”); *Rivers v. Katz*, 67 N.Y.2d 485, 493 (1986) (“In our system of a free government, where notions of individual autonomy and free choice are cherished, it is the individual who must have the final say in respect to decisions regarding his medical treatment in order to insure that the greatest possible protection is accorded his autonomy and freedom from unwanted interference with the furtherance of his own desires.”).<sup>292</sup>

158. Indeed, the importance of autonomy in Hawaii is such that Congress took the incredibly rare step of formally apologizing “for the overthrow of the Kingdom of Hawai'i on January 7, 1893 . . . and for the deprivation of the inherent rights of native Hawaiians to self-determination and sovereignty.” *Off. of Hawaiian Affs. v. Hous. & Cmty. Dev. Corp. of Hawaii (HCDCH)*, 117 Haw. 174, 190 (2008), *rev'd and remanded sub-nom. Hawaii v. Off. of Hawaiian Affs.*, 556 U.S. 163, 129 (2009). Congress then recommended that “as [a] matter of justice and equity

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<sup>292</sup> *See also Cruzan by Cruzan v. Harmon*, 760 S.W.2d 408, 416 (Mo. 1988), *aff'd sub nom. Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261 (1990) (“The common law recognizes the right of individual autonomy over decisions relating to one's health and welfare.”); *Thor v. Superior Court*, 855 P.2d 375, 380 (Cal. 1993) (noting “the long-standing importance in our Anglo–American legal tradition of personal autonomy and the right of self-determination.”. . . As John Stuart Mill succinctly stated, ‘Over himself, over his own body and mind, the individual is sovereign.’”) (citations omitted).



. . . [n]ative Hawaiian people should have self-determination over their own affairs.” *Id.* at 212 (citation omitted).

159. The Supreme Court of Hawaii has never shied away from recognizing the importance of protecting an individual’s autonomy. In *Campbell*, 20 Haw. at 245, the plaintiff argued that he was unlawfully subjected to a physical examination in the presence of a jury, calling the examination a “violation of his personal liberty.” *Id.* at 249. The court cited *Botsford*, 141 U.S. at 250-51, to emphasize that “[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others.” *Id.* at 250. However, the plaintiff voluntarily submitted to a physical examination, which the court construed as a waiver of his right not to be physically examined. *Id.* at 251. Still, the Supreme Court recognized that absent the plaintiff’s voluntary submission, the common law principles regarding autonomy enunciated in *Botsford* would have obligated the court to find that the examination was “an illegal method of obtaining evidence.” *Id.*

160. In *Carr v. Strode*, 79 Hawai’i 475 (1995), autonomy played a central role in helping the court expand the scope of informed consent. There, the Hawaii Supreme Court found that, with regard to a physician's duty to disclose risk information prior to treatment, the patient-oriented standard (as opposed to the physician-oriented standard) dictates the scope of the disclosure, because it “better respects the patient's right of self-determination.” *Id.* at 148. The court’s “adoption of the patient-oriented standard applie[d] generally to the common law doctrine of informed consent and to all professionals within its purview.” *Id.* at 485 n.5. *See also Keomaka v. Zakaib*, 8 Haw. App. 518, 523 (1991) (“The doctrine [of informed consent] ‘is based on the

principles of individual autonomy, and specifically on the premise that every person has the right to determine what shall be done to his own body.”) (citation omitted).

161. The Great Writ, which safeguards the right to bodily liberty, can be used to protect both humans and nonhuman animals who have had their autonomy unjustly restricted. *See Breheny*, 38 N.Y.3d at 632 (Rivera, J., dissenting) (“[T]he Great Writ serves to protect against unjust captivity and to safeguard the right to bodily liberty,” and “those protections are not the singular possessions of human beings.”); *id.* at 580 (Wilson, J., dissenting) (“The purpose of the Great Writ is to secure liberty.”); *see also Stanley*, 49 Misc.3d at 753 (“The great writ of habeas corpus lies at the heart of our liberty, and is deeply rooted in our cherished ideas of individual autonomy and free choice.”) (internal citations and quotations omitted).

162. In *Tommy*, Judge Fahey recognized that autonomy lies at the heart of whether a chimpanzee “has the right to liberty protected by habeas corpus,” noting the answer requires looking at the scientific evidence. 31 N.Y.3d at 1057 (Fahey, J. concurring). He found that “[t]he record before us in the motion for leave to appeal contains unrebutted evidence, in the form of affidavits from eminent primatologists, that chimpanzees have advanced cognitive abilities, including being able to remember the past and plan for the future, the capacities of self-awareness and self-control, and the ability to communicate through sign language.” *Id.* 1057-58 (citations omitted). Based on this evidence, *inter alia*, Judge Fahey recognized that chimpanzees are “autonomous, intelligent creatures.” *Id.* at 1059.

163. In *Breheny*, Judge Wilson understood the central importance of autonomy to an elephant’s right to petition for her liberty: “Happy has a level of autonomy, intelligence and understanding that could make suffering particularly acute.” 38 N.Y.3d at 619 (Wilson, J., dissenting). Judge Rivera concluded that the NhRP “made the case for Happy’s release and transfer to an elephant

sanctuary, and the writ should therefore be granted.” *Id.* at 634 (Rivera, J., dissenting). Her determination was based on “submitted affidavits from several internationally renowned elephant experts to establish Happy’s autonomy and the inherent harm of her captivity in the Zoo.” *Id.*

164. While elephants may not be capable of making the types of decisions that are discussed in *Campbell* and *Carr*, they can make decisions concerning their autonomy, which habeas corpus protects. For example, they can use specific calls and gestures (e.g., [Lets-Go-Rumble](#) and [Cadenced-Rumble](#)) to discuss with other elephants where they wish to go, and when, and choose what they want to do, and with whom. Poole Decl. ¶ 44.

165. The Expert Declarations irrefutably establish that Mari and Vaigai are autonomous and extraordinarily cognitively complex beings. Accordingly, as a matter of liberty, this Court must protect their autonomy by recognizing their common law right to bodily liberty protected by habeas corpus and ordering them released to a GFAS-accredited elephant sanctuary.<sup>293</sup>

**E. As a matter of equality, this Court must recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus because they are autonomous and extraordinarily cognitively complex**

166. “Our whole system of law is predicated on the general fundamental principle of equality of application of the law.” *Truax v. Corrigan*, 257 U.S. 312, 332 (1921); *see also Loving v. Virginia*, 388 U.S. 1, 11 (1967) (our “institutions are founded upon the doctrine of equality”) (citation omitted).

167. Equality is deeply woven into the fabric of the common law. *See, e.g., Denver & R.G.R. Co. v. Outcalt*, 2 Colo.App. 395, 400 (1892) (“a fundamental principle of, the common law,

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<sup>293</sup> The NhRP does not contend that autonomy is necessary for the possession of the right to bodily liberty, only that autonomy is sufficient for having this right.

assert[s] the inviolability of the equality of all persons before the law”); *Sullivan v. Minneapolis & R. R. Ry. Co.*, 121 Minn. 488, 492 (1913) (“the general principle of equality is a principle of the common law”) (citation omitted); *Simrall v. City of Covington*, 14 S.W. 369, 370 (Ky. 1890) (“Perhaps the most distinguishing feature of the common law is its regard for the protection and equality of individual right.”); *James v. Commonwealth*, 12 Serg. & Rawle 220, 230 (Pa. 1825) (“the common law . . . stamps freedom and equality upon all who are subject to it”).

168. Equality is also enshrined in state and federal constitutions. *See Tax Found. of Hawai‘i v. State*, 144 Haw. 175, 205 (2019) (“The equal protection clauses of the United States and Hawai‘i Constitutions mandate that all persons similarly situated shall be treated alike.”) (citation omitted) (cleaned up). This is significant because the two-way street that exists between common law and constitutional adjudication can result in “common law decisionmaking infused with constitutional values.” Judith S. Kaye, *Forward: The Common Law and State Constitutional Law as Full Partners in the Protection of Individual Rights*, 23 RUTGERS L. J. 727, 747 (1992). Thus, while this habeas corpus litigation does not seek the recognition of a constitutional right, constitutional equality principles can inform this Court’s analysis.

169. Equality has two components. It has (1) a comparative component, in which one’s entitlement to a right is determined by comparing one’s situation to the situation of another who has that right, as well as (2) a noncomparative component, in which one’s entitlement to a right is determined by making a normative judgment. The comparative component is violated when individuals similarly situated in relevant respects are treated in dissimilar ways (i.e., like cases are not treated alike), while the noncomparative component is violated when the

treatment lacks a legitimate or moral end (i.e., when unjust discrimination occurs). Mari and Vaigai’s imprisonment violates both equality principles.

**i. Mari and Vaigai’s imprisonment at the Honolulu Zoo violates the comparative component of equality because elephants and humans are similar in relevant respects for purposes of habeas corpus**

170. The comparative component of equality is integral to the common law of Hawaii, as it is in other common law jurisdictions.<sup>294</sup> This is reflected in the fact that Hawaiian courts have evolved the common law by mandating similar treatment for relevantly similar groups.

171. In 1973, “[o]f all American jurisdictions, only Hawaii and Massachusetts appear to have recognized a common law action for wrongful death.” Fredrick Davis, *Wrongful Death*, 327 WASH. U. L.Q. 329 (1973).<sup>295</sup> In Hawaii, *Kake v. Horton* was that case. There, the court overruled the common-law doctrine that no action would lie for the wrongful death of a human when it permitted a widow to maintain an action to recover consequential damages for the wrongful death of a partner. 2 Haw. at 209. Notably, *Kake* was the precedent relied on in *Ferreira v. Honolulu Rapid Transit & Land Co.*, 16 Haw. 615, 628 (1905), when *Ferreira* extended the common law action for wrongful death from widows to parents, holding: “It is

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<sup>294</sup> See, e.g., *Benavidez v. Sierra Blanca Motors*, 122 N.M. 209, 214 (1996) (“[O]ne of the most basic principles of the common law” is that “like cases will be treated alike.”); *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985) (The Fourteenth Amendment’s Equal Protection Clause is “essentially a direction that all persons similarly situated should be treated alike.”); *Enright by Enright v. Eli Lilly & Co.*, 570 N.E.2d 198, 388 (N.Y. 1991) (It is a “fundamental principle of justice” under the common law that “like cases should be treated alike”); *De Ayala v. Florida Farm Bureau Cas. Ins. Co.*, 543 So. 2d 204, 206 (Fla.1989) (“Under . . . our common law heritage, all similarly situated persons are equal before the law.”).

<sup>295</sup> Hawaii has long charted its own path. See *Lee*, 83 Haw. at 178 (Levison, J., dissenting and Klein, J., dissenting) (“After all, ‘in the past this court has expressed a willingness and a duty to depart from long established rules, and a readiness to act where precedent is lacking, in order to effect desirable changes in common law.’”) (citation omitted).

true that in the cases cited the actions were by widows for the deaths of their husbands, but the reasoning upon which the decisions were based is equally applicable to actions by parents for the deaths of their children.”<sup>296</sup> Thus, the decision had the effect of remedying an inequality between relevantly similar groups (i.e., widows and parents), and it did so by evolving the common law to make it possible for parents, like widows, to recover consequential damages for the wrongful death of a certain family member.

172. In *Doe Parents No. 1 v. State, Dept. of Educ.*, 100 Hawai’i 34 (2002), the Supreme Court of Hawaii put parents on equal footing as their children for purposes of certain claims sounding in negligence.<sup>297</sup> There, the Court concluded that the duty of care owed by the Hawaii Department of Education (DOE) to students, to prevent them from being molested by a teacher, also extended to the parents “because it was reasonably foreseeable that both the students and their parents would suffer emotional distress in the event that [a teacher] molested [a] student.”<sup>298</sup> *Id.* at 74. The doctrine’s extension was partially justified by relying on *Eisel v. Bd.*

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<sup>296</sup> See also *Hall v. Kennedy*, 27 Haw. 626, 629 (1923) (“The cases of *Kake v. Horton* and *Ferreira v. Hon. R. T. & L. Co.* above cited are undoubtedly authority for the proposition that, as ‘fixed by Hawaiian judicial precedent’ the common law rule denying a right of action to a widow for the wrongful death of her husband or a right of action to a father for the wrongful death of his minor son, has been abrogated in this jurisdiction.”).

<sup>297</sup> Indeed, “common law tort actions for damages, including judicial recognition of new duties of care in negligence cases, evolve with societal needs and expectations, in response to what common law courts view as just, equitable and reasonable in changing circumstances.” Douglass Cassell, *Outlining the Case for a Common Law Duty of Care of Business to Exercise Human Rights Due Diligence*, 1 BUS. & HUM. RTS. J. 179, 180 (2016).

<sup>298</sup> See, e.g., *Lee as Next Friend of M.L. v. SEED Pub. Charter Sch. of Washington, DC*, 2020 WL 4923619, at \*7 (D.D.C. Aug. 21, 2020) (noting “the traditional common law duty of care owed by schools to their students”).

*of Educ. Of Montgomery Cnty.*, 324 Md. 376, 377 (1991), which also extended the common law duty of care doctrine.

173. In *Eisel*, the court concluded that school counselors have “a common law duty of reasonable care to prevent suicides when they have evidence of a suicidal intent,” which is owed to the students and extends to their parents. 324 Md. at 389. The reasoning in *Eisel* led the *Doe Parents* court to the conclusion that “the DOE’s duty stems from its custodial relationship, *in loco parentis*, with students and, thus, obligates the DOE reasonably to anticipate, as would a reasonably prudent parent, foreseeable harm and to take whatever action is reasonable to protect a student from that foreseeable harm.” *Doe Parents*, 100 Hawai’i at 81. *Doe Parents* thus remedied an inequality between a relevantly similar group (i.e., parents and students) in extending the common law duty of care doctrine by reference to the decision of a sister jurisdiction.

174. Hawaii did away with the inequitable common law rule that a landowner’s duty to a visitor’s safety varied depending on the visitor’s status as a licensee, an invitee, or a trespasser. In *Pickard v. City and County of Honolulu*, 51 Haw. 134, 135 (1969), finding “no logical relationship to the exercise of reasonable care for the safety of others” in those common law distinctions, the court held “that an occupier of land has a duty to use reasonable care for the safety of all persons reasonably anticipated to be upon the premises, regardless of the legal status of the individual.” The reason for abolishing the common law distinctions: ““A man’s life or limb does not become less worthy of protection by the law nor a loss less worthy of compensation under the law because he has come upon the land of another without permission or with permission but without a business purpose. . . . [T]o focus upon the status of the injured party as a trespasser, licensee, or invitee in order to determine the question whether the

landowner has a duty of care, is contrary to our modern social mores and humanitarian values.” *Id.* at 136 (citation omitted).

175. Courts in other states have also updated their common law to accord with the foundational equality principle that like cases must be treated alike. *See, e.g., Millington v. S.E. Elevator Co.*, 22 N.Y.2d 498, 505 (1968) (overruling prior precedent to acknowledge “the equal right of the wife to damages as a result of her loss of consortium,” thus treating married women and married men equally for purposes of loss of consortium); *Klein v. Klein*, 376 P.2d 70, 71 (Cal. 1962) (abrogating spousal immunity for negligent torts, thus treating spouses and non-spouses equally for tort purposes); *Falcone v. Middlesex Cnty. Med. Soc.*, 34 N.J. 582, 598 (N.J. 1961) (affirming judgment requiring a physician to be admitted to full membership in a private medical society, since he met all of the qualifications prescribed in the organization’s by-laws, thus treating him and admitted members equally for purposes of membership).<sup>299</sup>

176. As these decisions show, common law equality requires similar treatment of individuals who are relevantly similar. Three judges on New York’s highest court understood that nonhuman animals are autonomous and relevantly similar to humans for purposes of habeas corpus. Judge Fahey explained in *Tommy* that “in elevating our species, we should not lower the status of other highly intelligent species.” 31 N.Y.3d at 1057 (Fahey, J., concurring). Suggesting that chimpanzees may have the right to liberty protected by habeas corpus, Judge Fahey emphasized the fact that they are “autonomous, intelligent creatures,” *id.* at 1059, “who think[] and plan[] and appreciate[] life as human beings do.” *Id.* at 1058.

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<sup>299</sup> *See also Ferguson v. Gies*, 46 N.W. 718, 720 (Mich. 1890) (recognizing Black men have a private right of action for civil damages against unjust discrimination in public places, “just as perfect and sacred . . . [as] any other citizen,” thus treating Black men and non-black men equally for purposes of discrimination actions).



177. In *Breheny*, Judge Wilson and Judge Rivera recognized the right of autonomous beings like elephants to seek relief pursuant to habeas corpus. Judge Wilson rejected the “unsupportable, contention is that only humans can have rights.” *Breheny*, 38 N.Y.3d at 580 (Wilson, J., dissenting). Judge Rivera then found that if “history, logic, justice, and our humanity must lead us to recognize that if humans without full rights and responsibilities under the law may invoke the writ to challenge an unjust denial of freedom, so too may any other autonomous being, regardless of species.” *Id.* at 628-29 (Rivera, J., dissenting).

178. The question for this Court to answer is whether the elephants at the Honolulu Zoo are similar in relevant respects to humans for purposes of habeas corpus.<sup>300</sup> The answer is that humans and elephants are similar in the relevant respect that both are autonomous and extraordinarily cognitively complex beings who need to exercise their autonomy, and habeas corpus is used to protect the autonomy of individuals unjustly imprisoned. *See Moss Decl.* ¶ 22 (“the physical similarities between human and elephant brains occur in areas that are relevant to capacities necessary for autonomy and self-awareness”).

179. Accordingly, Mari and Vaigai’s imprisonment at the Honolulu Zoo violates the comparative component of equality. It is therefore this Court’s duty to evolve the common law to recognize that the elephants have the common law right to bodily liberty protected by habeas corpus.<sup>301</sup> “The reality is that yesterday’s good enough has become today’s unacceptable.” *Matter of Hawai’i Elec. Light Co., Inc.*, 152 Haw. 352, 359 (2023).

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<sup>300</sup> “Scientists found that animals such as . . . elephants—like humans—had substantial capacity to engage in and maintain social relationships, to learn and transpose information, to 'appreciate the thoughts and feelings of other sentient beings, and engage in strategic behavior.'" *Breheny*, 38 N.Y.3d at 606-07 (Wilson, J., dissenting) (citation omitted).

<sup>301</sup> Judge Wilson and Judge Rivera understood that treating elephants and humans similarly for purposes of habeas corpus does not imply an equivalence for all purposes. *See Breheny*, 38 N.Y.3d

**ii. Mari and Vaigai’s imprisonment at the Honolulu Zoo violates the noncomparative component of equality because it lacks a legitimate or just reason**

180. The noncomparative component of equality forbids unjust discrimination, which occurs when there is no legitimate or just reason for distinguishing among relevantly similar groups. Distinctions among relevantly similar groups based upon a single irrelevant characteristic are illegitimate and/or unjust.

181. In *Romer v. Evans*, 517 U.S. 620, 633 (1996), the United States Supreme Court struck down on equal protection grounds a provision in Colorado’s Constitution (Amendment 2) that prohibited the protection of gay and lesbian individuals from discrimination, because the law “identif[ed] persons by a single trait [sexual orientation] and then deni[ed] them protection across the board.” The law’s “sheer breadth [was] so discontinuous with the reasons offered for it that the amendment seem[ed] inexplicable by anything but animus toward the class it affect[ed].” *Id.* at 632. In other words, “Amendment 2 classifie[d] homosexuals not to further a proper legislative end but to make them unequal to everyone else.” *Id.* at 635. *See also Equality Found. v. City of Cincinnati*, 128 F.3d 289, 297 (6th Cir. 1997) (noting that *Romer* found Amendment 2 “so obviously and fundamentally inequitable, arbitrary, and oppressive that it literally violated basic equal protection values”).<sup>302</sup>

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at 578 (Wilson, J., dissenting) (“Human beings should have greater rights than elephants, if only because we make the rules.”); *id.* at 632 (Rivera, J., dissenting) (“To be clear, I do not place nonhuman animals like Happy on equal footing with humans. Science and history establish that human beings’ cognitive abilities far surpass those of nonhuman animals.”).

<sup>302</sup> *See also Buck v. Davis*, 580 U.S. 100, 123 (2017) (“Our law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle.”); *United States v. Windsor*, 570 U.S. 744, 770 (2013) (“The Constitution’s guarantee of equality ‘must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot’ justify disparate treatment of that group.”) (citation

182. In common law cases, courts have also rejected the notion that irrelevant characteristics can justify treating relevantly similar individuals differently. For example, in *Lum v. Fullaway*, 42 Haw. 500 (1958), the Hawaii Supreme Court rejected the arbitrary distinction between (i) adult children who are under a duty to support their indigent parents and (ii) parents who are under a duty to support their minor children, for purposes of recovering medical expenses from a tortfeasor. In *Lum*, the Court held that adult children whose mother had been seriously injured in a car accident resulting from defendant's negligence stated a cause of action for the recovery of their mother's medical expenses: "Logically, the duty imposed upon adult children for the support of their indigent parent is no different from the duty imposed upon parents for the support of their minor children. The incidents of the duty of support, whether such duty is owed by adult children to their indigent parent or by parents to their minor children, should be the same." *Id.* at 505. Rejecting defendant's argument that these adult children should be treated differently than parents who seek to recover medical expenses from supporting their minor children, the Court made clear that "a failure to extend the precedents established in husband-wife relationship and parent-minor child relationship to the instant case is neither logical nor consonant with the enlightened mood of the times." *Id.* at 510.

183. Sister jurisdictions also recognize that distinctions among relevantly similar groups based upon a single irrelevant characteristic are illegitimate and/or unjust. *See Millington*, 22 N.Y.2d at 509 (terminating "an unjust discrimination under New York law" that distinguished wives and husbands, regarding the right to recover loss of consortium, solely upon the irrelevant characteristic of sex); *James v. Marinship Corp.*, 155 P.2d 329, 339 (Cal. 1944) (finding that a

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omitted); *City of Cleburne*, 473 U.S. at 450 (an "irrational prejudice against the mentally retarded" is not a legitimate governmental interest).

labor union's "discriminatory practices" treated qualified Black workers unequally solely upon the irrelevant characteristic of race).

184. Just as distinctions grounded upon these irrelevant characteristics are illegitimate and unjust, so too are distinctions grounded upon the irrelevant characteristic of species membership. There is no rational, non-arbitrary reason to limit the Great Writ's protections to humans. This Court must choose the position that harmonizes best with the most essential values and principles embraced by Hawaiian courts. The position that only species membership matters for the common law right to bodily liberty protected by habeas corpus not only deeply conflicts with the importance of protecting an individual's autonomy under the common law, it also perpetuates unjust discrimination.

185. In *Tommy*, Judge Fahey recognized that given the autonomous nature of chimpanzees, it is illegitimate and unjust to deny them the right to bodily liberty protected by habeas corpus simply because they are not human. He criticized a lower court's "conclusion that a chimpanzee cannot be considered a 'person' and is not entitled to habeas relief" as being "based on nothing more than the premise that a chimpanzee is not a member of the human species." *Tommy*, 31 N.Y.3d at 1057 (Fahey, J. concurring). "To treat a chimpanzee as if he or she had no right to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others." *Id.* at 1058. "Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect." *Id.*

186. Judge Wilson and Judge Rivera agreed that given the autonomous nature of elephants, it was illegitimate and unjust to deny Happy the right to bodily liberty protected by habeas corpus

simply because she is not human. Judge Wilson understood the crucial question in the case was “whether the detention of an elephant can ever be so cruel, so antithetical to the essence of an elephant, that the writ of habeas corpus should be made available under the common law.” *Breheny*, 38 N.Y.3d at 579 (Wilson, J., dissenting).

187. In other words, “given what we know about the qualities an elephant has—and in particular, the qualities Happy has—should the law afford her certain rights through habeas corpus?” *Id.* at 581. Answering this question should not depend on the irrelevant fact that an elephant is not a member of the human species. To illustrate this point, Judge Wilson quoted English philosopher, jurist, and social reformer Jeremy Bentham:

The day *may* come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. . . . It may come one day to be recognised, that the number of legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? . . . [T]he question is not, Can they *reason*? nor, Can they *talk*?, but *Can they suffer*?

*Id.* at 578-79 (citation omitted). The contrary position—held by the majority in *Breheny*, and likely the Respondents here—that autonomous beings like elephants cannot have fundamental liberty rights simply because they are not human, despite their great suffering in captivity, embraces blatant species bias to justify unjust discrimination.<sup>303</sup> It thereby “denies and denigrates the human capacity for understanding, empathy and compassion.” *Id.* at 626.

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<sup>303</sup> This bias is called “speciesism.” PETER SINGER, ANIMAL LIBERATION: THE DEFINITIVE CLASSIC OF THE ANIMAL MOVEMENT 6 (2009), <https://bit.ly/3JPxbCo> (“Speciesism . . . is a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species.”); *see also* *Speciesism*, ANIMAL ETHICS, <https://www.animal-ethics.org/speciesism/> (last visited Mar. 31, 2023) (“Speciesism is a form of discrimination. Discrimination occurs when someone is given less moral consideration than others or treated worse for an unjustified reason.”). *See also* KRISTIN ANDREWS ET AL., CHIMPANZEE RIGHTS: THE PHILOSOPHERS’ BRIEF 34 (2018) (“[I]t is arbitrary to utilize species membership alone as a condition of personhood, and it fails to satisfy the basic requirement of justice that we treat like

188. Judge Rivera exposed the majority’s position as arbitrary and irrational, criticizing the “incoherence of its circular logic”:

The majority's argument boils down to a claim that animals do not have the right to seek habeas corpus because they are not human beings and that human beings have such a right because they are not animals. But, of course, humans are animals. And glaringly absent is any explanation of why some kinds of animals—i.e., humans—may seek habeas relief, while others—e.g., elephants—may not. The majority's suggestion that the “fundamental liberty rights” of human beings are “recognized by law” is nothing more than a tautological evasion. Whether autonomous, nonhuman animals have rights that ought to be “recognized by law” is *precisely* the question we are called upon to answer in this appeal.

*Id.* at 632-33 (Rivera, J., dissenting). Looking beyond Happy’s biological classification, Judge Rivera understood that “an autonomous animal has a right to live free of an involuntary captivity imposed by humans, that serves no purpose other than to degrade life.” *Id.* at 629. For no reason other than being born an elephant, Happy has been confined solely to “entertain and satisfy human curiosity.” *Id.*

189. This Court must decide whether it is illegitimate and unjust to deny Mari and Vaigai their right to bodily liberty, and thus allow their continued imprisonment, simply based upon the irrelevant characteristic of their species. Just as Judge Fahey recognized with respect to chimpanzees, and Judge Wilson and Judge Rivera recognized with respect to Happy, the answer is that it would be illegitimate and unjust.

190. In the eyes of the Honolulu Zoo, Mari and Vaigai are regarded merely as resources for human use and thus lack inherent value, despite their autonomous nature and the great suffering they endure from their loss of freedom. *See, e.g.*, Jacobs Decl. ¶ 22(b) (“Limited space, which restricts movements, coupled with hard surfaces, leads to osteoarthritis, which regularly occurs

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cases alike. It picks out a single characteristic as one that confers rights without providing any reason for thinking it has any relevance to rights.”).

prematurely in captive elephants. Such ailments are associated with pain and joint stiffness, inability to stand, and sometimes lead to euthanasia.”) (citations omitted). Accordingly, their imprisonment lacks a legitimate or just reason and violates the noncomparative component of equality.

191. If this Court refuses to recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus, it would be permitting an unjust discrimination to stand. To do what’s right this Court merely needs to “give heed to present-day standards of wisdom and justice.” *Alford*, 39 Haw. at 466.

**F. This Court must not deflect its duty to recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus onto the legislature**

192. Hawaiian courts have said “the absence of precedent is a feeble argument” against granting warranted relief in a novel common law case. *Fergerstrom*, 50 Haw. at 376. “The common law system would have withered centuries ago had it lacked the ability to expand and adapt to the social, economic, and political changes inherent in a vibrant human society.” *Id.*

193. Hawaiian courts do not wait for legislative action to change archaic common law. *See Bissen v. Fujii*, 51 Haw. 636, 646 (1970) (Levinson, J., dissenting) (“In the past this court has expressed a willingness and a duty to depart from long established rules, and a readiness to act where precedent is lacking, in order to effect desirable changes in the common law. . . . Where this court is not foreclosed from acting by an express legislative prohibition, it should strive to reach what is the fairest result in the circumstances.”) (emphasis added) (citing examples).

194. In *Fergerstrom*, 50 Haw. at 375, plaintiffs brought an action for invasion of their right of privacy whereupon the defense “moved for summary judgment on the grounds that there is no common law action for invasion of privacy and that the legislature has not provided for such

an action.” The Court denied the motion and sharply criticized the defendant’s erroneous argument:

The defendant contends that since the ancient common law did not afford a remedy for invasion of privacy, and there is no case in Hawaii recognizing such a right, only the legislature can provide for such a cause of action. The magnitude of the error in the defendant's position approaches Brobdingnagian proportions. To accept it would constitute more than accepting a limited view of the essence of the common law. It would be no less than an absolute annihilation of the common law system. This spectre of judicial self-emasculation has pervaded one case in which the court accepted this line of argument.

*Id.*<sup>304</sup>

195. Deflecting the responsibility to change archaic common law onto the legislature is an abdication of judicial duty in Hawaii as it is in sister jurisdictions. *See, e.g., Lum*, 42 Haw. at 510 (“If we follow defendant's argument, the legislature alone may keep up with the times and the courts are but automatons to match the colors provided by previous legislative acts and by established precedents. We do not think that the legislature has become so potent, and the judiciary so atrophied, that we must defer to the former in every situation where the colors do not match.”); *see also Woods v. Lancet*, 303 N.Y. 349, 355 (N.Y. 1951) (“Legislative action there could, of course, be, but we abdicate our own function, in a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule.”); *accord Digby v. Digby*, 388 A.2d 1, 2 (R.I. 1978); *Gates v. Foley*, 247 So. 2d 40, 43 (Fla. 1971); *Rodriguez v. Bethlehem Steel Corp.*, 525 P.2d 669, 678 (Cal. 1974).

196. The duty of courts to evolve habeas corpus is paramount. When Judge Wilson confronted whether to change archaic common law so that an elephant could invoke the protections of

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<sup>304</sup> Courts in Hawaii are no stranger to evolving the common law when times warrant such changes. *See, e.g., Lemle v. Breeden*, 51 Haw. 426 (1969) (implied warranty of habitability in rental agreements recognized); *Pickard*, 51 Haw. at 134 (invitee-licensee distinction eliminated); *Tamashiro v. De Gama*, 51 Haw. 74 (1969) (parent-child tort immunity abolished).



habeas corpus, he admonished the majority for deflecting that responsibility onto the legislature:

The judges, Justice Paine among them, who issued writs of habeas corpus freeing enslaved persons, or liberating women and children from households run by abusive men, or ordering the return home of underage soldiers could have said, as the majority does here, “that’s a job for the legislature.” They could have said, “existing law offers some protections, and we dare not do more.” They could have said, “we can’t be the first.” But they did not. None of those declamations is remotely consistent with our Court’s history, role or duty. Where would we or Judge Cardozo be, had he declined to act for any of those reasons? The Great Writ’s use, as a case-by-case tool to probe whether the law may need to adapt, is part of the fundamental role of a common-law court to adapt the law as society evolves.

*Breheny*, 38 N.Y.3d at 617 (Wilson, J, dissenting).

197. Judge Rivera similarly observed: “[I]t is for this Court to decide the contours of the writ based on the qualities of the entity held in captivity and the relief sought. The difficulty of the task—i.e., determining the reach of a substantive common-law right whose existence pre-dates *any* legislative enactment on the subject and whose core guarantees are unalterable by the legislature—is no basis to shrink from our judicial obligation by recasting it as the exclusive purview of the legislative branch. The common law is our bailiwick.” *Id.* at 633 (Rivera, J, dissenting).

198. Accordingly, this Court must not deflect its duty to recognize Mari and Vaigai’s common law right to bodily liberty protected by habeas corpus onto the legislature, especially because “the fundamental right to be free is grounded in the sanctity of the body and the life of autonomous beings and does not require legislative enactment.” *Id.* at 634.

**G. This Court must order Mari and Vaigai released from the Honolulu Zoo and relocated to a GFAS-accredited sanctuary because their imprisonment is unlawful**

199. Mari and Vaigai’s imprisonment at the Honolulu Zoo is unlawful because it violates their common law right to bodily liberty protected by habeas corpus—by depriving them of the

ability to meaningfully exercise their autonomy and extraordinary cognitive complexity, including the freedom to choose where to go, what to do, and with whom to be. They cannot travel, they cannot properly forage, they cannot choose whom they socialize with, they cannot plan for the future, and they cannot partake in any activities remotely close to acceptable for a member of their species. There is no variety in their lives, no challenge to employ their mental capacity for exploration, spatial memory, or problem-solving, and no opportunity to employ their wide range of vocalizations, to communicate and interact with a range of other elephants over distance.<sup>305</sup>

200. The unlawfulness of the elephants’ imprisonment is further made manifest by the exhibition of stereotypical behavior in Mari and Vaigai, behavior that has never been observed in free-living elephants. Jacobs Decl. ¶ 21(h). Stereotypes “reflect underlying (abnormal) disruption of neural mechanisms.” *Id.* at ¶ 18. They are caused by chronic stress from captivity and are “a direct reflection of the dysregulation of motor control circuitry in the brain, that is, a form of brain damage.” *Id.* at ¶ 21(h).<sup>306</sup>

201. Since the elephants are being unlawfully imprisoned, this Court must order them released from the custody of Respondents. *See* Haw. Rev. Stat. § 660-29 (“If no legal cause for the imprisonment or restraint is shown the person shall be immediately discharged therefrom.”); *Ex parte Apuna*, 6 Haw. at 734 (“The writ . . . was designed to release persons from illegal confinement.”); *Rapozo v. State*, 150 Haw. 66, 84 (2021) (“The chief use of habeas corpus has

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<sup>305</sup> Lindsay Decl. ¶ 58.

<sup>306</sup> “Stress from captivity often fosters learned helplessness and conditioned defeat.” Jacobs Decl. ¶ 17.

been to seek the release of persons held in actual, physical custody.”) (citation and underline omitted);

202. To remedy the injustice of the elephants’ imprisonment this Court must order their relocation to an environment where they can exercise their autonomy and extraordinary cognitive complexity to the greatest extent possible. The elephants can still lead something approaching a normal life at a GFAS-accredited elephant sanctuary. *See* Lindsay Decl. ¶ 65; Jacobs Decl. ¶ 21(g); Poole Decl. ¶ 57. As Dr. Joyce Poole explained, “the orders of magnitude of greater space” offered in sanctuaries “permits autonomy and allows elephants to develop more healthy social relationships and to engage in near natural movement, foraging, and repertoire of behavior.” *Id.*

203. The flexibility of habeas corpus permits the relief sought herein. As the Hawaiian Supreme Court has explained: “If we have the power to issue writs of habeas corpus to inquire into the cause of the imprisonment, it will not be denied, we think, that that power also implies and includes the power to do whatever justice may seem to require in the premises, after we have finished our inquiry.” *In re Cambridge*, 1 Haw. at 193 (emphasis added); *In re de Flanchet*, 2 Haw. 96, 98, *aff’d*, 2 Haw. 112 (1858) (“[Habeas corpus] requires the exercise of a sound discretion and a careful examination into all the circumstances of the case, which in this instance involves questions of great importance.”).

204. That the elephants cannot be released onto the streets does not preclude habeas corpus relief. *See, e.g., Hutch v. State*, 107 Haw. 411, 415 (2005) (citing *Johnson v. Avery*, 393 U.S. 483 (1969)) (discussing a habeas corpus petitioner being “released from disciplinary confinement and restored to the status of an ordinary prisoner”); *see also Breheny*, 38 N.Y.3d at 598 (Wilson, J., dissenting) (“underscoring the flexibility of the Great Writ, its history

evinces that habeas corpus could be used to transfer custody from one confinement, if determined to be unlawful, to another type of custody; habeas petitions were not required to seek or result in total liberation as the remedy.”).

205. The writ thus “allows for consideration of the proper conditions of a release when, as here, the captive is a nonhuman animal and cannot live as a free being within human society.” *Id.* at 640 (Rivera, J., dissenting). Judge Rivera concluded that the inherent flexibility of habeas corpus permits the relief sought by the NhRP:

The fact that Happy cannot be set totally free on the streets of New York City is a consequence of human beings' attempts to exert such unnatural control over her. Humans removed her as a calf from her natural habitat. Humans separated her from her herd. After a lifetime of captivity, in which humans have controlled every aspect of her life, she cannot return, 50 years later, and simply live as would any elephant who grew up in a wild environment. However, a court can order the most practical and humane alternative: transfer to an elephant sanctuary.

*Id.* at 641.

206. Proper habeas corpus relief here requires ordering Mari and Vaigai released from their unlawful imprisonment at the Honolulu Zoo and relocated to an appropriate GFAS-accredited elephant sanctuary where they can exercise their autonomy and extraordinary cognitive complexity and begin to live as elephants have evolved to do.<sup>307</sup> Justice demands nothing less from this Court.

### **Prayer for Relief**

WHEREFORE, Petitioner respectfully requests this Court to:

- (1) issue an order to show cause requiring Respondents to appear and show cause for their imprisonment or restraint of Mari and Vaigai;

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<sup>307</sup> There are GFAS-accredited elephant sanctuaries in the United States and in Brazil.

- (2) grant the Petition by ordering Mari and Vaigai released from their unlawful imprisonment at the Honolulu Zoo and relocated to an elephant sanctuary accredited by the Global Federation of Animal Sanctuaries; and,
- (3) grant such other and further relief as this Court may deem just, proper, and equitable.

Dated: October 31, 2023

By: /s/ Cheryl Nolan  
Cheryl Nolan, Esq.  
HI Bar No. 6412

Jake Davis\*  
*\*Pro hac vice* pending  
CO Bar No. 54032  
Attorneys for  
Petitioner Nonhuman Rights Project, Inc., on behalf  
of Mari and Vaigai

**VERIFICATION**

I declare under penalty of perjury under the law of Hawaii that the foregoing is true and correct.  
Executed on the 31st day of October 2023 in San Diego, California.

/s/ Cheryl Nolan  
Cheryl Nolan, Esq.  
611 Pennsylvania Ave SE #345  
Washington, DC 20003

# **Exhibit I**

## **Joint Declaration of Lucy Bates and Richard M. Byrne**

We, Lucy Bates and Richard M. Byrne, declare as follows:

### **I. Introduction and Qualifications**

#### **A. Lucy Bates**

1. My name is Lucy Bates. I graduated with a Bachelor of Arts (with Honors) in Experimental Psychology from Oriel College at the University of Oxford in 2000. I earned a Master's of Science in Human Biology from the Institute of Biological Anthropology, University of Oxford in 2001 and earned a Ph.D. in Evolutionary Biology from the University of St. Andrews in 2005. From January 2016 to December 2017, I was a Daphne Jackson Trust Postdoctoral Research Fellow at the School of Psychology, University of Sussex, studying culture in elephants. As of January 2018 I have held the title of Visiting Research Fellow at Sussex, and since September 2019 have been additionally employed as an Associate Lecturer within the School of Psychology and Counselling of the Open University. I currently reside in Paris, France.

2. I submit this declaration in support of the Nonhuman Rights Project, Inc.'s petition for a writ of habeas corpus regarding the captive elephants at the Honolulu Zoo. I am a nonparty to this proceeding.

3. I study the evolution of cognition and social behavior, and my research focuses on the evolution of cognitive skills which allow social mammals to thrive in close-knit groups. My research has focused on the social and cognitive skills of African elephants since 2005, when I became a Leverhulme Trust Post-Doctoral Research Fellow at the University of St. Andrews. I was an Honorary Research Associate at the University of St. Andrews from 2008 – 2016, and since January 2016 I have continued my research as a Research Fellow at the School of Psychology, University of Sussex, and since 2022 as a lecturer at the University of Portsmouth.



4. I have been studying elephant cognition and social behaviour for eighteen years, since 2005. During this time, I have worked with the world's pre-eminent elephant biologists, many of whom are also submitting declarations in this matter, and spent months observing wild African elephants in both Kenya and South Africa, working in collaboration with the Amboseli Trust for Elephants, Elephant Voices, and Save the Elephants. In order to be more efficient, my colleagues and I agreed that I would draft the main declaration, which I would circulate to my colleagues for them to add or delete anything they believed was appropriate.

5. I have authored 24 scientific articles and book chapters on social cognition in African elephants and primates. These articles have been published in many of the world's premier scientific journals and books, including: APA Handbook of Personality and Social Psychology, Animal Behaviour, Biology Letters, Current Biology, Neuron, and PLoS One. I have also co-authored a field guide to elephant behaviour, and researched and fully drafted ('ghost-wrote') a popular science book about African elephants for a British media personality.

6. In addition to my research work, I also currently serve as a Director and Management Committee Member for the Elephant Specialist Advisory Group (ESAG), South Africa, a non-profit organisation that offers advice on elephant behaviour and management policy for government departments and managers of reserves within South Africa. I have previously acted as a consultant in elephant welfare and conservation, including freelance work for Save the Elephants, Kenya; Ezevelo KwaZulu Natal Wildlife, South Africa; and Society for the Prevention of Cruelty to Animals, Zimbabwe.

7. I have previously served as a consulting expert in legal matters, including: (1) in 2010/11, where I commented on licensing documents and attended a workshop for Ezemvelo KZN (Kwa Zulu Natal) Wildlife authority (South Africa), which resulted in tighter controls being implemented in the license agreement, considerably improving the elephants' welfare; and (2) in 2009, at the request of the Zimbabwe SPCA, I conducted a site visit and inspection

of a private farm where 10 juvenile elephants were being held. The elephants had been illegally captured from the wild and were undergoing training for the elephant-back safari industry. The ZNSPCA presented our reports to the then Minister for Environment and Tourism, who intervened and said that the elephants were to be rehabilitated and released back in to the wild. They were released six months later, and have adapted well.

8. My Curriculum Vitae fully sets forth my educational background and experience and is annexed hereto as “Exhibit A”.

### **Basis for opinions**

9. The opinions I state in this Declaration are based on my professional knowledge, education, training, and over 10 years of experience observing and studying elephants, as well as my knowledge of peer-reviewed literature about elephant behaviour and intelligence published in the world’s most respected journals, periodicals and books that are generally accepted as authoritative in the field, and many of which were written by myself or colleagues whom I have known for several years and with whose research and field work I am personally familiar. A full reference list of peer-reviewed literature cited herein is annexed hereto as “Exhibit B”.

### **B. Richard Byrne**

10. My name is Richard William Byrne. I earned my Master of Arts with 1<sup>st</sup> Class Honours in Natural Sciences from St. John’s College, Cambridge between 1969-1972. I received my Ph.D. from the University of Cambridge in 1975 for my thesis entitled “Memory in complex tasks.” I am a Fellow of the Royal Society of Edinburgh. I reside and work in St. Andrews, Scotland.

11. I submit this declaration in support of the Nonhuman Rights Project, Inc.’s petition for a writ of habeas corpus regarding the captive elephants at the Honolulu Zoo. I am a nonparty to this proceeding.

12. I have studied the evolution of cognition and social behavior throughout my career. As a Professor of Evolutionary Psychology at the University of St Andrews, Scotland, I have studied the evolution of cognition with a particular focus on the origins of uniquely human characteristics, utilizing evidence from a number of mammalian species including great apes, elephants, and domestic pigs, among other animals. I have studied the evolutionary basis of gestural communication, the use of tools, spatial mapping, cognition, and social behaviour.

13. Over the course of my career, I have received several awards and honors related to my research, including; (1) the Wright Prize & Hughes Prize, St Johns College, Cambridge, in 1972; (2) an MRC Studentship, tenure at MRC Applied Psychology Unit, Cambridge, from 1972-1975; (3) a Development Fellowship from the Association of Commonwealth Universities in 1993; (4) *British Psychology Society* Book Award for my Oxford University Press monograph "The Thinking Ape" in 1997; (5) awarded *Convenorship* of Focus Group 2003, "Precursors to Culture," from the Institute of Advanced Study, Collegium Budapest, Hungary in 2001; (6) elected Fellow of the *Royal Society of Edinburgh* (FRSE) in 2002; and (7) elected Fellow of the *Higher Education Academy* in 2007; (8) awarded *British Psychology Society* Lifetime Achievement Award in 2017.

14. In 1987, I founded (along with Bill McGrew at Stirling University, Liz Rogers at Edinburgh University, and Andy Whiten at St. Andrews University) the *Scottish Primate Research Group*, in order to coordinate the research interests of the 3 centers, promote new joint grant applications, encourage outside visitors to Scotland and postgraduate admissions, and coordinate joint seminars and lectures. The *Scottish Primate Research Group* now boasts national and international acclaim and attendance at hosted research presentations and seminars, and it is now larger and more productive than ever with 21 faculty members and over 50 affiliated researchers, including at Aberdeen and Abertay Universities. The focus of SPRG research is the natural behaviour, mentality, and ecology of primates. Field studies are carried

out by core SPRG members at several sites in Africa, Asia, and South America; captive primate studies rely on well-housed breeding groups at Edinburgh Zoo, particularly the SPRG Living Links Research Centre, as well as primate centers in France, Japan, and the USA. (Full Group member and affiliated researcher information can be found at the SPRG website: <http://psy.st-andrews.ac.uk/research/sprg/>).

15. I have conducted field work as part of my scientific research in multiple sites over my career, including: (1) at Mont Assirik, Senegal from January to April 1979, studying the Guinea baboon (*Papio papio*); (2) at Giant's Castle Game Reserve, South Africa from August to December 1983, studying the Chacma baboon (*Papio ursinus*); (3) at the Mahale Mountains, Tanzania from July to December 1984, studying the Chimpanzee (*Pan troglodytes*); (4) at the Virunga Volcanoes, Rwanda from July to December 1989, studying the Mountain gorilla (*Gorilla b. beringei*); and (5) at Mbeli Bai, Republic of the Congo from August to October 2010, studying the Western gorilla (*Gorilla g. gorilla*).

16. Throughout my career, I have been involved with Editorial work in a variety of capacities. Since 2000, this editorial work has included: (1) Serving on the Editorial Board of *Current Biology*, ongoing since 2006; (2) Serving on the Editorial Board of *Biology Letters*, from 2007-2013; (3) serving on the Editorial Board of *Animal Cognition*, from 1997-2011; (4) Serving on the Editorial Board of the *Journal of the Royal Anthropological Institute*, from 1995-2010; (5) Refereeing of book proposals for a number of publishers, including Basil Blackwell, Cambridge University Press, Curzon Press, Lawrence Erlbaum Associates, Oxford University Press, and John Wiley; (6) Refereeing of manuscripts for many premier scientific journals, including *Science*, *Nature*, *PNAS*, *Proc.Roy.Soc.B.*, *Phil.Trans.B*, *TICS*, *TINS*, *Psychological Science*, *Psychological Bulletin*, and *Current Biology*; (7) Refereeing of promotion applications for a number of Universities in both the USA and United Kingdom, including Arizona State University, University of California San Diego, University of

Colorado, University of Florida (Gainesville, FL), Max Planck Institute for Evolutionary Anthropology (Leipzig), Miami University of Ohio, University of Natal (Republic of South Africa), University of Portsmouth (UK), University of Stirling (UK), and York University (Toronto); (8) Refereeing of research grants for many research foundations including the Biomedical and Biological Sciences Research Council (BBSRC), the Economic and Social Research Council (ESRC), Israel Academy of Sciences and Humanities (Basic Research Foundation), LSB Leakey Foundation (Oakley, California), Leverhulme Trust, Medical Research Council (MRC, United Kingdom), National Science Foundation (NSF, USA), National Environment Research Council (NERC, United Kingdom), and the National Science and Engineering Research Council (NSERC, Canada); and (9) Refereeing of research programmes for the Leverhulme Trust, Max-Planck-Society (Germany), and Earthwatch Europe.

17. I am affiliated with a number of professional organizations and have engaged in a variety of professional activities throughout my career. Since the year 2000, this has included: (1) Focus Group Convenor, "Precursors to Culture," at the Collegium Budapest Institute for Advanced Studies, Hungary, from Oct-Dec 2003; (2) Member of the Subgroup on *Use of non-human primates in research and testing* from 2000-2002 for the Boyd Group; (3) Vice-President for the *International Primatological Society* from 1996-2001; (4) organized symposium of 18<sup>th</sup> Congress of the *International Primatological Society*, Adelaide, 2001; (5) discussant at *Perspectives on Imitation*, France, 2002; (6) discussant at *Nijmegen Lectures*, Max Planck Institute for Psycholinguistics/University of Nijmegen, Holland, 2002; (7) organized symposium of St Andrews International Conference on *Animal Social Learning*, June 2005; (8) discussant at symposium *The cognitive triangle: Primates, Cetaceans, and Corvids*, Kyoto, 2006; (9) organized symposium of the 23<sup>rd</sup> Congress of the *International Primatological Society*, Kyoto, 2010; and (10) served as part of the Steering Committee for

Assessment for the *Quality Assurance Agency /Scottish Higher Education Funding Council* from 2003-2005.

18. I have written two books concerning my work with cognition: (1) *The Thinking Ape: evolutionary origins of intelligence* (1995, Oxford University Press, Oxford, 266 pages; 1997 *British Psychological Society* Book Award winner; Reprinted annually; Japanese edition published by Otsuki Shoten, Tokyo, 1998; Chinese edition, in translation, published by Hunan Education Publishing House, 2006); (2) *Evolving Insight* (2016, Oxford University Press, Oxford, 304 pages).

19. I have co-edited two books concerning my work with cognition: (1) *Machiavellian Intelligence: Social Expertise and the Evolution of Intellect in Monkeys, Apes and Humans* (Co-edited with A. Whiten, 1988, Oxford University Press, Oxford, 413 pages; Japanese edition published by Nakanishiya Shuppan Press, Kyoto, 2004); (2) *Machiavellian Intelligence II: Extensions and Evaluations* (Co-edited with A. Whiten, Cambridge University Press, Cambridge, 1997, 403 pages; Japanese edition published by Nakanishiya Shuppan Press, Kyoto, 2004).

20. I have published 165 peer-reviewed scientific articles over my career. These articles have been published in many of the world's premier scientific journals, including: *Science, Biology Letters, Animal Cognition, Animal Behaviour, Biosemiotics, Behavioural Ecology and Sociobiology, Current Biology, International Journal of Primatology, Annals of the New York Academy of Sciences, Journal of Comparative Psychology, American Journal of Primatology, Trends in Evolution & Ecology, PLoS Biology, PLoS One, Trends in Cognitive Sciences, Philosophical Transactions of the Royal Society of London – Series B Biological Sciences, The Behavioral and brain sciences, Methods, American Journal of Physical Anthropology, Canadian Journal of Psychology, and The British Journal of Mathematical and Statistical Psychology*. Over the last four years, specific topics of these publications have

included: African elephants interpret a trunk gesture as a clue to direction of interest, Interpretation of human pointing by African elephants – generalization and rationality, African elephants recognize visual attention from face and body orientation, Flexibility and survival of Apes in the Anthropocene, Wild baboons (*Papio ursinus*) remember single foraging episodes, The what as well as the why of animal fun, Change point analysis of travel routes reveals novel insights into foraging strategies and cognitive maps of wild baboons, Age-dependent social learning in a lizard, Isolation rearing does not constrain social plasticity in a family-living lizard, The animal origins of disgust: reports of basic disgust in nonhuman great apes, The gestural repertoire of the wild bonobo (*Pan paniscus*): a mutually understood communication system, The meanings of chimpanzee gestures, Bonobo and chimpanzee gestures overlap extensively in meaning, Using cross correlations to investigate how chimpanzees use conspecific gaze cues to extract and exploit information in a foraging competition, Complexity in animal behaviour: towards common ground, African elephants can use human pointing cues to find hidden food, Deictic gesturing in wild chimpanzees – some possible cases, Laterality in the gestural communication of wild chimpanzees, Age-related differences in the use of the “moo” call in black howler monkeys, Evolutionary origins of human handedness – evaluating contrasting hypotheses, Titi monkey call sequences vary with predator location and type, Animal curiosity, Evidence for semantic communication in Titi monkey alarm calls, The alarm call system of wild black-fronted Titi monkeys, From parsing actions to understanding intentions, Serial gesturing by wild chimpanzees – its nature and function for communication, What are we learning from teaching? Local traditions in gorilla manual skill – Evidence for observational learning of behavioural organization, Animal behaviour in a human world: A crowdsourcing study on horses that open door and gate mechanisms, and Cognition in the wild – exploring animal minds with observational evidence.

21. My scientific work has also been published as chapters in 71 books. Over the last four years, these books have included *The Amboseli Elephants: A Long-Term Perspective on a Long-Lived Mammal* (2011, University of Chicago Press), *Integrating Gestures. The interdisciplinary nature of gesture* (2011, John Benjamins Publishing Company, Amsterdam), *Current research in applied ethology* (2011, Kuratorium für Technik und Bauwesen in der Landwirtschaft e.V. (KTBL), Darmstadt, Germany), *Developments in Primate Gesture Research* (2012, John Benjamins Publishing Company, Amsterdam), *Tool Use in Animals: Cognition and Ecology* (2013, Cambridge University Press), *New Perspectives on the symbolic species* (new edition in press, Springer-Verlag, Heidelberg, Germany), *The Emergence of Personhood: A Quantum Leap?* (in press, William B. Eerdmans Publishing Company, Grand Rapids, Michigan), and *Formal Models in Evolutionary Cognitive Archaeology* (in press, New York: Oxford University Press).

22. I have given major invited lectures at international research meetings and symposia throughout the world over the course of my career. Since the year 2000, these have included: (1) a public lecture and discussion on the topic of deception and fake news, with Evan Davies, BBC, at the Royal Institution, London; (2) the 85<sup>th</sup> James Arthur Lecture at the American Museum of Natural History (Public lecture, 2015), and a public lecture at Emory University, Atlanta; (3) two lectures in 2013: (a) the Tarragona Laterality Conference (invited lecture to closed conference) and (b) a public lecture at the University of Portsmouth; (4) an Invited lecture in the 2012 Workshop “Unpacking intentionality in animal vocal communication: an integrative approach” at the Institute of Evolutionary Biology, University of Zurich; (5) three lectures in 2011: (a) an invited lecture to a symposium entitled “The Emergence of Personhood” for the John Templeton Foundation, (b) a lecture at a closed workshop entitled “The evolution of human handedness” at the Hanse-Wissenschaftskolleg in Delmenhorst, Germany, and (c) a public lecture at the Institute of Evolutionary Biology at the University of Zurich; (6) a



referential communication for a workshop at the 2010 INCORE Thematic Meeting in Berlin;

(7) three lectures in 2009: (a) a Plenary lecture at the 11<sup>th</sup> Congress of the German Society for Primatology in Hanover, Germany, (b) a public “Year of Darwin Lecture” for the School of Biosciences at Birmingham University, and (c) a lecture at the Workshop “Understanding Tool Use” at the Max Planck Institute for Evolutionary Anthropology in Leipzig, Germany;

(8) an invited lecturer at the 2008 Summer School on “Social Cognition” at the Institute of Cognitive Sciences in Montreal;

(9) four lectures in 2007: (a) an inter-faculty series “The evolution of social cognition” for the Faculty of Life Sciences at the University of Vienna, (b) a Plenary lecture at the Second Congress of the European Federation of Primatology, at Charles University, Prague, (c) an invited lecture at a Workshop on “Social Cognition” by the MRC/Cold Spring Harbor at St Anne’s College, Oxford, and (d) a Plenary lecture at the “Missing Links” conference at Carlsberg Academy, Copenhagen;

(10) two lectures in 2006: (a) a lecture at the symposium “From Brain to Culture” hosted by The Royal Society, London, and (b) a Plenary lecture at the 66<sup>th</sup> Annual Meeting of the Japan Society for Animal Psychology in Kyoto;

(11) two lectures in 2005: (a) Plenary lectures at the Portuguese Primatological Association’s 2<sup>nd</sup> International Conference in Lisbon, and (b) a lecture in the “Evolutionary Cognitive Sciences” series at the University of Tokyo;

(12) two lectures in 2004: (a) a Public lecture at the Institute of Cognitive & Decision Sciences at the University of Oregon, and (b) a lecture at the closed conference “Roots of Human Sociality” for the Wenner-Gren Foundation for Anthropological Research in North Carolina;

(13) an International Workshop in 2003 for the European Workshop in Cognitive Neuropsychology in Bressanone, Italy;

(14) three lectures in 2002: (a) a lecture in the Annual Autumn School in Cognitive Neuroscience with the theme “Rational animals?” for the McDonnell-Pew Centre at the University of Oxford, (b) a lecture at an International Workshop called “Perspectives on Imitation” in Royaumont Abbey, France, and (c) Public lectures for the Fundacio “la Caixa”

Museum of Science in Barcelona and the Social & Cultural Centre in Tarragona, Spain; (15) six lectures in 2001: (a) the Keynote Address to the VIIth European Congress of Psychology, forming part of the BPS Centenary in London, (b) a lecture at the “Human Cognition” symposium at the Institute of Cognitive Neurology at UCL, London, (c) a lecture and Press Conference on “Constraints on Culture” for the British Association for the Advancement of Science in Glasgow, (d) the Keynote Lecture for the Consciousness & Experiential Psychology section of the British Psychological Society, (e) a lecture entitled “Knapping Stone: a uniquely hominid behaviour?” for an International Workshop in Abbaye des Premontres, France, and (f) a lecture at an International Workshop “Malingering & Illness Deception” in Blenheim, Oxford; and (16) seven lectures in 2000: (a) a Plenary lecture to the Millennial Meeting “The social brain” for the British Neuropsychiatry Association, (b) the Invited Main Lecture entitled “Primate Cognition” for the International Congress for Cognitive Science in Inuyama, Japan, (c) a lecture at the Symposium “Animal Architecture” for the Gaia Research Project in Edinburgh, (d) a lecture at the International Conference “Human Nature” for the Royal Society of Edinburgh in Edinburgh, a lecture at the Workshop “Cognitive Science” at Sorbonne University in Paris, (e) a lecture at the Symposium “The Social Brain” at the Max Planck Institute in Andechs, Germany, and (f) a lecture at the Symposium “Science and Philosophy of Pain” for the University of Ghent, in Ghent, Belgium.

23. In addition to the major invited lectures listed above, I have given invited, funded talks at: Auckland University (Psychology, Zoology); BAAS SET7 Week (St Andrews); Gesamthochschule, Kassel (Primatenbiologie); Deutsches Primatenzentrum, Gottingen; Duke University, North Carolina (Biological Anthropology); Dundee University (teaching forum); Durham University (Psychology, Anthropology); Eotvos Lorand University, Budapest (Ethology); Hang Sen Centre for Cognitive Studies, Sheffield (twice); Hawaii University, Honolulu (Psychology); Kyoto University; Living Links Center, Emory University; MRC

Cognitive Brain Research Unit, Cambridge (twice); Max Planck Institute, Leipzig; Max Planck Institute, Seewiesen, Bavaria; Miami University, Ohio (Zoology); University of Otago, New Zealand (Psychology); Queens University, Kingston Ontario (Psychology); Universite de Rennes 1 (Zoology); Royal Anthropological Institute, London; Royal (Dick) School of Veterinary Studies, Edinburgh; Yerkes Regional Primate Research Center, Atlanta GA; UCSD (Psychology); York University, Toronto (Psychology); Universities of Aberdeen (Psychology), Abertay (Psychology), Cambridge (Psychology), Archaeology & Anthropology), Reading (Archaeology), St Andrews (Divinity, Modern Languages, Zoology, Psychology), Stirling (Psychology), UCL (Archaeology), Sussex (Neuroscience & Robotics), York (Centre for Human Palaeontology & Human Origins); and the Zoological Society of London.

24. Throughout my scientific career, I have had the privilege of supervising PhD level students. Since the year 2000, these have included: (1) R. Noser, (self-funded), “Navigation by chacma baboons within the home-range” from 1999-2004; (2) R. da Cunha (funded by CAPES, Brazil), “Long distance communication of howler monkeys” from 2000-2004; (3) A. Valero (funded by CONACYT, Mexico), “Social interactions of spider monkeys” from 2000-2004; (4) L. Bates (funded by BBSRC), “Foraging skills of female chimpanzees” from 2001-2005; (5) E. Cartmill (funded by Univ. St Andrews), “Gestural communication in great apes” from 2004-2008; (6) F. Moore (joint supervision), “Effects of resource control on female reproductive strategies from 2005-2006; (7) A. Ruiz (funded by James Cook Foundation and ORS), “Monkeys’ understanding of intention and attention” from 2005-2009; (8) C. Hobaiter (funded by own EC grant), “Gestural communication in great apes” from 2007-2010; (9) C. Casar (funded by CAPES, Brazil), “Vocal communication of wild Titi monkeys” from 2007-2011; (10) K. Hall (funded by Janet Anderson Trust and ORSAS), “Theory of mind in chimpanzees” from 2008-2012; (11) L. Orr (funded by NSF Studentship), “Gestural communication in gorillas” from 2010-2014; (12) A. Smet (funded by Univ. St Andrews),

“Cognition in the African Elephant” from 2011-2015; (13) B. Fallon (self-funded), Gestural communication by sexually consorting male chimpanzees” 2012 - 2016; and (14) K. Graham (funded by Univ. St Andrews), “Negotiation of sexual relationships among bonobos” 2013 - 2016.

25. In addition to direct supervision of PhD students, I have also served as an External Postgraduate Examiner for individuals. Since the year 2000, these have included: (1) L. Ambrose, Ph.D. Oxford Brookes University (Anthropology) in 2000; (2) A. Nowell, M.Sc. University of Stirling (Psychology) in 2001; (3) B. A. Whiting, M.Sc. University of Durham (Anthropology) in 2002; (4) K. Rigby, Ph.D. London School of Economics (Psychology) in 2002; (5) P. Citrynell, Ph.D. Exeter University (Psychology) in 2003; (6) J. Dally Ph.D. University of Cambridge (Psychology) in 2004; (7) P. Citrynell Ph.D. Exeter University (Psychology, re-examination) in 2004; (8) J. Dalley Ph.D. University of Cambridge (Psychology); (9) Dr. Thomal Bugnyar, Habilitation, University of Vienna (Faculty of Life Sciences) in 2008; (10) C. Bird University of Cambridge (Psychology) in 2009; (11) P. Bertolani University of Cambridge (Archaeology & Anthropology) in 2012; (12) J. Trosciano University of Birmingham (Psychology) in 2012; (13) J. Wathen University of Sussex in 2015; (14) A. Picard, University of York, 2016; (15) A. Frohnwieser, University of Lincoln, 2017; (16) M. de Guinea, Oxford Brookes University, 2020.

26. I have been interviewed and my scientific research has been featured on a number of radio broadcasts, including: (1) interviews with BBC Radio 4 “Today” in 2000 and 2008; (2) with BBC Radio 4 as an interview with Jonathan Miller, “Self-made things” in 2005; (3) interview on Australian Radio with an article on my own research in “The Science Show” in 2001; (4) interview on Radio Netherlands with an article on my own research in 2001. Additionally, other interviews on my own research have been featured on: ABC Radio Australia, Austrian Broadcasting Corporation, US Public Broadcasting Network, Breakfast

Radio Auckland (NZ), Radio Canada, Western Australia Radio, Discovery Canada, Radio New Zealand “Morning Report,” Radio Ireland, Talkback Radio (Ireland), BBC World Service, BBC Radio Scotland, Radio Wales, Radio Cambridgeshire, BBC Radio Jersey, BBC Radio 5 Live, Radio Tay, Kingdom FM, Talk 107, Voice of Russia, and Wave 102.

27. I have appeared and been featured in a number of Television broadcasts, including: (1) Interview with BBC1 6 O’ Clock News (Scotland) on my own great ape research in 2008; (2) Interview with BBC1 6 O’ Clock News (UK) on my own elephant research in 2013; (3) as a consultant for the BBC2 Program “The Secret Life of Pigs” in 2010; (4) Interview with BBC World/BBC4 Evening News on my own elephant research in 2013; (5) Interview with ITV/STV (ITN News) on my own elephant research in 2013; and (6) Interview with Australian ABC Channel TV as part of a programme on my research in the “Catalyst” series.

28. My Curriculum Vitae fully sets forth my educational background and experience and is annexed hereto as “Exhibit C”.

### **Basis for opinions**

29. The opinions I state in this Declaration are based on my professional knowledge, education, training, and years of experience observing and studying elephants, as well as my knowledge of peer-reviewed literature about elephant behaviour and intelligence published in the world’s most respected journals, periodicals and books that are generally accepted as authoritative in the field, and many of which were written by myself or colleagues whom I have known for several years and with whose research and field work I am personally familiar. A full reference list of peer-reviewed literature cited herein is annexed hereto as “Exhibit B”.

## **II. Opinions**

### **A. Premise**

30. Elephants are autonomous beings. Autonomy in humans and nonhuman animals is defined as self-determined behaviour that is based on freedom of choice. As a psychological concept it implies that the individual is directing their behaviour based on some non-observable,

internal cognitive process, rather than simply responding reflexively. Although we cannot directly observe these internal processes in other humans, we can explore and investigate them by observing, recording and analysing their behaviour. We can explore autonomy in non-human animals in a similar way, by observing similar behaviour and recording evidence of shared cognitive capacities in elephants.

31. We shall indicate which species, African (*Loxodonta Africana*) or Asian (*Elephas maximus*), specific observations relate to. If the general term ‘elephants’ is used with no specific delineation, it can be assumed the comment relates to both species.

## **B. Brain And Development**

32. Elephants are large-brained, with the biggest absolute brain size of any land animal (Cozzi et al. 2001; Shoshani et al. 2006). Even relative to their body sizes, elephant brains are large. Encephalization quotients (EQ) are a standardised measure of brain size relative to body size, and illustrate by how much a species’ brain size deviates from that expected for its body size. An EQ of one means the brain is exactly the size expected for that body, and values greater than one indicate a larger brain than expected (Jerison 1973). Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species). This means an elephant’s brain can be more than twice as large than is expected for an animal of its size. These EQ values are similar to those of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years (Eisenberg 1981, Jerison 1973). Given how metabolically costly brain tissue is, the large brains of elephants must confer significant advantages; otherwise their size would be reduced. The advantage of a large brain is to allow greater cognitive skill and behavioural flexibility (Bates et al. 2008a).

33. Typically, mammals are born with brains weighing up to 90% of the adult weight. This figure drops to about 50% for chimpanzees. Human baby brains weigh only about 27% of the adult brain weight, increasing in size over the prolonged childhood period (Dekaban &

Sadowsky 1978). This long period of brain development over many years (termed ‘developmental delay’) is a key feature of human brain evolution. It provides a longer period in which the brain may be shaped by experience and learning (Fuster 2002), and plays a role in the emergence of our complex cognitive abilities such as self-awareness, creativity, forward planning, decision making, and social interaction (Bjorkland 1997). Likewise, elephant brains at birth weigh only about 35% of their adult weight (Eltringham 1982), and elephants show a similarly protracted period of growth, development and learning (Lee 1986). This similar developmental delay in the elephant brain is likewise associated with the emergence of analogous cognitive abilities.

34. Despite nearly 100 million years of separate evolution (Hedges 2001), elephants share certain characteristics of our large brains, namely deep and complex folding of the cerebral cortex, large parietal and temporal lobes, and a large cerebellum (Cozzi et al. 2001). The temporal and parietal lobes of the cerebral cortex manage communication, perception, and recognition and comprehension of physical actions (Kolb and Wishaw 2008), while the cerebellum is involved in movement, planning, empathy, and predicting and understanding the actions of others (Barton 2012). The physical similarities between human and elephant brains occur in areas that are relevant to capacities necessary for autonomy and self-awareness.

35. Elephant brains hold three times more neurons than do human brains, with 97% of their found neurons in the cerebellum and 5.6 billion neurons in the cerebral cortex (Herculano-Houzel et al. 2014). (This figure for cortical neurons is lower than previous estimates, which suggested 11 billion cortical neurons for elephants and 11.5 billion for humans (Roth & Dicke 2005)). Elephants’ pyramidal neurons (a class of neuron that is found in the cerebral cortex, particularly the pre-frontal cortex - the brain area that controls executive functions) are larger than in humans and most other species (Cozzi et al. 2001; Jacobs et al. 2011). (This term “executive function” refers to controlling operations, for example paying attention, inhibiting

inappropriate responses, deciding how to use memory search, and so on. These abilities develop late in human infancy and are often impaired in dementia).

36. Elephant pyramidal neurons have a large dendritic tree, i.e. a large number of connections with other neurons for receiving and sending signals (Cozzi et al. 2001; Jacobs et al. 2011; Maseko et al. 2012). The degree of complexity of pyramidal neurons is linked to cognitive ability, with more (and more complex) connections between pyramidal neurons being associated with increased cognitive capabilities (Elston 2003).

37. As described below, evidence demonstrates that along with these common brain and life-history characteristics, elephants share many behavioural and intellectual capacities with humans, including: self-awareness, awareness of death, empathy, intentional communication, learning, memory, and categorisation abilities. Many of these capacities have previously been considered – erroneously – to be uniquely human, and each relates to autonomy and self-determination.

### **C. Awareness Of Self And Others**

38. An Asian elephant has exhibited Mirror Self Recognition (MSR) using Gallup's classic 'mark test' (Gallup 1970; Plotnik et al. 2006). MSR is the ability to recognise a reflection in the mirror as oneself, and the mark test involves surreptitiously placing a coloured mark on an individual's forehead that it could not see or be aware of without the aid of a mirror. If the individual uses the mirror to investigate the mark, the individual must recognise the reflection as herself. (See video [here](#)). Despite numerous attempts and trials in other species, the only other mammals (beyond humans) who have successfully passed the mark test and exhibit MSR are the great apes (chimpanzees, bonobos, gorillas and orangutans) (Parker, Mitchell & Boccia 1994) and one bottlenose dolphin (Reiss and Marino 2001). MSR is significant because it is a key identifier of self-awareness. Self-awareness is intimately related to autobiographical memory in humans (Prebble et al. 2013) and is central to autonomy and



being able to direct one's own behaviour to achieve personal goals and desires. ("Autobiographical memory" refers to what one remembers about his or her own life; for example, not that "Paris is the capital of France", but the recollection that you had a lovely time when you went there). By demonstrating that they can recognize themselves in a mirror, elephants must be holding a mental representation of themselves from another perspective, and thus be aware that they are a separate entity from others (Bates and Byrne 2014).

39. Related to possessing a sense of self is an understanding of death. Observing reactions to dead family or group members appears to demonstrate an awareness of death in two known animal genera beyond humans; chimpanzees and elephants (Anderson et al. 2010, Douglas-Hamilton et al. 2006; Sharma et al. 2020). Having a mental representation of the self – a pre-requisite for mirror-self recognition – likely also confers an ability to comprehend death. Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals (McComb et al. 2006) (See video [here](#)), and they have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals (see Poole & Granli 2011; Goldenberg & Wittemyer 2020). Although they do not give up trying to lift or elicit movement from the body immediately, elephants appear to realise that once dead, the carcass cannot be helped anymore, and instead they engage in more 'mournful' behaviour, such as standing guard over the body and protecting it from the approaches of predators (Poole & Granli 2011; Goldenberg & Wittemyer 2020) (See photographs [here](#)). They also have been observed to cover the bodies of dead elephants with dirt and vegetation (Moss 1992; Poole 1996). In the particular case of mothers who lose a calf, although they may remain with the calf's body for an extended period, they do not behave towards the body as they would a live calf. Indeed, the general demeanour of elephants who are attending to a dead elephant is one of grief and compassion, with slow movements and few vocalisations (Poole, pers. comm.; Goldenberg & Wittemyer 2020). These behaviours are akin

to human responses to the death of a close relative or friend, and illustrate that elephants possess some understanding of life and the permanence of death.

40. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities (Gallup 1982), where empathy can be defined as identifying with and understanding another's experiences or feelings by relating personally to their situation. Empathy is an important component of human consciousness and autonomy, and is a cornerstone of normal social interaction. It goes beyond merely reading the emotional expressions of others. It requires modeling of the emotional states and desired goals that influence others' behaviour both in the past and future, and using this information to plan one's own actions; empathy is only possible if one can adopt or imagine another's perspective, and attribute emotions to that other individual (Bates et al. 2008b). Empathy is, therefore, a component of and reliant on 'Theory of Mind' - the ability to mentally represent and think about the knowledge, beliefs and emotional states of others, whilst recognising that these can be distinct from your own knowledge, beliefs and emotions (Premack and Woodruff 1978; Frith and Frith 2005).

41. Elephants clearly and frequently display empathy in the form of protection, comfort and consolation, as well as by actively helping those who are in difficulty, such as assisting injured individuals to stand and walk, or helping calves out of rivers or ditches with steep banks (Bates et al. 2008b; Lee 1987). Elephants have even been observed feeding those who are not able to use their own trunks to eat (Poole and Granli 2011).

42. In an analysis of behavioural data collected from wild African elephants over a 40-year continuous field study, we concluded that as well as possessing their own intentions, elephants can diagnose animacy and goal directedness in others, understand the physical competence and emotional state of others, and attribute goals and mental states (intentions) to others (Bates et al. 2008b), as evidenced in the examples below:

*'IB family is crossing river. Infant struggles to climb out of bank after its mother. An adult female [not the mother] is standing next to calf and moves closer as the infant struggles. Female does not push calf out with its trunk, but digs her tusks into the mud behind the calf's front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins mother.'*

(See video [here](#)).

*'At 11.10ish Ella gives a 'lets go' rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp except Elspeth and her calf [<1 year] and Eudora [Elspeth's mother]. At 11.25 Eudora appears to 'lead' Elspeth and the calf to a good place to enter the swamp — the only place where there is no mud.'*

Examples such as these demonstrate that the acting elephant (the adult female in the first example, and Eudora in the second) was able to understand the intentions of the other (the calf in the first case, and Elspeth in the second) – i.e. to either climb out of or into the water – and they could adjust their own behaviour in order to counteract the problem being faced by the other. Whilst humans may act in this helpful manner on a daily basis, such interactions have been recorded for very few non-human animals (Bates et al. 2008b).

43. Experimental evidence from captive African elephants further demonstrates that elephants attribute intentions to others, as they follow and understand human pointing gestures - the only wild animal so far shown to do so spontaneously – and can also read direction information in the trunk movements of other elephants (Smet and Byrne 2020). The elephants understood that the human experimenter was pointing in order to communicate information to them about the location of a hidden object (Smet and Byrne 2013) (See video [here](#)). Attributing intentions and understanding another's reference point is central to empathy and theory of mind.

44. Our analysis of simulated oestrus behaviours in African elephants – whereby a

non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive, even though she is not ready to mate or breed again – shows that these knowledgeable females adopt false oestrus behaviours in order to demonstrate to naïve young females how to attract and respond appropriately to suitable males. The experienced females may be taking the youngsters lack of knowledge into account and actively showing them what to do; an example of true teaching as it is defined in humans. This evidence, coupled with the data showing that they understand the ostensive cues in human pointing, demonstrates that elephants do share some executive theory of mind skills with humans, namely understanding the intentions and knowledge states (minds) of others. (Ostension is the way that we can “mark” our communications to show people that that is what they are. If you do something that another copies, that's imitation; but if you deliberately indicate what you are doing to be helpful, that's “ostensive” teaching. Similarly, we may “mark” a joke, hidden in seemingly innocent words; or “mark” our words as directed towards someone specific, by catching their eye. Ostension implies that the signaler knows what they are doing).

45. Further related to empathy, coalitions and cooperation have been documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when a family group tries to ‘kidnap’ a calf from an unrelated family (Lee 1987; Moss and Poole 1983). These behaviours are based on one elephant understanding the emotions and goals of the coalition partner (Bates et al. 2008b).

46. Cooperation is also evident in experimental tests with captive Asian elephants, whereby elephants demonstrated they can work together in pairs to obtain a reward, and understood that it was pointless to attempt the task if their partner was not present or could not access the equipment (Plotnik et al. 2011) (See video [here](#)). Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal

and the sequence of behaviours that is required to achieve that goal; it is based on (at the very least) short-term action planning.

47. Wild elephants have frequently been observed engaging in cooperative problem solving, for example when retrieving calves that have been kidnapped by other groups, or when helping calves out of steep, muddy river banks (Bates et al. 2008b; Moss 1992). These behaviours demonstrate the purposeful and well-coordinated social system of elephants, and show that elephants can hold particular aims in mind and work together to achieve those goals. Such intentional, goal-directed action forms the foundation of independent agency, self-determination, and autonomy.

48. Elephants also show innovative problem solving in experimental tests of insight (Foerder et al. 2011), where insight can be defined as the ‘a-ha’ moment when a solution to a problem ‘suddenly’ becomes clear. (In cognitive psychology terms, insight is the ability to inspect and manipulate a mental representation of something, even when you can’t physically perceive or touch the something at the time. Or more simply, insight is thinking and using only thoughts to solve problems (Richard Byrne, *Evolving Insight*, Oxford Online Press, 2016<sup>1</sup>). A juvenile male Asian elephant demonstrated just such a spontaneous action by moving a plastic cube and standing on it to obtain previously out-of-reach food. After solving this problem once, he showed flexibility and generalization of the technique to other, similar problems by using the same cube in different situations, or different objects in place of the cube when it was not available (See video [here](#)). This experiment again demonstrates that elephants can choose the appropriate action and incorporate it into a sequence of behaviour in order to achieve a goal, which they kept in mind throughout the process.

49. Further observations and experiments also demonstrate Asian elephants’ ability to understand goal-directed behaviour (Irie-Sugimoto et al. 2008; Mizuno et al. 2016). When

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<sup>1</sup> Available at <https://global.oup.com/academic/product/evolving-insight-9780198757078?cc=us&lang=en&>.

presented with food that was out of reach, but with some bits resting on a tray that could be pulled within reach, the elephants learned to pull only those trays that were baited with food (Irie-Sugimoto et al. 2008). Success in this kind of ‘means-end’ task is a demonstration of causal knowledge, which requires understanding not just that two events are associated with each other but also that there is some mediating force that connects and affects the two which may be used to predict and control events. Moreover, understanding causation and inferring object relations may be related to understanding psychological causation, i.e., the appreciation that others are animate beings that generate their own behaviour and have mental states (e.g., intentions).

#### **D. Communication and social learning**

50. Speech is a voluntary behaviour in humans, whereby a person can choose whether to utter words and thus communicate with another. Therefore, speech and language are reflections of autonomous thinking and intentional behaviour. Elephants also use their vocalisations to share knowledge and information with others (Poole 2011). Male elephants primarily communicate about their sexual status, rank, and identity, whereas females and dependents call to emphasise and reinforce their social units. Call types can generally be separated into calls produced by the larynx (such as rumbles) or calls produced by the trunk (such as trumpets), with different calls in each category being used in different contexts (Poole 2011; Poole and Granli 2009; Soltis et al. 2005; Stoeger-Horwarth et al. 2007; Wood et al. 2005). Field experiments have shown that African elephants distinguish between different call types (for example, contact calls – rumbles that travel long distances to maintain associations between elephants that could be several kilometres apart, or oestrus rumbles – that occur after a female has copulated) and these different call types elicit different responses in the listeners. Elephant vocalisations are not simply reflexive, they have distinct meanings to listeners and

they are truly communicative, similar to the volitional use of language in humans (Leighty et al. 2008; Pardo et al. 2019; Poole 1999; Poole 2011; Stoeger & Baotic 2016, 2017).

51. Furthermore, elephants have been shown to vocally imitate the sounds they hear around them, from the engines of passing trucks to the commands of human zookeepers (Poole et al. 2005; Stoeger et al. 2012). Imitating another's behaviour can be demonstrative of a sense of self, as it is necessary to understand how one's own behaviour relates to the behaviour of others.

52. Elephants display a wide variety of gestures, signals and postures, used to communicate information to the audience (Poole and Granli 2011). Such signals are adopted in many different contexts, such as aggressive, sexual, or socially integrative situations, and each signal is well defined and results in predictable responses from the audience. That is, each signal or gesture has a specific meaning both to the actor and recipient. Elephants' use of gestures demonstrates that they communicate intentionally and purposefully to share information with others and/or alter the others' behaviour to fit their own will.

53. Experimental evidence demonstrates that African elephants recognize the importance of visual attentiveness of the intended recipient (in this case, human experimenters) of gestural communication (Smet & Byrne 2014), further supporting that elephants' gestural communication is intentional and purposeful. Furthermore, the ability to understand the visual attentiveness and perspective of others is crucial for empathy and mental-state understanding.

#### **E. Memory And Categorisation**

54. Elephants have both extensive and long-lasting memories, just as the folk stories and adages encourage us to believe. McComb et al. (2000), using experimental playback of long-distance contact calls in Amboseli National Park, Kenya, showed that African elephants remember and differentiate the voices of at least 100 other elephants. Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average

of 14 families in the population. When the calls were from the test elephants' own family, they contact-called in response and approached the location of the loudspeaker and when they were from another non-related but familiar family— that is, one that had previously been shown to have a high association index with the test group— they listened but remained relaxed. However, when a test group heard unfamiliar contact calls (from groups with a low association index with the test group), they bunched together and retreated from the area.

55. McComb et al. (2001) went on to show that this social knowledge accumulates with age, with older females having the best knowledge of the contact calls of other family groups. McComb et al. (2011) also showed that older females are better leaders, with more appropriate decision-making in response to potential threats (in this case, in the form of hearing lion roars). Younger matriarchs under-reacted to hearing roars from male lions, elephants' most dangerous predators. Sensitivity to the roars of male lions increased with increasing matriarch age, with the oldest, most experienced females showing the strongest response to this danger. These experimental studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they grow older.

56. Further demonstration of elephants' long-term memory comes from data on their movement patterns. African elephants are known to move over very large distances in their search for food and water. Leggett (2006) used GPS collars to track the movements of elephants living in the Namib Desert. He recorded one group traveling over 600 km in five months, and Viljoen (1989) showed that elephants in the same region visited water holes approximately every four days, even though some of them were more than 60km apart. Elephants inhabiting the deserts of both Namibia and Mali have been described traveling hundreds of kilometers to arrive at remote water sources shortly after the onset of a period of rainfall (Blake et al. 2003; Viljoen 1989), sometimes along routes that researchers believe have not been used for many



years. These remarkable feats suggest exceptional cognitive mapping skills, reliant on the long-term memories of older individuals who traveled that path sometimes decades earlier. Indeed, it has been confirmed that family groups with older matriarchs are better able to survive periods of drought. The older matriarchs lead their families over larger areas during droughts than those with younger matriarchs, again apparently drawing on their accrued knowledge (this time about the locations of permanent, drought-resistant sources of food and water) to better lead and protect their families (Foley et al. 2008).

57. Significantly, it has recently been shown that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to ‘management’ practices initiated by humans. Shannon et al. (2013) demonstrated that elephants in South Africa who had experienced trauma decades earlier showed significantly reduced social knowledge. During historic culling practices, juvenile ‘cull-orphan’ elephants were forcibly separated from family members and subsequently translocated to new locations. Two decades later, they still showed impoverished social knowledge and skills, with impaired decision-making abilities compared to elephants from an undisturbed population in Kenya. Disrupting elephants’ natural way of life has substantial negative impacts on their knowledge and decision-making abilities, much as it can with humans.

58. Elephants demonstrate advanced ‘working memory’ skills. Working memory is the ability to temporarily store, recall, manipulate, and coordinate items from memory. Working memory directs attention to relevant information, and results in reasoning, planning, and coordination and execution of cognitive processes through use of a ‘central executive’ (Baddeley 2000). Adult human working memory is generally thought to have a capacity of around seven items. In other words, we can keep about seven different items or pieces of information in mind at the same time (Miller 1956). We conducted experiments with wild

elephants in Amboseli National Park, Kenya, manipulating the location of fresh urine samples from related or unrelated elephants. The elephants' responses to detecting urine from known individuals in surprising locations showed that they are able to continually track the locations of at least 17 family members in relation to themselves, as either absent, present in front of self, or present behind self (Bates et al. 2008c). This remarkable ability to hold in mind and regularly update information about the locations and movements of a large number of family members is best explained by the fact that elephants possess an unusually large working memory capacity, apparently much larger than that of humans.

59. Elephants show sophisticated categorisation of their environment, with skills on a par with those of humans. We experimentally presented the elephants of Amboseli National Park, Kenya, with garments that gave olfactory or visual information about their human wearers - either Maasai warriors (men who traditionally attack and spear elephants on occasion as part of their rite of passage), or Kamba men (who are agriculturalists and traditionally pose little threat to elephants). In the first experiment, the only thing that differed between the cloths was the smell, derived from the ethnicity and/or lifestyle of the wearers. The elephants were significantly more likely to run away when they sniffed cloths worn by Maasai men than those worn by Kamba men or no one at all (See video [here](#)). In a second experiment, we presented the elephants with two cloths that had not been worn by anyone, but here one was white (a neutral stimulus) and the other was red—the color that is ritually worn by Maasai warriors. With access only to these visual cues, the elephants showed significantly greater reaction to red garments than white, often including signs of aggression. We concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e. 'dangerous' or 'low risk') based on either olfactory or visual cues alone (Bates et al. 2007). McComb et al. went on to show that the same elephants can also distinguish between human groups based on our voices. The elephants reacted differently (and appropriately) depending on whether they heard Maasai

or Kamba men speaking, and also when they heard male or female Maasai (where female Maasai pose no threat as they are not involved in spearing events), and adult Maasai men or young Maasai boys (McComb et al. 2014). Scent, sounds and visual signs associated specifically with Maasai men are categorized as ‘dangerous’, while neutral signals are attended to but categorized as ‘low risk’. Two captive Asian elephants have also recently been shown to differentiate between familiar and unfamiliar humans based on visual and olfactory signals (Polla et al. 2018). Asian elephants have also shown remarkable skills in judging quantities, using both visual and olfactory information (Irie et al. 2019; Plotnik et al. 2019), leading to the statement in one peer-reviewed paper that elephants ‘have cognitive characteristics partially identical to human counting’ (Irie et al. 2019). These sophisticated, multi-modal categorization and numerical skills may be exceptional among non-human animals. Moreover, these experiments demonstrate elephants’ acute sensitivity to the human world – monitoring our behavior and learning to recognize when we might cause them harm.

### **III. Conclusion**

60. Both African and Asian elephants demonstrate highly adapted cognitive abilities, and share many key traits of advanced cognition and autonomy with humans. Based on the evidence, it is clear to us they should also be considered autonomous beings.

61. Scientific knowledge about elephant intelligence has been increasing rapidly in the past decade: what we currently know is only a tiny fraction of what elephant brains are likely capable of, and yet more amazing abilities are still likely to be discovered.

I, Lucy Bates, Ph.D., declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 05/25/2023

A handwritten signature in black ink, appearing to be 'Lucy Bates', written over a horizontal line.

(signature)

I, Richard M. Byrne, Ph.D., declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 06/01/2023

Richard M. Byrne  
(signature)

# **Exhibit A**

# Lucy Anne BATES

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## EMPLOYMENT

**Oct 2019 – Present**

**Associate Lecturer, School of Psychology, The Open University**

Tutoring on final year 'Investigating Psychology' research module for undergraduate students. (0.2FTE)

**Jan 2018 – Present**

**Visiting Research Fellow, School of Psychology, University of Sussex**

Continuing *Culture in elephants* research project; finalizing publications, developing future funding proposals, continuing to supervise related MSc and BSc research projects and deliver lectures. (0.6FTE)

**Jan 2016 – Jan 2018**

**Daphne Jackson Research Fellow, School of Psychology, University of Sussex**

*Culture in elephants? Exploring social traditions across elephant populations*

Conceived, designed and led survey-based, collaborative research project working with 10 independent elephant research sites across east and southern Africa, supervised by Prof. Karen McComb. (0.5FTE)

**Oct 2012 – Dec 2015**

**Maternity leave** for my two children born in 2012 and 2014.

**Jun 2008 – Present**

**Director, Elephant Specialist Advisory Group (ESAG), South Africa** (0.2 FTE since 2012)

**Freelance Elephant Conservation Advisor, Pretoria, South Africa**

Committee member advising national and local government on elephant management and conservation policy. Consultancy including report writing, assessment, analysis for: Save the Elephants, Kenya; Ezemvelo Kwa Zulu Natal Wildlife, South Africa; and Society for the Prevention of Cruelty to Animals, Zimbabwe.

**Mar 2005 – May 2008**

**Research Fellow, School of Psychology, University of St Andrews**

*Leverhulme Trust funded project: Socio-Cognitive skills of the African Elephant*

Designed, conducted and published high-impact experimental and observational field research exploring elephant cognition and social skills in Amboseli, Kenya; grant co-written with PI Prof. Richard Byrne.

## EDUCATION

**Nov 2001 – Mar 2005**

**PhD Evolutionary Psychology, School of Psychology, University of St Andrews**

Title: *Travel and food location by chimpanzees of the Budongo Forest Reserve, Uganda*

Supervised by Prof. Richard Byrne. Supported by a BBSRC Studentship.

**Oct 2000 – Oct 2001**

**MSc Human Biology, Institute of Biological Anthropology, University of Oxford**

Dissertation: *Gregariousness in female chimpanzees of the Budongo Forest Reserve, Uganda*

Supervised by Prof. Vernon Reynolds.

**Oct 1997 – Jun 2000**

**BA (Hons) Experimental Psychology, Oriel College, University of Oxford**

Papers completed: Animal Behaviour; Biology of Learning and Memory; Brain and Behaviour; Individual Differences; Memory and Cognition; Perception; Social Psychology.

## RESEARCH

*Publications h-index: 16*

**Bates LA** (2020) Cognitive abilities in elephants. In: *The Cambridge Handbook of Evolutionary Perspectives on Human Behaviour*. Eds. L. Workman, W. Reader & J. Barkow. Cambridge University Press, Cambridge.

van der Water A, Henley M, **Bates LA** & Slotow R (2020) A transformative conservation future for Thailand's captive elephants: A commentary on Baker & Winkler Elephant Rewilding. *Animal Sentience*.

**Bates LA** & Byrne RW (2019) The Evolution of Intelligence: Reconstructing the Pathway to the Human Mind. In: *The Cambridge Handbook of Intelligence*, 2<sup>nd</sup> Edition. Ed. R. Sternberg. Cambridge University Press, Cambridge.

Pretorius Y, Garai M & **Bates LA** (2018) The status of African elephant *Loxodonta africana* populations in South Africa. *Oryx*. doi:10.1017/S0030605317001454.

Garai ME, **Bates LA**, Bertschinger H, Delsink A, Pretorius Y, Selier J, Zitzer HR (2018) Non-lethal elephant population control methods: Summary of the first workshop of the Elephant Specialist Advisory Group of South Africa. *Bothalia – African Biodiversity and Conservation* 48 (2) a2357.

**Bates LA** (2018) Elephants – Studying Cognition in the African Savannah. In: *Field and Laboratory Methods in Animal Cognition*. Eds. N. Bueno-Guerra & F. Amici. Cambridge University Press, Cambridge.

**Bates LA** & Byrne RW (2014) Primate Social Cognition: What we have learned from nonhuman primates and other animals. In: *APA Handbook of Personality and Social Psychology Vol. 1. Attitudes and Social Cognition*. Eds. M. Mikulincer & P.R. Shaver. APA, Washington, DC.

Byrne RW & **Bates LA** (2011). Elephant cognition: What we know about what elephants know. In: *The Amboseli Elephants: A long-term perspective on a long-lived mammal*. Edited by CJ Moss, H Croze, & PC Lee. University of Chicago Press, Chicago.

Byrne RW & **Bates LA** (2011) Cognition in the wild: exploring animal minds with observational evidence. *Biology Letters* 7 619-622.

**Bates LA**, Handford R, Lee PC, Njiraini N, Poole JH, Sayialel K, Sayialel S, Moss CJ & Byrne RW (2010) Why do African elephants simulate oestrus? An analysis of longitudinal data. *PLoS One* 5 (4) 1-6.

Byrne RW & **Bates LA** (2010) Primate social cognition: uniquely primate, uniquely social, or just unique? *Neuron* 65 815-830.

**Bates LA** & Byrne RW (2010) Imitation: what animal imitation tells us about animal cognition. *WIREs Cognitive Science* 1 (5) 685-695.

**Bates LA** & Byrne RW (2009) Sex differences in the movement patterns of free-ranging chimpanzees: foraging and border checking. *Behavioral Ecology and Sociobiology* 64 247-255.



- Byrne RW, **Bates LA** & Moss CJM (2009) Elephant cognition in primate perspective. *Comparative Cognition and Behavior Reviews* 4 1-15.
- Byrne RW, Noser RG, **Bates LA** & Jupp PE (2009) How did they get here from there? Detecting changes of direction in terrestrial ranging. *Animal Behaviour* 77 (3) 619-631.
- Bates LA**, Lee PC, Njiraini N, Poole JH, Sayialel K, Sayialel S, Moss CJ & Byrne RW (2008) Do elephants show empathy? *Journal of Consciousness Studies* 15 (10-11) 204-225.
- Bates LA**, Sayialel K, Njiraini N, Poole JH, Moss CJ & Byrne RW (2008) African elephants have expectations about the locations of out-of-sight family members. *Biology Letters* 4 (1) 34-36.
- Bates LA**, Poole JH, & Byrne RW (2008) Elephant cognition: A Quick Guide. *Current Biology* 18 (13) R544-R546.
- Bates LA**, Sayialel K, Njiraini NW, Poole JH, Moss CJ & Byrne RW (2007) Elephants classify human ethnic groups by odour and garment colour. *Current Biology* 17 (22) 1938-1942.
- Byrne RW & **Bates LA** (2007). Sociality, Evolution and Cognition. *Current Biology* 17 (16) R714-723.
- Bates LA** & Byrne RW (2007). Creative or created: Using anecdotes to investigate animal cognition. *Methods* 42 (1) 12-21.
- Byrne RW & **Bates LA** (2007) Animal Brain Evolution: When is a group not a group? *Current Biology* 17 (20) R883-R884.
- Byrne RW & **Bates LA** (2006) Why are animals cognitive? *Current Biology* 16 (12) 445-448.
- Bates LA** & Chappell J (2002). Inhibition of optimal behaviour by social transmission in the guppy depends on shoaling. *Behavioural Ecology* 13 827-831.

### *Popular Books*

- Wood L (2020) *The Last Giants*. Hodder, London.
- ESAG (Garai ME, **Bates LA**, Pretorius Y, Hofmeyr M, Henley M, Selier J) (2017) *Understanding Elephants: Guidelines for safe and enjoyable elephant viewing*. Struik Nature: South Africa.

### *Oral Presentations (selected)*

- Keynote presentation:** Bates, LA (2019) The role of women in conservation and ethology. *Workshop: Herding together for conservation, organised by Elephants Alive, Elephants for Africa and Southern African Conservation Trust, Hoedspruit, South Africa.*
- Invited Presentation:** Bates, LA (2018) Elephant conservation: Does culture have a role to play? *Workshop: The Conservation Applications of Research on Elephant Behaviour and Ecology, Wissenschaftskolleg zu Berlin, Germany.*
- Invited Presentation:** Bates, LA (2017) Culture in elephants? *Daphne Jackson Trust Research Conference, Royal Society, London, UK.*
- Plenary Lecture:** Bates, LA (2017) Studying elephant minds: What can primatologists learn? *Primate Society of Great Britain Spring Meeting, Manchester, UK.*
- Bates, LA (2010) Using observational data to study cognition: elephants and primates. *International Primatology Society XXIII Congress, Kyoto, Japan.*

**Invited Presentation:** Bates, LA (2009) Social knowledge in African elephants.  
*Department of Zoology & Entomology, University of Pretoria, South Africa.*

Bates, LA (2006) Travel and food location in chimpanzees.  
*Animal Behaviour Society Conference, Utah, USA.*

## *Funding Obtained*

**Apr 2016**

**University of Sussex Research Development Fund**

**£8,200.** Wrote application for support including temporary Research Assistant and field-trip expenses.

**Jan 2016**

**Daphne Jackson Trust Research Fellowship, University of Sussex**

**0.5FTE salary plus £10,000 research expenses.** Conceived & wrote application for fellowship research.

**Mar 2005**

**Leverhulme Trust Research Project Grant - Named Post-Docotoral Fellow**

**£102,000.** Prepared and wrote application with PI Prof. Richard Byrne.

**Oct 2001**

**Biotechnology and Biological Sciences Research Council PhD Studentship**

**Full funding award,** including fees, stipend and field-work expenses.

## **TEACHING**

### *Student Supervision and Examining*

**Oct 2019 – Present**

**Research Methods and BSc research projects, School of Psychology, The Open University**

Teaching on final year *Investigating Psychology* module. Supervising BSc research projects on topics within Individual Differences and Social Psychology and writing lectures delivered both face-to-face and online.

**Sep 2016 – Present**

**Co-supervising PhD, MSc and BSc research projects, School of Psychology, University of Sussex**

Supervised 11 BSc Honours projects, four MSc projects and two PhD projects (ongoing) on various topics detailing elephant cognition and behaviour.

**Oct 2016**

**External examiner for MSc thesis, Faculty of Natural and Agricultural Sciences, University of Pretoria, South Africa.** Thesis title: Social organisation of African elephants in Pilanesberg.

### *Lectures and Seminars*

**Feb 2017, 2018, 2019**

**Lectures: *Animal Culture*, Psychology Now 2<sup>nd</sup> year module, University of Sussex**

Devised and delivered two lectures; devised essay questions and marking scheme, supervised calibration.

**Feb 2016**

**Lectures: *Primate Cognition*, Psychobiology 1<sup>st</sup> year module, University of Sussex**

Delivered two lectures previously prepared by Prof. Karen McComb.

**Mar 2006 & 2007**

**Seminar series: *Evolutionary Psychology*, School of Psychology, University of St Andrews**

Led seminars tied to associated second-year lecture course by Prof. Richard Byrne.

## DEVELOPMENT, TRAINING AND ENGAGEMENT

**Jul 2019 – Oct 2019**

**Researched, planned, drafted popular science book ‘The Last Giants’ for Mr Levison Wood.**

Wrote complete first draft of this book at the request of the named author and edited subsequent drafts.

**Aug 2017 – Aug 2018**

**Supervising student research project for Junior Science Symposium, Briarcliff High School, New York State, USA.** Supervising internet-based research project on tool-use in elephants for student participating in USA-wide high school science competition.

**Jan 2016 – Nov 2017**

**Daphne Jackson Trust and University of Sussex training courses: Funding and professional skills; Leadership skills; Media and PR skills; Presentation skills; Time-management and work-life balance.** Completing courses which have eased the transition back to academia and enhanced my professional development, readying me for the multi-faceted challenges of a lectureship role.

**Oct 2007 – Present**

**Media interviews about my research, Numerous internet, print, radio, and tv media.** Including for: *BBC One*; *BBC World Service*; *Discovery Channel*; *National Geographic*; *New Scientist*; *Off the Fence Productions*; *Radio New Zealand*; *Scientific American*; *The Guardian*; *The Times*; *The Psychologist*; *Tortoise*.

## ADMINISTRATION

**Jan 2016 – Present**

**Member of working group ‘Culture and Social Complexity’, Convention on the Conservation of Migratory Species (UNEP-CMS).** Analysing the conservation implications of culture in priority species.

**Oct 2015 – Present**

**Member of working groups: ‘Translocating elephants’, ‘Elephant welfare’ and ‘Policy and legislation’, ESAG.** Ensuring activities in these areas are compatible with latest scientific knowledge.

**Oct 2003 – Present**

**Peer reviewing,** Reviewed manuscripts and book proposals for numerous international journals and publishers, including *Animal Cognition*, *Animal Behaviour*, *Biology Letters* and *Current Biology*.

**Mar 2011**

**Co-editor of Special Feature ‘Cognition in the Wild’, *Biology Letters*,** with Prof. Richard Byrne.

**Sep 2010**

**Symposium Co-ordinator: ‘Cognition in the Wild’, IPS XXIII Congress, Kyoto, Japan.** Proposed and organised symposium with Prof. Richard Byrne, involving eight speakers.

## **Exhibit B**

## Exhibit B

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- Stoeger, A.S., D. Mietchen, S. Oh, S. de Silva, C.T. Herbst, S. Kwon & W.T. Fitch (2012) An Asian Elephant Imitates Human Speech. *Current Biology*, **22**(22): 2144-8
- Stoeger, A., Baotic, A. (2016) Information content and acoustic structure of male African elephant social rumbles. *Sci Rep* **6**, 27585.
- Stoeger, A., Baotic, A. (2017) Male African elephants discriminate and prefer vocalizations of unfamiliar females. *Sci Rep* **7**, 46414.

Viljoen, P. J. (1989) Spatial distribution and movements of elephants (*Loxodonta africana*) in the northern Namib desert region of Kaokoveld, South West Africa–Namibia. *Journal of Zoology*, **219**: 1–19.

Wood, J.D., B. McCowan, W.R. Langbauer, J.J. Viloen & L.A. Hart (2005) Classification of African elephant *Loxodonta africana* rumbles using acoustic parameters and cluster analysis. *Bioacoustics*, **15**: 143–161.

## **Exhibit C**

# Richard William Byrne FRSE

6<sup>th</sup> September 2018

Emeritus Professor

University of St Andrews

## Education

1969-1972 M.A. in Natural Sciences, St John's College, Cambridge (1st Class Honours)  
1972-1975 Ph.D., University of Cambridge, "*Memory in complex tasks*"

## Career

1976-1991 Lecturer in Psychology, University of St Andrews  
1991-1997 Reader in Psychology, University of St Andrews  
1997-2017 Professor of Evolutionary Psychology, University of St Andrews

## Awards

1972 Wright Prize & Hughes Prize, *St Johns College, Cambridge*  
1972-1975 MRC Studentship, tenure at MRC Applied Psychology Unit, Cambridge  
1993 *Association of Commonwealth Universities: Development Fellowship*  
1997 *British Psychological Society: Book Award*  
2001 *Collegium Budapest: Institute of Advanced Study. Awarded Convenorship of Focus Group 2003 "Precursors to Culture".*  
2002 Elected Fellow of the *Royal Society of Edinburgh*  
2007 Elected Fellow of the *Higher Education Academy*  
2017 *British Psychological Society: Research Board Lifetime Achievement Award 2017*

## Professional activities (since 2000)

**Focus Group Convenor**, *Precursors to Culture*, Collegium Budapest Institute Advanced Studies, Hungary. Oct-Dec 2003.

**Boyd Group Member** of Subgroup on *Use of non-human primates in research and testing*. 2000-2002

**Vice-President**, *International Primatological Society* 1996 – 2001

**National teaching:** *Quality Assurance Agency/ Scottish Higher Education Funding Council: Steering Committee for Assessment (2003-5)*

## H-Index: 64 (H-Index since 2013: 43)

## Scottish Primate Research Group

In 1987 I set up (with McGrew, Stirling; Rogers, Edinburgh; Whiten, St Andrews) the *Scottish Primate Research Group*, to co-ordinate the cognate research interests of the 3 centres, promote new joint grant applications, encourage outside visitors to Scotland and postgraduate admissions, and co-ordinate joint seminars and lectures. The *Scottish Primate Research Group* now attracts international notice (e.g. US researchers coming to spend Sabbatical with Group), and it is now larger and more productive than ever, with 21 faculty members and over 50 researchers.

## Fieldwork Periods

Mont Assirik, Senegal. January-April 1979. (Guinea baboon *Papio papio*)

Giant's Castle Game Reserve, South Africa. August-December 1983. (Chacma baboon, *Papio ursinus*)

Mahale Mountains, Tanzania. July-December 1984. (Chimpanzee, *Pan troglodytes*)

Virunga Volcanoes, Rwanda. July-December 1989. (Mountain gorilla, *Gorilla b. beringei*)

Mbeli Bai, Republic of Congo. August-October 2010. (Western gorilla, *Gorilla g. gorilla*)

## Editorial work (since 2000)

*Current Biology*, **Editorial Board**, 2006 - present

*Biology Letters*, **Editorial Board**, 2007 - 2013

*Animal Cognition*, **Editorial Board**, 1997 - 2011

*Animal Behaviour*, **Consulting Editor**, 1996 – 2000

*Journal of the Royal Anthropological Institute*, **Editorial Board**, 1995 - 2010

Refereeing of **book proposals**: Basil Blackwell, Cambridge University Press, Curzon Press, Lawrence Erlbaum Associates, Oxford University Press, John Wiley.

(And refereeing of **manuscripts**: numerous journals, including Science, Nature, PNAS, Proc.Roy.Soc.B., Phil.Trans.B, TICS, TINS, Psychological Science, Psychological Bulletin, Current Biology.)

Refereeing of **promotion applications**: Arizona State University; University of California, San Diego; University of Colorado; University of Florida, Gainesborough, FL; Max Planck Institute for Evolutionary Anthropology, Leipzig; Miami University, Ohio; University of Natal, RSA; University of Portsmouth, UK; University of Stirling, UK; York University, Toronto

Refereeing of **research grants**: BBSRC, ESRC, Israel Academy of Sciences and Humanities (Basic Research Foundation), L S B Leakey Foundation (Oakland, California), Leverhulme Trust, MRC, NSF (USA), NERC, NSERC (Canada)

Refereeing of **research programmes**: Leverhulme Trust, Max-Planck-Society, Germany, Earthwatch Europe

## Major invited lectures (since 2000)

- 2018 *The Royal Institution, London.* (**Public lecture and discussion**, 8<sup>th</sup> November)
- 2016 *University of Emory, Atlanta.* (**Public lecture**, 12<sup>th</sup> April)
- 2015 *85th James Arthur Lecture, American Museum of Natural History.* (**Public lecture**, 5th March)
- 2013 *Tarragona Laterality Conference.* (Invited lecture to Closed Conference)  
*University of Portsmouth.* (**Public lecture**, 25th April)
- 2012 *Institute of Evolutionary Biology, University of Zurich.* (Invited lecture in Workshop, *Unpacking intentionality in animal vocal communication: an integrative approach.*)
- 2011 *John Templeton Foundation.* (Invited lecture to Symposium, *The Emergence of Personhood*)  
*Hanse-Wissenschaftskolleg, Delmenhorst.* (Closed Workshop, *The evolution of human handedness*)  
*Institute of Evolutionary Biology, University of Zurich.* (**Public lecture**, 29th September)
- 2010 *INCORE Thematic Meeting, Berlin.* (Workshop, *Referential communication*)
- 2009 *German Society for Primatology* (**Plenary lecture**, 11<sup>th</sup> Congress, Hanover)  
*Year of Darwin Lecture, School of Biosciences, Birmingham University* (**Public lecture**)  
*Max Planck Institute for Evolutionary Anthropology, Leipzig.* (Workshop, *Understanding Tool Use*)
- 2008 *Institute of Cognitive Sciences, Montréal.* (Invited lecturer, Summer School on *Social Cognition*)
- 2007 *University of Vienna, Faculty of Life Sciences.* (Inter-faculty series, “The evolution of social cognition”)  
*European Federation of Primatology.* (**Plenary lecture**, Second Congress, Charles University Prague)  
*MRC / Cold Spring Harbor.* (Invited lecturer, Workshop on *Social Cognition*, St Anne's College, Oxford)  
*Carlsberg Academy, Copenhagen.* (**Plenary lecture**, conference *Missing Links*)
- 2006 *The Royal Society, London.* (Symposium, *From Brain to Culture*)  
*Japan Society for Animal Psychology* (**Plenary lecture**, 66<sup>th</sup> Annual Meeting, Kyoto.)
- 2005 *Portuguese Primatological Association, 2<sup>nd</sup> Int. Conf.* (**Plenary lectures** to conference, Lisbon)  
*University of Tokyo, “Evolutionary Cognitive Sciences” series* (Lecture)
- 2004 *Institute of Cognitive & Decision Sciences, University of Oregon.* (**Public Lecture**).  
*Wenner-Gren Foundation for Anthropological Research.* (Closed conference “Roots of Human Sociality”, North Carolina.)
- 2003 *European Workshop in Cognitive Neuropsychology.* (International workshop, Bressanone, Italy.)
- 2002 *University of Oxford, McDonnell-Pew Centre Centre.* (Annual Autumn School in Cognitive Neuroscience.)  
*Perspectives on Imitation.* (International workshop, Royaumont Abbey, France.)  
*University of Oxford, McDonnell-Pew Centre for Cognitive Neuroscience.* (Theme “Rational animals?” Autumn School)  
*Fundació “la Caixa” Museum of Science, Barcelona; & Social & Cultural Centre, Tarragona* (**Public lectures**)
- 2001 *VII<sup>th</sup> European Congress of Psychology.* (**Keynote address** to Congress, forming part of BPS Centenary, London.)  
*Institute of Cognitive Neurology.* (Symposium, “Human Cognition”, UCL, London.)  
*British Association for the Advancement of Science.* (Lecture, **press conference**. “Constraints on Culture”, Glasgow.)  
*British Psychological Society.* (**Keynote lecture**, Consciousness & Experiential Psychology section.)  
*Knapping Stone: a uniquely hominid behaviour?* (International workshop, Abbaye des Prémontrés, France.)  
*Malingering & Illness Deception.* (International workshop, Blenheim, Oxford.)
- 2000 *British Neuropsychiatry Association.* (**Plenary lecture** to Millennial Meeting, “The social brain”)  
*International Congress for Cognitive Science.* (**Invited main lecture**, “Primate Cognition”, Inuyama.)  
*Gaia Research Project.* (Symposium, “Animal Architecture”, Edinburgh.)  
*Sorbonne University.* (Workshop, “Cognitive Science”, Paris.)  
*The Royal Society of Edinburgh.* (International Conference, “Human Nature”, Edinburgh.)  
*Max Planck Institute, Andechs.* (Symposium, “The Social Brain”, Bochum.)  
*University of Ghent.* (Symposium, “Science and Philosophy of Pain”, Gent.)

**Additional invited, funded talks at:** Auckland University (Psychology, Zoology); BAAS SET7 Week (St Andrews); Gesamthochschule, Kassel (Primatenbiologie); Deutsches Primatenzentrum, Göttingen; Duke University, North Carolina (Biological Anthropology); Dundee University (teaching forum); Durham University (Psychology, Anthropology); Eötvös Loránd University, Budapest (Ethology); Hang Sen Centre for Cognitive Studies, Sheffield (twice); Hawaii University, Honolulu (Psychology); Kyoto University; Living Links Center, Emory University; MRC Cognitive Brain Research Unit, Cambridge (twice); Max Planck Institute, Leipzig; Max Planck Institute, Seewiesen, Bavaria; Miami University, Ohio (Zoology); University of Otago, New Zealand (Psychology); Queens University, Kingston Ontario (Psychology); Université de Rennes 1 (Zoology); Royal Anthropological Institute, London; Royal (Dick) School of Veterinary Studies, Edinburgh; Yerkes Regional Primate Research Center, Atlanta GA; UCSD (Psychology); York University, Toronto (Psychology); Universities of Aberdeen (Psychology), Abertay (Psychology), Cambridge (Psychology, Archaeology & Anthropology), Durham (Psychology, Anthropology), Edinburgh (Psychology, Zoology), Exeter (Psychology), Leeds (Psychology), Liverpool (Psychology, Zoology), Manchester (Psychology), Oxford (Zoology), Oxford Brookes (Anthropology), Reading (Archaeology), St Andrews (Divinity, Modern Languages, Zoology, Psychology), Stirling (Psychology), UCL (Archaeology), Sussex (Neuroscience & Robotics), York (Centre for Human Palaeontology & Human origins); Zoological Society of London.

## Broadcasting (since 2000)

BBC1 *6 O'Clock News (Scotland)* interview on own great ape research 2008; *6 O'Clock news (UK)* interview on own elephant research 2013  
 BBC2 *"The Secret Life of Pigs"* (consultant 2010)  
 BBC World/BBC4 *Evening News* interview on own elephant research 2013  
 ITV/STV (*ITN News*) interview on own elephant research (2013)  
 Australian ABC Channel TV (programme on my research in *Catalyst* series)  
 BBC Radio 4 *"Today"* (interviews 2008, 2000)  
 BBC Radio 4 Interview with Jonathan Miller, *Self-made things* (2005)  
 Australian Radio (article on own research in "The Science Show", 2001); *Radio Netherlands* (article on own research, 2001)  
 Numerous other interviews on own research: *ABC Radio Australia*, *Austrian Broadcasting Corporation*, *US Public Broadcasting Network*, *Breakfast Radio Auckland (NZ)*, *Radio Canada*, *Western Australia Radio*, *Discovery Canada*, *Radio New Zealand "Morning Report"* *Radio Ireland*, *Talkback Radio (Ireland)*, *BBC World Service*, *BBC Radio Scotland*, *Radio Wales*, *Radio Cambridgeshire*, *BBC Radio Jersey*, *BBC Radio 5 Live*, *Radio Tay*, *Kingdom FM*, *Talk 107*, *Voice of Russia*, *Wave 102*

## External Postgraduate Examining (since 2000)

2000 *Ph.D. Oxford Brookes University (Anthropology)* L. Ambrose.  
 2001 *M.Sc. University of Stirling (Psychology)* A Nowell.  
 2002 *M.Sc. University of Durham (Anthropology)* B A Whiting.  
*Ph.D. London School of Economics (Psychology)* K Rigby.  
 2003 *Ph.D. Exeter University (Psychology)* P.Citrynell.  
 2004 *Ph.D. University of Cambridge (Psychology)* J Dally  
*Ph.D. Exeter University (Psychology)* P.Citrynell, re-examination  
 2005 *Ph.D. University of Cambridge (Psychology)* J Dally  
 2008 *Habilitation. University of Vienna (Faculty of Life Sciences)* Dr Thomas Bugnyar  
 2009 *Ph.D. University of Cambridge (Psychology)* C Bird  
 2012 *Ph.D. University of Cambridge (Archaeology & Anthropology)* P Bertolani  
*Ph.D. University of Birmingham (Psychology)* J Trosciano  
 2016 *Ph.D. University of York (Psychology)* Alejandra Picard  
 2017 *Ph.D. University of Lincoln (Psychology)* A Frohnwieser  
 2018 *PhD Oxford Brookes University (Psychology)* M de Guinea

## PhD Supervision (since 2000)

1999-04 R Noser (self-funded), "Navigation by chacma baboons within the home-range"  
 2000-04 R da Cunha (funded by CAPES, Brazil), "Long distance communication of howler monkeys"  
 2000-04 A Valero (funded by CONACYT, Mexico), "Social interactions of spider monkeys"  
 2001-05 L Bates (funded by BBSRC), "Foraging skills of female chimpanzees"  
 2004-08 E Cartmill (funded by Univ. St Andrews) "Gestural communication in great apes"  
 2005-06 F Moore (joint supervision) "Effects of resource control on female reproductive strategies"  
 2005-09 A Ruiz (funded by ORS) "Monkeys' understanding of intention and attention"  
 2007-10 C Hobaiter (funded by own EC grant) "Gestural communication in great apes"  
 2007-11 C Casar (funded by CAPES, Brasil) "Vocal communication of wild titi monkeys"  
 2008-12 K Hall (funded by Janet Anderson trust and ORSAS) "Theory of mind in chimpanzees"  
 2010-14 L Orr (funded by NSF Studentship) "gestural communication in gorillas"  
 2011-15 A Smet (funded by Univ. St Andrews) "Cognition in the African elephant"  
 2012-16 B Fallon (self-funded) "Gestural communication by sexually consorting male chimpanzees"  
 2013-17 K Graham (funded by Univ. St Andrews) "Negotiation of sexual relationships among bonobos"

## Books

- Byrne, R W (2016) *Evolving Insight*. Oxford University Press, Oxford.
- Byrne, R W and Whiten A (Eds.) (1988) *Machiavellian Intelligence: Social Expertise and the Evolution of Intellect in Monkeys, Apes and Humans*. Oxford University Press, Oxford; 413 pages. [Japanese edition published by Nakanishiya Shuppan Press, Kyoto, 2004.]
- Byrne, R W (1995) *The Thinking Ape: evolutionary origins of intelligence*. Oxford University Press, Oxford; 266 pages. [British Psychological Society Book Award 1997. Reprinted annually; Japanese edition published by Otsuki Shoten, Tokyo, 1998. Chinese edition, in translation, published by Hunan Education Publishing House, 2006.]
- Whiten, A and Byrne, R W (Eds.) (1997) *Machiavellian Intelligence II: Extensions and Evaluations*. Cambridge University Press, Cambridge; 403 pages. [Japanese edition published by Nakanishiya Shuppan Press, Kyoto, 2004.]

## Refereed Journal Articles

1. Byrne, R W (1977) Planning meals: problem-solving on a real data-base. *Cognition*, 5, 287-232.
2. Byrne, R W (1979) Memory for urban geography. *Quarterly Journal of Experimental Psychology*, 31, 147-154.
3. Byrne, R W (1981) Mental cookery: an illustration of fact-retrieval from plans. *Quarterly Journal of Experimental Psychology*, 33A, 31-37.
4. Byrne, R W (1981) Distance vocalisations of Guinea baboons (*Papio papio*): an analysis of function. *Behaviour*, 78, 283-312.
5. Byrne, R W (1982) Primate vocalisations: structural and functional approaches to understanding. *Behaviour*, 80, 241-258.
6. Byrne, R W, Conning A M and Young, J (1983) Social relationships in a captive group of Diana monkeys (*Cercopithecus diana*). *Primates*, 24, 360-370.
7. Byrne, R W and Salter, E (1983) Distances and directions in the cognitive maps of the blind. *Canadian Journal of Psychology*, 37, 293-299.
8. Conning, A M, and Byrne, R W (1984) Pointing to pre-school children's spatial competence: a study in natural settings. *Journal of Environmental Psychology*, 4, 165-175.
9. Byrne, R W and Whiten, A (1985) Tactical deception of familiar individuals in baboons (*Papio ursinus*). *Animal Behaviour*, 33, 669-673.
10. Appleton, C C, Henzi, S P, Whiten, A and Byrne, R W (1986) The gastro-intestinal parasites of *Papio ursinus* from the Drakensberg Mountains, R S A. *International Journal of Primatology*, 7, 447-454.
11. Hiraiwa-Hasegawa, M, Byrne, R W and Takasaki, H and Byrne, J M (1986) Aggression towards large carnivores by wild chimpanzees of Mahale Mountains National Park, Tanzania. *Folia Primatologica*, 47, 8-13.
12. Takasaki, H, Hiraiwa-Hasegawa, M, Takahata, Y, Byrne, R W and Kano, T (1986) A case of unusually early postpartum resumption of estrus cycling in a young female chimpanzee in the wild. *Primates*, 27, 517-519.
13. Byrne, R W, Whiten, A and Henzi, S P (1987) One-male groups and intergroup interactions of mountain baboons (*Papio ursinus*). *International Journal of Primatology*, 8, 615-633.
14. Whiten, A, Byrne, R W and Henzi, S P (1987) The behavioural ecology of mountain baboons. *International Journal of Primatology*, 8, 367-388.
15. Byrne, R W, and Whiten, A (1988) Towards the next generation in data quality: a new survey of primate tactical deception. *Behavioral and Brain Sciences*, 11, 267-273.
16. Whiten, A, and Byrne, R W (1988) Tactical deception in primates. *Behavioral and Brain Sciences*, 11, 233-244.
17. Gordon, A D, Jupp, P E, and Byrne, R W (1989) The construction and assessment of mental maps. *British Journal of Mathematical and Social Psychology*, 42, 169-182.
18. Byrne, R W, and Whiten, A (1990) Tactical deception in primates: the 1990 database. *Primate Report, Whole Volume* 27, pp.1-101.
19. Byrne, R W, Whiten, A and Henzi, S P (1990) Social relationships in mountain baboons: leadership and affiliation in a non-female-bonded monkey. *American Journal of Primatology*, 20, 313-329.
20. Byrne, R W and Byrne, J M E (1991) Hand preferences in the skilled gathering tasks of mountain gorillas. (*Gorilla g. beringei*). *Cortex*, 27, 521-546.
21. Whiten, A, Byrne, R W, Barton, R A, Waterman P G and Henzi S P (1991) Dietary and foraging strategies of baboons. *Philosophical Transactions of the Royal Society of London (B)*, 334, 187-197.
22. Byrne, R W and Whiten, A (1992) Cognitive evolution in primates: evidence from tactical deception. *Man*, 27, 609-627.
23. Barton, R A, Whiten, A, Strum, S S, Byrne, R W, and Simpson, A J, (1992) Habitat use and resource availability in baboons. *Animal Behaviour*, 43, 831-844.
24. Henzi, S P, Byrne, R W and Whiten, A (1992) Patterns of movement by baboons in the Drakensberg Mountains: Primary responses to the environment. *International Journal of Primatology*, 13, 601-628.
25. Mitani, J C, Hasegawa, T, Gros-Louis, J, Marler, P, and Byrne, R (1992) Dialects in wild chimpanzees? *American Journal of Primatology*, 27, 233-243.
26. Byrne, R W (1993) A formal notation to aid analysis of complex behaviour: understanding the tactical deception of primates. *Behaviour*, 127, 231-246.
27. Byrne, R W and Byrne, J M E (1993) The complex leaf-gathering skills of mountain gorillas (*Gorilla g. beringei*): variability and standardization. *American Journal of Primatology*, 31, 241-261.
28. Byrne, R W, Whiten, A, Henzi, S P and McCulloch F M (1993) Nutritional constraints on mountain baboons (*Papio ursinus*): implications for baboon socioecology. *Behavioral Ecology and Sociobiology*, 33, 233-246.
29. Barton, R A, Whiten, A, Byrne, R W and English, M (1993) Chemical composition of baboon plant foods: implications for the interpretation of intra- and interspecific differences in diet. *Folia Primatologica*, 61, 1-20.

30. Tanner, J E and Byrne, R W (1993) Concealing facial evidence of mood: evidence for perspective-taking in a captive gorilla? *Primates*, 34, 451-456.
31. Byrne, R W, (1995) Primate cognition: comparing problems and skills. *American Journal of Primatology*, 37, 127-141.
32. Byrne, R W and Tomasello, M (1995) Do rats ape? *Animal Behaviour*, 50, 1417-1420.
33. Byrne, R W (1996) Machiavellian intelligence. *Evolutionary Anthropology*, 5, 135-143.
34. Barton, R A, Byrne, R W, and Whiten, A (1996) Ecology, feeding competition and female bonding in baboons. *Behavioural Ecology and Sociobiology*, 38, 321-329.
35. Tanner, J E and Byrne R W (1996) Representation of action through iconic gesture in a captive lowland gorilla. *Current Anthropology*, 37, 162-173.
36. Henzi, S P, Lycett, J E, Weingrill, T, Byrne, R and A Whiten (1997) The effect of troop size on travel and foraging in mountain baboons. *South African Journal of Science*, 93, 333-335.
37. Teixidor, P and Byrne, R W (1997) Can spider monkeys (*Ateles geoffroyi*) discriminate vocalizations of familiar individuals and strangers? *Folia Primatologica*, 68, 254-264.
38. Byrne, R W and Russon, A (1998) Learning by imitation: a hierarchical approach. (Target Article) *Behavioral and Brain Sciences*, 21, 667-721.
39. Byrne, R W and Russon, A (1998) Common ground on which to approach the origin of higher cognition. (Response) *Behavioral and Brain Sciences*, 21, 709-717.
40. Byrne, R W (1999) Imitation without intentionality: using string-parsing to copy the organization of behaviour. *Animal Cognition*, 2, 63-72.
41. Byrne, R W (1999) Cognition in great ape ecology. Skill-learning ability opens up foraging opportunities. *Symposia of the Zoological Society of London*, 72, 333-350. [*Mammalian social learning. Comparative and ecological perspectives*, pp.333-350, eds. H O Box & K R Gibson. Cambridge University Press]
42. Teixidor, P and Byrne, R W (1999) The 'whinny' of spider monkeys: individual recognition before situational meaning. *Behaviour*, 136, 279-308.
43. Byrne, R W (2000) The evolution of primate cognition. *Cognitive Science*, 24 (4) 543-570.
44. Byrne, R W (2000) Is consciousness a useful scientific term? Problems of "animal consciousness." *Vlaams Diergeneeskundig Tijdschrift*, 69, 407-411.
45. Harrison, K and Byrne, R W (2000) Hand preferences in unimanual and bimanual feeding by wild vervet monkeys. *Journal of Comparative Psychology*, 114, 1-9.
46. Held, S, Mendl, M, Devereux, C, and Byrne, R W (2000) Social tactics of pigs in a competitive foraging task: the 'Informed Forager' paradigm. *Animal Behaviour*, 59, 559-576.
47. Byrne, R W, Corp, N, and Byrne, J M (2001) Estimating the complexity of animal behaviour: How mountain gorillas eat thistles. *Behaviour*, 138, 525-557.
48. Byrne, R W, Corp, N, and Byrne, J M (2001) Manual dexterity in the gorilla: bimanual and digit role differentiation in a natural task. *Animal Cognition*, 4, 347-361.
49. Held, S, Mendl, M, Devereux, C, and Byrne, R W (2001) Behaviour of domestic pigs in a visual perspective taking task. *Behaviour*, 138, 1337-1354.
50. Held, S, Mendl, M, Devereux, C, and Byrne, R.W. (2001). Studies in social cognition: from primates to pigs. *Animal Welfare*, 10, S209-217.
51. Stokes, E J and Byrne, R W (2001) Cognitive capacities for behavioural flexibility in wild chimpanzees (*Pan troglodytes*): The effect of snare injury on complex manual food processing. *Animal Cognition*, 4, 11-28.
52. Byrne, R W (2002) Imitation of novel complex actions: What does the evidence from animals mean? *Advances in the Study of Behavior*, 31, 77-105.
53. Byrne, R W (2002) Emulation in apes: Verdict "Not Proven". *Developmental Science*, 5, 21-22.
54. Byrne, R W & Stokes, E J (2002) Effects of manual disability on feeding skills in gorillas and chimpanzees. *International Journal of Primatology*, 23 (3), 539-554.
55. Corp, N & Byrne, R W (2002) The ontogeny of manual skill in wild chimpanzees: Evidence from feeding on the fruit of *Saba florida*. *Behaviour*, 139, 137-168.
56. Corp, N & Byrne, R W (2002) Leaf processing of wild chimpanzees: Physically defended leaves reveal complex manual skills. *Ethology*, 108, 1-24.
57. Held, S, Mendl, M, Devereux, C, and Byrne, R W (2002) Foraging pigs alter their behaviour in response to exploitation. *Animal Behaviour*, 64, 157-166.
58. Held, S, Mendl, M, Laughlin, K & Byrne, R W (2002) Cognition studies with pigs: livestock cognition and its implications for production. *Journal of Animal Science*, 80, E10-E17.



59. Byrne, R W (2003) Imitation as behaviour parsing. *Philosophical Transactions of the Royal Society of London B*, 358, 529-536.
60. Byrne, R W (2003) Animal Communication: What makes a dog able to understand its master? *Current Biology*, 13, R347-R348.
61. Byrne, R W & Corp, N (2004) Neocortex size predicts deception in primates. *Proceedings of the Royal Society B*, 271, 1693-1699.
62. Byrne, R W, Barnard, P J, Davidson, I, Janik, V M, McGrew, W C, Miklósi, A & Wiessner, P (2004) Understanding culture across species. *Trends in Cognitive Sciences*, 8, 341-346.
63. Corp, N & Byrne, R W (2004) Sex difference in chimpanzee handedness. *American Journal of Physical Anthropology*, 123, 62-68.
64. Scerif, G, Gomez, J-C and Byrne, R W (2004) What do Diana monkeys know about the focus of attention of a conspecific? *Animal Behaviour*, 68, 1239-1247.
65. Byrne, R W (2005) Animal evolution: foxy friends. *Current Biology*, 15, R86-87.
66. Byrne, R W (2005) Social Cognition: Imitation, Imitation, Imitation. *Current Biology*, 15, R496-R500.
67. Held, S, Baumgartner, J, Kilbride, A, Byrne, R W & Mendl, M (2005) Foraging behaviour in domestic pigs (*Sus scrofa*): remembering and prioritizing food sites of different value. *Animal Cognition*, 8, 114-121.
68. Byrne, R W (2006) Animal Cognition: Know your enemy. *Current Biology*, 16, R385-R688.
69. Byrne, R W & Bates, L A (2006) Why are animals cognitive? *Current Biology* 16, R445-R447.
70. Byrne, R W and Tanner, J E (2006) Gestural imitation by a gorilla: Evidence and nature of the capacity. *International Journal of Psychology and Psychological Therapy* (Special issue on Animal Learning and Cognition), 6, 215-231.
71. Da Cunha, R G T and Byrne, R W (2006) Roars of black howler monkeys (*Alouatta caraya*): evidence for a function in inter-group spacing. *Behaviour*, 143, 1169-1199.
72. Janmaat, K R L, Byrne, R W and Zuberbühler, K (2006) Primates take weather into account when searching for fruits. *Current Biology* 16, 1232-1237.
73. Janmaat, K R L, Byrne, R W & Zuberbühler, K (2006) Evidence for a spatial memory of fruiting states of rain forest trees in wild mangabeys. *Animal Behaviour*, 72, 797-807.
74. Tanner, J E, Patterson, F G and Byrne, R W (2006) The development of spontaneous gestures in zoo-living gorillas and sign-taught gorillas: from action and location to object representation. *Journal of Developmental Processes*, 1, 69-102.
75. Topál, J, Byrne, R W, Miklósi, A, Csányi, V (2006) Reproducing human actions and action sequences: "Do as I Do!" in a dog. *Animal Cognition*, 9, 355-367.
76. Zuberbühler, K & Byrne, R W (2006) Social cognition. *Current Biology*, 16, R786-R790.
77. Barnard, P J, Duke, D J, Byrne, R W and Davidson, I (2007) Differentiation in cognitive and emotional meanings: an evolutionary analysis. *Cognition and Emotion*, 21, 1155-1183.
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## **Exhibit II**



## **Declaration of William Keith Lindsay**

I, William Keith Lindsay, declare as follows:

### **Introduction and Qualifications:**

1. My full name is William Keith Lindsay. I am also known more generally, and in some published work, by the name Keith Lindsay. I was awarded a Bachelor of Science with Honours in Zoology from the University of British Columbia, Vancouver, Canada, in 1974. I completed an MSc in Zoology at the University of British Columbia in 1982, under the supervision of Professor A.R.E. Sinclair, with a dissertation entitled "Habitat selection and social group dynamics of African elephants, in Amboseli Kenya." I received a PhD in Zoology at the University of Cambridge in 1994, under the supervision of Dr. S.K. Eltringham, for my dissertation entitled "Feeding ecology and population demography of African elephants in Amboseli, Kenya." I have published over forty scholarly articles related to elephants. My CV, which lists these articles, is attached as **Exhibit A**.
2. I submit this Declaration in support of the Nonhuman Rights Project, Inc.'s petition for a writ of habeas corpus regarding the captive elephants, Mari and Vaigai, at the Honolulu Zoo. I have personal and professional knowledge of the facts to which I attest, and I am not a party to the proceedings.
3. I am a natural resources advisor/monitoring and evaluation expert with over 40 years of professional experience in Southeast Asia, Africa, Latin America, the Caribbean, North America, and Europe, in planning, conducting, and evaluating field projects and in senior administrative and leadership roles. I was a senior staff member at the Oxford-based consultancy, The Environment & Development Group (EDG), during 1994-2013. I undertook a variety of long- and short-term consultancy missions and project work, both independently and with EDG, in project/programme monitoring and evaluation, environmental assessment and land-use planning, community-based natural resource management, protected area monitoring and management, and biodiversity research and conservation. Since 2013, I have been an independent consultant on assignments for international donor agencies and nongovernmental organizations (NGOs) in Africa and Asia.
4. My life-long involvement with elephants began in 1977 when I joined the Amboseli Elephant Research Project (AERP) in southern Kenya. I went on to undertake and complete my MSc and PhD research projects on feeding ecology and population processes, through observational study of free-ranging wild African elephants in their natural environment. I have remained a Collaborating Researcher with AERP, focusing on ecosystem change,

elephant ranging, and human-elephant co-existence. There has been cross-over into my professional work; since the late 1980s/early 1990s, I have had elephant-focused assignments in all parts of Africa, including southern Africa (elephant management policies in Botswana and South Africa), Central Africa (regional elephant conservation coordination for the Convention on Migratory Species), West Africa (research on the movements, population structure and habitat requirements of the Gourma elephants in Mali) and East Africa (Kenya's national elephant strategy, woodland habitat conservation in Tanzania). My work in Asia includes community-based natural resource management and conservation in elephant-populated regions of Cambodia and Thailand and the promotion of human-elephant coexistence in Myanmar. My current concerns include stopping the international trade in ivory and live elephants through supporting African elephant range states in a coordinated action on CITES (the Convention on the International Trade in Endangered Species) and facilitating dialogue towards resolution of human-elephant land-use conflict, in partnership with practitioners within and between Africa and Asia. For the past 15 years, I have been active in promoting improved well-being for elephants held in captivity in North American, European, and Asian zoos and circuses.

5. My participation in academic groups include as Associate Fellow, 2003-2006, Environmental Change Institute, University of Oxford, and Member, 2009-present, Oxford Centre for Tropical Forests, University of Oxford. I have been a member of the IUCN/Species Survival Commission's African Elephant Specialist Group (AfESG) during 1992-2001 and more recently from September 2020 to present.
6. Much of my experience with elephant biology derives from my work with African savanna elephants but the fundamental principles of elephant ecology and behavior are applicable to African forest elephants and to Asian elephants. There is extensive literature on all three species, and while there are certainly documented distinctions between them in terms of habitat and food choices, and social behavior and relationships, the similarities due to common phylogeny and physical attributes and needs far outweigh these differences of detail. Throughout this document, I will simply refer to 'elephants,' but the consequences apply equally to all elephant taxa. The observations herein apply generally to captive elephants as well as those living in the wild.

**Autonomy and higher cognition demonstrated in elephants' foraging decisions and use of space**

7. As the largest living land animals, elephants have proportionately enormous metabolic requirements and thus the greatest need to find sufficient nutrients for maintenance, growth,

and reproduction (Christiansen 2004). They are the ultimate generalist herbivores, and they satisfy this ongoing need for nutrition by selecting diets from the diverse vegetation on offer in complex and constantly variable natural ecosystems (Roever *et al.* 2012; Woolley *et al.* 2011; Lindsay 1994). These ecosystems present both foraging opportunities and existential risks from natural and human hazards.

8. To navigate their way through this landscape of potential rewards and threats, elephants have evolved sensory systems and cognitive capacities that allow them to develop and exhibit flexible and responsive decision strategies, appropriate to each individual animal as well as to members of their social groups, to cope and prosper in the face of these multi-layered challenges (Poole & Granli 2009).
9. It has now been recognized that elephants possess complex cognitive abilities comparable in many respects to higher primates and cetaceans. Byrne & Bates (2011) reviewed the findings of research on elephants in the wild and in captivity and confirmed their significant capacity in several areas of physical and social cognition:
  - Physical cognition:
    - Knowledge of environmental spaces and objects
    - Use of tools and understanding of causality
    - Learning to discriminate among features and categories
    - Quantity judgments
  - Social cognition
    - Knowing about others and their interactions
    - Communication and social manipulation
    - Social learning
    - Theory of mind
10. Elephants display a high degree of autonomy in the choices they make throughout their decades-long lives. Several of the aspects of elephants' physical cognition, particularly in the way they find their way around their natural environment, its rewards, and hazards, will be discussed in the sections below.

**Foraging strategies: selectivity, manipulation, memory, anatomy, and cognitive ability**

11. Elephants select items from all parts of plants and a vast range of species in plant communities (Poole & Granli 2009; Lindsay 1994). The major component of biomass in most plants is structural materials, including fibrous stems, branches, and roots. Down the abundance scale, with less fibre and greater soluble cell contents, are leaves and finally the

most nutritious plant parts: fruits, seeds, and flowers. In order to satisfy their large and absolute forage needs, elephants must include in their diets large quantities of coarse plant material and cell walls, with varying degrees of lignification, and relatively smaller amounts of easily digestible material. The relative amounts of digestible plant parts will vary greatly between plant communities, and between seasons in the same locations (Roever *et al.* 2012; Duffy *et al.* 2011).

12. An elephant's foraging strategy must be able to respond to these changes, making use of the best foraging opportunities at any given time and place. These opportunities present themselves in areas of land ranging from tens to many thousands of square miles, depending on the productivity of the plant communities and their spatial extent (Sukumar 2003). In zones that are more stable and well-watered within and between years, large amounts of digestible plants will be more-or-less continuously available and there may be little need to cross more than a few square miles in search of food. In the more arid savannas and semi-deserts of sub-Saharan Africa, the timing and localization of rainfall events are much less predictable between years and their range areas are necessarily much larger, and flexible (Young *et al.* 2009, Duffy *et al.* 2011). Paradoxically, the forests of much of Asia and the African Congo basin provide relatively little food at ground level, with biomass and leaf canopy locked up in treetops. Forest elephants rely on scattered and ephemeral openings in the forest cover and seasonally fruiting trees for their forage (Campos-Arceiz & Blake 2011). To achieve optimal nutritional intake, elephants must have considerable capacity for spatial and categorical memory of the localities of the plants available in the best foraging sites and their timings within such ranges (Roever *et al.* 2012).
13. There are different components to the predictability of food supplies: some plant communities, such as wetlands, will be continuously productive although with possibly less nutritious/more fibrous food, while others may be temporarily productive only during times of abundant rainfall yet may have highly nutritious plant components. The pattern of food abundance can change between years, varying between times of drought and plenty (Birkett *et al.* 2012). In forests, the timing of fruiting varies between different tree species, which are widely distributed and often isolated. Elephants must learn and remember all these locations and timings, and are able to recall them when appropriate (Polansky *et al.* 2015). Older elephants retain knowledge of past events and locations of food and water that were appropriate at specific times of drought or plenty, and they teach this knowledge to younger family members (McComb *et al.* 2001).
14. This memory spans years and even decades, and there is evidence that older female

elephants in family groups have better survival in droughts than do younger animals, and they can lead their companions to the best spots that had been favorable in the past (McComb *et al.* 2001). Areas of the brain active in spatial memory are well-developed in elephants (Jacobs *et al.* 2011). But to make use of this memory, they must also be able to put memories together with current sensory information, as they make the correct, context-appropriate decisions on the direction and distance to move (Polansky *et al.* 2015, Jacobs *et al.* 2014).

15. With their highly developed sense of smell, and in combination with hearing thunder, elephants can detect the direction of distant rainstorms that will result in flushes of fresh vegetation (Birkett *et al.* 2012). Olfactory areas of the elephant brain are also highly developed (Jacobs *et al.* 2014).
16. The location of other necessary resources, and their spatial and temporal availability, are searched for, monitored, remembered, and recalled. An elephant must drink large amounts of water at least every few days. Thus they must find sources of clean water for drinking. Other resources include: water or mud for cooling/wallowing; minerals - if they cannot be found in vegetation, then areas of salty soil or rock ('salt-licks') must be located; and shelter, such as tree canopies, for relief from the sun during the heat of the day (Boult *et al.* 2019).
17. Elephants' bodies are adapted for covering large distances. The average distance of ground covered per day is a remarkably consistent at  $\pm 10$ km in 24 hours (as evident in a variety of studies reviewed in Miller *et al.* 2016). This figure has been documented across very different biomes, from arid deserts, through different semi-arid savanna types, to moist tropical forests (Douglas-Hamilton 1998, Leggett 2009, Wall *et al.* 2013, Wyatt & Eltringham 1974, Merz 1986, Galanti *et al.* 2000). Within this stable daily movement pattern there is, however, a wide range in distance traveled in any given day, from less than 1km when foraging locally to 30km or more of directed movement when moving to new foraging areas.
18. Striding over large areas is accomplished most efficiently with long legs, and as longer legs evolved, there was the parallel evolution of foraging anatomy to reach from ground to mouth. Modification of a prehensile upper lip has led to the development of the trunk seen today (Shoshani 1998), which is a highly specialized organ useful not only for different forms of feeding, but also for drinking, olfaction, grooming, visual and auditory social signaling, and other motor functions.
19. Studies of foraging elephants (*e.g.* Guy 1976, Short 1981, Lindsay 1994) have documented that a wide range of food items is chosen from hundreds of species of plants, including

fruits, buds, leaves, climbing shoots, flowers, growing stems, woody stems and branches, bark, and roots. Because it forms continuous ground cover and is easy to pluck/harvest, grass forms a significant portion of elephants' diets when it is available and abundant. All grass parts - flowers/ seeds, leaves, stems, and roots - are eaten, as and when each is most nutritious at the time of year and growth stage. Each item of food requires specific processing and handling, to select the most nutritious, digestible bits and discard the less digestible parts or those holding soil or other contaminants (Poole & Granli 2009).

#### **Use of trunk, other body parts and tools**

20. The musculature of the trunk requires millions of sensory and motor nerve connections, and the trunk is capable of both immense strength and fine control in selecting, picking up, and moving objects in the environment. Elephants use their trunks in extremely dexterous manipulation of food items, analogous to the human hand in its ability to handle objects with delicate control, with the added quality of olfaction (Rasmussen & Munger 1996). As in humans, the evolution of this manipulation organ required accompanying neural development (Onodera & Hicks 1999).
21. Other food preparation techniques include the lifting and moving of branches to reveal lush grass beneath. Such adjustment of the local environment implies a deeper understanding of the localization of plant productivity. Elephants also use other body parts to process food items. Tusks are used in different ways: to cut grass stems, break twigs and branches, carve bark from trees, dig for roots or water. Feet are used in kicking up roots, crushing, or flattening thorns (Poole & Granli 2009).
22. Tools may be fashioned from tree branches and used to pry into bark or dig salty soil from ground sources. Tools in the form of branches serving as 'back scratchers' are also used for grooming, and mats of vegetation may be used as sunshades (Hart *et al.* 2001).

#### **Acute awareness of and response to risk factors in the environment**

23. Elephants have a keen awareness of risk factors in their environment and they make swift assessments and take appropriate responses. Predation is a key risk. Very young calves are vulnerable to attack by lions, and when these predators are detected, all family members are cooperatively protective; alerted by a specific alarm call, they will rush to protect the calf and chase away the predator. Older females in particular show rapid and appropriate responses (McComb *et al.* 2011).
24. The primary risk to elephants, however, are humans. There are two ways that this presents itself: through competition in the way they use land and through killing for the ivory trade (Thouless *et al.* 2016). In land use competition, elephants can themselves come into conflict

with human groups who practice both agriculture and livestock husbandry.

25. Elephants are displaced when their previously available wild habitat is converted to agriculture or settlement (Mmbaga *et al.* 2017). When this happens, there is active competition for the use of those fields, particularly when the plants in fields are more attractive to elephants than the vegetation on offer in natural habitats. Elephants make the rational foraging choice of preferring these more nutritious food sources to many of their natural foods that are declining in quality (Osborn 2004). Elephants also come into direct conflict with livestock owners who may also be semi-mobile pastoralists. There is more scope for the sharing of livestock grazing lands, but the key points of conflict are at waterpoints. Again, there is injury and mortality on both sides of this conflict (Kuriyan 2002).
26. There is very rapid learning by elephants of the dangers posed by these potential conflicts. One way that they avoid the conflict is to change their movement and foraging patterns to times of day when people are less active. Typically, this is at night. Elephants' 'raids' into agricultural fields are most common at night, as are visits to livestock waterpoints. If there is a protected area (national park or other designated wildlife protection zone) in the vicinity, elephants will retreat into it during daylight hours and emerge at night into the surrounding lands (Douglas-Hamilton *et al.* 2005). Evidence from radiotracking of elephants shows that they move much more quickly through landscapes they share with humans, from one zone of perceived relative safety to another (Graham *et al.* 2009).
27. Killing of elephants by rural villagers or armed gangs for their ivory is a much greater threat to elephants in the immediate term. Elephants can detect alarm calls from some considerable distance and avoid the area where killings take place (O'Connell-Rodwell & Wood 2007). Again, they seek the refuge provided by protected areas when they are secured by wildlife agencies.
28. There is clear evidence that elephants' response to humans is based on an ability to distinguish the risk posed by different human groups. Playback experiments show that this is mediated by vocal cues – they can recognize and respond to the sounds of Maasai warriors as distinct from that of women and children, and other ethnic groups, and respond with a flight response to the former but not the latter (McComb *et al.* 2014). There is a similar ability to differentiate among types of humans through visual and olfactory cues (Bates *et al.* 2007).

### **Human-elephant conflict transformed to coexistence through negotiation**

29. Many different attempts to mitigate or eliminate human-elephant conflict have been attempted over the past decades. Several of these have involved aggressive deterrence methods or hard barriers. But they have been met with mixed success, in large part because elephants are able to respond and find ways around them. The most effective responses to such conflicts treat elephants as autonomous and sentient beings and work with their biological nature to achieve solutions that promote coexistence rather than conflict (Shaffer *et al.* 2019).
30. One commonly used approach has been to try to scare elephants when they enter fields, with the use of firecrackers, 'thunderflashes', or shots from guns. While these measures may work in the short term, elephants soon discover that the noises are localized and generally nonlethal. Their use, however, does make the elephants more fearful and, thus, potentially more aggressive in their approach to humans (Davies *et al.* 2011).
31. Electric fences are erected by people to keep elephants out of crop fields (e.g. Kioko *et al.* 2008). Elephants, while initially deterred, respond to the hazard of electric shocks by handling the 'hot' wire with non-conducting tusks; they are then able to snap the wire and enter the field. They may also break fences by pushing other elephants into them; both these approaches demonstrate higher cognitive ability and autonomy. But it is the use of branches and logs as tools to break fences that is their most impressive feat. And these techniques, once discovered are rapidly copied and replicated by other elephants, a form of cultural transmission. The use of these fences, which deliver a powerful shock, also make elephants more aggressive and more likely to attack humans in retaliation.
32. More effective fences have been developed that recognize elephants' natural aversion to pungent plant products, such as chilies (Osborn 2002), and to the stinging attacks of honeybees (King *et al.* 2017). Fences using these more natural approaches have the additional advantage of providing a livelihood supplement to the farmers. A fence system that startles elephants with strobe lights, rather than alarming noises, has also proven effective; indeed, several of the described methods are more effective if used without noisemakers (Davies *et al.* 2011). Early warning systems, where observers share information about the presence of elephants in an area or near contested sites, have allowed more targeted, preventive approaches for reducing damage to human life, property, and livelihoods (Sugumar *et al.* 2013, Graham *et al.* 2011).
33. As noted above, it is now increasingly recognized by conservation workers that elephants are autonomous and sentient beings, and that coexistence can be achieved by people entering into 'negotiation' with elephants (Shaffer *et al.* 2019). Such programmes have



reduced the use of aggressive methods that serve only to escalate the tension between humans and elephants and increase the potential for mutual harm. Instead, they emphasize more positive approaches that work with elephants' perceptions and decision-making, allowing them some autonomy in their movements and feeding choices, while at the same time protecting human interests (e.g. Songhurst *et al.* 2016).

### **Summary of elephants' intrinsic cognitive qualities and needs based on their use of space**

34. Elephants, in their detailed understanding of, and carefully tailored responses to, the challenges of their natural habitats, demonstrate a deep degree of autonomy, sentience, and judgment in their foraging and movement strategies. The strategies for flexible, reactive problem-solving and decision-making make use of elephants' highly developed anatomical, sensory, and cognitive adaptations and abilities, and are fine-tuned over decades of experience in navigation of environments with both predictable and unpredictable elements. The experiences gained over a lifetime are then shared between members of their strongly bonded social groups through example, teaching, and learning. When we recognize that these qualities of elephants are deeply ingrained through millennia of evolutionary selection and adaptation to their native ecosystems, we must inevitably move from a position of domination towards appreciation of them as creatures deserving of, and requiring, autonomy to the greatest extent possible in appropriate environmental conditions.

### **Observations on minimum standards for captive elephants**

35. It is instructive to consider some of the so-called "standards" for the husbandry of elephants held in captivity that have been developed and modified over time by different zoo associations and other concerned groups. A discussion of these standards, in comparison to the actual needs of elephants, is presented below.

36. The Standards of the American Association of Zoos and Aquariums (AZA 2022) specify the following minimum acceptable spatial areas for indoor and outdoor enclosures for its member zoos:

- Indoor: Females – 37m<sup>2</sup> (400 square feet) per animal; females with calves – 56m<sup>2</sup> (600 sq.ft.); Males – 56m<sup>2</sup> (600 sq.ft.)
- Outdoor: Females and males – 500 m<sup>2</sup> (5,400 sq.ft. or 0.12 acre).

The AZA standards also specify minimum figures for size and composition of social groups:

- Females: 3 adult females; Males: 2 adult males; Mixed group: 3 adults of either sex.

37. For the purpose of comparison, it is worth considering the current standards of the British and Irish Association of Zoos and Aquariums (BIAZA 2019). They go some way beyond AZA standards, having increased steadily over recent years, and include:

- Indoor: Females – 300m<sup>2</sup> (3,229 square feet) for up to and including 4 females; additional females 80m<sup>2</sup> each (861 sq.ft.); Males – 160m<sup>2</sup> each (1,722 sq.ft.)
- Outdoor: Females and males – 3,000m<sup>2</sup> for any shared space (32,290 sq.ft. or 0.75 acre); this is a minimum and a much larger space for 5 or fewer females and males of 20,000m<sup>2</sup> (4.9 acres) are considered desirable.

The BIAZA standards' minimum figures for size and composition of social groups are:

- Females: 4 compatible adult females; Males: at least 2 adult males of different ages in bachelor groups and with the opportunity of mixing with females.
- All elephants must have the option to get away from other elephants if so desired, through use of space and visual or physical barriers in the enclosure.

38. The "Best Practice" guidelines developed by the Coalition for Captive Elephant Well-Being (Kane *et al.* 2005), which were the result of a meeting attended by elephant husbandry and welfare experts and zoo professionals at Tufts University in 2004, are intended to take greater cognizance of elephant biology. The CCEWB recommends the following minimum conditions for space:

- Indoor: Females – 60m<sup>2</sup> (645 sq.ft.) per animal, overnight; 185m<sup>2</sup> (1,990 sq.ft.) per animal in winter quarters (i.e., longer term); males – 110 m<sup>2</sup> (1,184 sq.ft.) overnight; 320m<sup>2</sup> (3,444 sq.ft.) winter quarters
- Outdoor: Females and males – Sufficient to allow walking of 10 km (6.2 miles) per day. and for social groups and companions:
- African savanna elephants: 10 individuals; African forest elephants and Asian elephants: 5 individuals
- Females: related animals and socially bonded animals never separated; Males: separated from their maternal group only by or after sexual maturity (10 years or older); Sub-adult and adult males: separate facilities, including separate night quarters and yards for male elephants, as well as the option of common housing and yards for males and females.

39. The fundamental biological needs of elephants have been established by the extensive scientific research undertaken thus far on the living elephant species in their natural ranges, as described in part above. A comparison between the sets of space and housing standards

with each other, and with the evidence from elephant biology, makes it clear that the minimum standards adopted by the AZA for zoos located in the United States are weaker than both those of the United Kingdom and the CCEWB elephant welfare experts, which are themselves also inadequate when compared to elephants' natural lives.

40. The AZA standards for social conditions are equally inadequate. These guidelines appear to be a compromise between the actual needs of elephants and the financial and logistical difficulties faced by AZA member zoos in meeting such requirements, with the balance tilted firmly towards the latter criteria.
41. All of these standards fall far, far short of fulfilling elephants' requirements for space and sociality in both indoor and outdoor facilities (in fact, by several orders of magnitude).
42. A review by Atkinson & Lindsay (2022) has argued persuasively that: "Quality space means that elephants can forage in natural, diverse vegetation, walk for miles each day, and exert a high degree of control over their social interactions. They suffer in zoos psychologically and physically because of the limits of what can be provided within such restricted environments." They conclude that, for captive situation, only "100ha or more of diverse, natural habitat in a warm climate would offer individual elephants the opportunity to live fulfilling lives."

### **Information sources and observations of Mari and Vaigai at the Honolulu Zoo**

43. There are two Asian elephants currently resident at Honolulu Zoo (HZ). Their history of capture at an early age and movement to the HZ, along with observations of their present state indicates that they have led lives with very limited ability to exercise their autonomy. In relation to the quality of their lives in captivity, I have studied the following information sources:

#### **Satellite imagery**

- A satellite image on Google Earth Pro (©2022; version 7.3.6.9345), image date 3 June 2022, showing the HZ elephant exhibit. Zooming and moving around this image allowed visual inspection of the elephant enclosure and its features. The Ruler tool was used for measuring linear distances and areas of polygons to estimate the dimensions and size of the elephant enclosures and their features.

#### **Documents**

- A Word document, with publicly available hyperlinks, summarising the location and management of the HZ and its elephant exhibit, along with the history of the two elephants and others that have been held at the Zoo. Available at:

[https://docs.google.com/document/d/1h5pujESfc2\\_Kar8LtTMmJ5F4A1HR\\_08yRC3wtzJLrXY/edit](https://docs.google.com/document/d/1h5pujESfc2_Kar8LtTMmJ5F4A1HR_08yRC3wtzJLrXY/edit).

### **Websites**

- The HZ official website, <https://www.honolulu zoo.org>.
- Facebook posts: two posts, listed in the References.
- YouTube videos: four videos, listed in the References.
- The Elephant Database. A database that attempts to collate information on all elephants held in captivity worldwide. Its accuracy depends on the information supplied by informants and should be viewed with a healthy critical eye. Available at: <https://www.elephant.se/>.

### ***Photographs and video clips***

- Image files (in \*.jpg format), showing aspects of the elephant compound, the barn and the elephants. Available at: [https://drive.google.com/drive/folders/11xkg3ys7jqAM8pU8mXQh5VE\\_33C-IJhi](https://drive.google.com/drive/folders/11xkg3ys7jqAM8pU8mXQh5VE_33C-IJhi).
- Short video clips (\*.MOV format) of varying length, showing aspects of the elephant compound, the barn, the elephants, and zoo visitors. Available at: [https://drive.google.com/drive/folders/11xkg3ys7jqAM8pU8mXQh5VE\\_33C-IJhi](https://drive.google.com/drive/folders/11xkg3ys7jqAM8pU8mXQh5VE_33C-IJhi).
- An information sheet containing various multimedia items. Available at: [https://docs.google.com/document/d/1h5pujESfc2\\_Kar8LtTMmJ5F4A1HR\\_08yRC3wtzJLrXY/edit](https://docs.google.com/document/d/1h5pujESfc2_Kar8LtTMmJ5F4A1HR_08yRC3wtzJLrXY/edit).

### **Information on the elephants held at Honolulu Zoo: present and past**

44. The elephants currently held at HZ are female Asian elephants with the following details:
- Mari is 48 years old, born in the wild at an unspecified location in India in 1975. She was brought directly to HZ in 1982 at age seven. She was on her own for four years, until Joshi arrived at the Zoo (see below), and for another five years after Joshi died and before Vaigai arrived.
  - Vaigai is 38 years old, born in the wild at an unknown location in 1985. She was also brought directly to HZ in 1992, again at the age of seven, when she joined Mari. The two have been together for the subsequent 31 years.
45. There are records of only one other elephant being held at HZ in recent years, another female Asian elephant:

- Joshi died at age five, having been born in the wild at an unknown location in Asia in 1982, taken directly to HZ at age four in 1986. She died of an unspecified cause one year later in 1987.

46. Anecdotal information<sup>1</sup> suggests that other elephants have lived at the zoo in the past. In 1916, an African elephant named Daisy was reportedly acquired for the Queen Kapi‘olani Park – establishing the zoo in its present location. Daisy remained there until 1933, when she was killed by Honolulu Police Department officers after she trampled her trainer. In 1949, other animals, including an elephant (of unspecified species) were added to the collection. In 1974, other animals including an elephant (again, of an unspecified taxon) were donated to the zoo.
47. There have been no births of elephants at HZ, as there has been no attempt to breed either of the adult females.

### **The elephant facilities and their management**

48. It is clear to me in my professional opinion that the facilities and their management at the Honolulu Zoo fall far short of fulfilling the physical and psychological needs of the two elephants, including the need to exercise their autonomy, in both indoor and outdoor facilities.
49. The elephant exhibit was redeveloped and reopened in 2010. The total area of the exhibit was reportedly 1.4<sup>2</sup> to 1.5<sup>3</sup> acres. Although the area was said to comprise only the "elephant viewing areas," it is likely to include all the infrastructure and off-exhibit management facilities as well as the elephant barn and the different compounds/ yards and visitor facilities.
50. The zoo is administered by the City & County of Honolulu through the Department of Enterprise Services, and is located very close to the high density tourist area of Waikiki Beach. The elephant exhibit is only 300 yards from the main high rise complex of apartments and tourist hotels on the Waikiki waterfront, with a housing development only 325 yards away to the east and an entertainment venue, the Tom Moffat Waikiki Shell, some 200 yards to the south. This outdoor venue has seating for 2,400 visitors and seating space for an additional 6,000 people. Events including musical concerts in a range of genres, including rock, reggae and Hawaiian music, and other performances occur regularly in the

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<sup>1</sup> [https://en.wikipedia.org/wiki/Honolulu\\_Zoo](https://en.wikipedia.org/wiki/Honolulu_Zoo).

<sup>2</sup> <https://www.honolulu.gov/csd-news-2010/4764-new-elephant-exhibit-for-honolulu-zoo.html>

<sup>3</sup> <http://hawaiiiahe.com/positive-city-dedicates-new-elephant-exhibit/>.

daytime and evenings throughout the year. There are roads running past the zoo and elephant exhibit at all these boundaries.

51. The indoor and outdoor areas provided to the elephants have been examined with different information sources. Information on the structure of the indoor quarters has been gleaned from an examination of the Google Earth images, several relevant YouTube videos, and posts on the HZ website.
52. The size of the elephant living space within the barn is estimated, from examination of the Google Earth image of the barn, to be a maximum of 565 yd<sup>2</sup>. This barn might be physically spacious enough to "hold" the current number of elephants, but only for a few hours of any given day. It is completely unsuitable for keeping them confined for any more than this brief amount of time; confinement for any longer periods is likely to lead to foot and joint damage from standing on the hard substrate, and psychological damage from the noise and the frustration of prevented choice and movement.
53. The size of the outdoor exhibit area, as noted above, is said to be 1.4-1.5 acres. It is divided into two yards, each of which has a small pond. Examination of the Google Earth satellite image indicates that the various sections available to the elephants actually have the following dimensions:
  - Main yard, including the pond and waterfall: 0.43 acres. Long axis = 66 yards; width = 50 yards
  - Second yard: 0.35 acres. Long axis = 53 yards; width = 52 yards
  - Pens and enclosures, for training/ elephant management: 0.19 acres (940 sq. yards).The total area of the two yards, plus the training/ management areas, comes to 1.0 acres in the main elephant exhibit. With the barn, the total area available to the elephants is about 1.1 acres, rather than the 1.4-1.5 acres claimed by the zoo authorities.

As noted above, the natural ranges of elephants are much, much larger, by several orders of magnitude than these tiny exhibit areas.
54. As noted, the maximum linear distance available for directional walking within the largest exhibit yard is little more than 65 yards. All of the movements of elephants within the two yards are controlled directly and exclusively by Zoo staff.
55. The outdoor area and its management are described below:
  - Much of the ground cover in the exhibit yards is bare, compact soil. The terrain is a flat area with little stimulation or room to explore; a few boulders are stuck in the ground. While this landscaping may look appealing to the visiting public, the features provide no novelty or variety to the elephants themselves. They do nothing to alleviate the

tedium of these sterile surroundings.

- There is some shade provided by two "umbrellas" that appear to be about 8 yards in diameter, with an area of some 50 sq. yd. each. The landscaping appears to be designed more to project a feeling to visitors of a quasi-natural environment, rather than providing anything meaningful to the elephants.
- There is a pond in each exhibit area, neither of which appears to be deep enough to support an elephant's body weight, to take weight off their feet.

56. It appears that the elephants are moved into their stalls when zoo staff go off duty, spending at least half their day and probably longer in the close confines of the barn. On cold days, they are kept in the barn all day. **As elephants in the wild are actively moving for up to 18 hours every 24-hour period, this involuntary confinement is both physically and psychologically harmful.** It also removes agency from the elephants, depriving them of the basic need to make their own decisions on how and where they spend their time.
57. The handling modality of the elephants by keepers appears to be protected contact but with considerable control over movements and placement in exhibit areas.
58. The behavioral repertoire of the two elephants in the Honolulu Zoo is extremely limited, widely divergent from that of free-ranging elephants, and indicative of the pathology of zoo husbandry. Observations from the video clips and photographs have informed this conclusion. When the elephants are not simply standing and feeding, they can be seen walking between the front and back yards on the same path every time. There is no variety in their lives, no challenge to employ their mental capacity for exploration, spatial memory, or problem-solving. There is no opportunity to employ their wide range of vocalisations, to communicate and interact with a range of other elephants over distance.
59. The best that could be said for the current elephants is that they do not appear to have personality conflicts that result in aggressive actions between them. This situation does not sound like a positive outcome. The two females have spent many years together, but it is not clear how much social interaction there is between them, or of what nature – affiliative, aggressive or ambivalent.

### **Summary of elephant management by the zoo**

60. The elephants are managed intensively, with hands-on training and exercise activities. There is an emphasis placed on "enrichment," which appears intended to provide novelty and stimulation to the elephants' minds, to accompany the apparent concern for maintaining their bodily health. However, this intervention is imposed on the elephants, with all vestiges of autonomy having been removed.

61. In addition, elephants need the freedom to choose their own social companions, to avoid antagonism, and bond in social groups with compatible others. In an area the size of the current zoo compounds, and under the intensive management regime, there is little opportunity to form and maintain such separate sub-groups.
62. It is now accepted that elephants experience permanent damage to their brains as a result of the trauma endured in impoverished environments (Jacobs *et al.* 2021). However, it is less clear whether this impact is more damaging when the animal has had a longer period of independent, nature-based living before the deprivation, whether the trauma occurs earlier or later in their lives. Most of the elephants currently held in zoos were either born in captivity or taken from the wild at a very early age. The female elephants at HZ appear to have been removed from the wild around the age of seven years and then kept in zoo for the remainder of their lives.

### **Conclusions**

63. On the basis of my review of the sources of evidence I have studied and my analysis in relation to my own extensive professional knowledge and understanding of elephants' undeniable biological needs, I conclude that Mari and Vaigai are not being kept in anything close to a satisfactory environment that is consistent with an acceptable life for an elephant.
64. The life of these two elephants at Honolulu Zoo is nothing but a succession of boring and frustrating days, damaging to their bodies and minds, and punctuated only by interaction with their keepers. Their physical and psychological health has been severely compromised by the sustained deprivation of their autonomy and freedom of movement. They spend at least half, if not more, of each day in a barn with very little cushioning for their feet and joints. When allowed outside, they are commonly unable to walk more than 65 yards in any direction, they have limited shade from the sun, and only shallow water features that are not deep enough to allow proper bathing. The elephants receive predictable enrichment activities, are unable to communicate over large distances, and their acute hearing is bombarded by constant auditory disturbances from the hotel complex, the housing area, the nearby entertainment venue, and the visitors who can approach them closely.
65. My professional conclusions and recommendations are:
  - The two elephants should be moved, as soon as possible, to a “rewilding” facility in their native Asia or to a suitable elephant sanctuary in the United States or Brazil. If there is a possibility of rewilding the elephants, then that scenario should be considered. However, if rewilding is not viable, the elephants should be immediately relocated to a suitable elephant sanctuary according to practices that are well-established by sanctuary



professionals. They were all taken from the wild at an early age and have spent all their remaining years in the barren confines of zoo compounds or, in some cases, the much worse conditions of performance venues. Their behavior has been completely controlled by his human handlers, and for this reason has been stressful to the point of psychological damage.

- There is no obstacle to their recovering some measure of successful and fulfilling lives in the favourable ecological and social surroundings of a large, appropriate habitat area such as a sanctuary.
- Honolulu Zoo should never be used again to keep elephants captive, for public display or for any other purpose.

I declare under penalty of perjury under the law of Hawaii that the foregoing is true and correct.

William Keith Lindsay, Ph.D.



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Executed on the 18<sup>th</sup> of October 2023 at Oxford, United Kingdom.

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### **Facebook posts**

Mari swinging mud onto her back (2021)

<https://www.facebook.com/watch/?v=10158566493251531&ref=sharing>

Mari and Vaigai “picking” Suberbowl winner (2023)

<https://www.facebook.com/watch/?v=910371296818455&ref=sharing>

### **YouTube videos**

Mari and Vaigai during keeper demonstration (2009)

[https://www.youtube.com/watch?v=z4aL\\_ydhbxE&t=2848s](https://www.youtube.com/watch?v=z4aL_ydhbxE&t=2848s)

Mari and Vaigai being hosed down by keeper (2023)

<https://www.youtube.com/watch?v=zxbs3giZapk>

Elephant feeding (2019)

[https://www.youtube.com/watch?v=z4aL\\_ydhbxE&t=2848s](https://www.youtube.com/watch?v=z4aL_ydhbxE&t=2848s)

Mari and Vaigai keeper demonstration (2023)

<https://www.youtube.com/shorts/LAkPQ7nfjdg>

## **Exhibit A**

## Curriculum Vitae

<b>Name</b>	William Keith LINDSAY
<b>Profession</b>	Natural Resources Advisor/ Monitoring & Evaluation Expert
<b>Date of Birth</b>	5 November 1952
<b>Nationality</b>	Canadian / British (dual citizenship)

### Key experience

*Keith Lindsay is a natural resources advisor/ monitoring & evaluation expert with over 40 years' professional experience in Southeast Asia, Africa, Latin America, the Caribbean, North America and Europe, in planning, conducting and evaluating field projects and in senior administrative and leadership roles. He was a senior staff member at the Oxford-based consultancy, The Environment & Development Group (EDG), during 1994-2013. He undertook a variety of long- and short-term consultancy missions and project work, both independently and with EDG, in project/programme monitoring and evaluation, environmental assessment and land use planning, community-based natural resource management (CBNRM), protected area monitoring and management, and biodiversity research and conservation. Since 2013, Dr Lindsay has been an independent consultant on assignments for international donor agencies and NGOs in Africa and Asia.*

*Dr Lindsay has been engaged in research on the ecology of African savanna elephants with the Amboseli Elephant Research Project of southern Kenya since 1977, focussing on foraging behaviour, population dynamics, and coexistence with local human communities. His work continues on policy support for elephant conservation, international trade in ivory and live elephants under the Convention on International Trade in Endangered Species (CITES), and efforts to improve their well-being in both the wild and captivity.*

### Education

Ph.D. Zoology, 1995, University of Cambridge

M.Sc. Zoology, 1982, University of British Columbia, Vancouver, Canada

B.Sc. (Hons.) Zoology, 1974, University of British Columbia, Vancouver, Canada

### Summary of selected employment record

- Switzerland: Survey of elephants in Swiss zoos (Fondation Franz Weber, 2023)
- Myanmar: Monitoring & evaluation of Human-Elephant Coexistence project (Elephant Family, 2019-present)
- UK/ Europe: Support to African Elephant Coalition in the context of CITES (FFW, 2017-present)
- Tanzania: Terminal Evaluation of Kilombero wetlands conservation (Enabel - Belgium, 2018)
- UK/ Brussels: Project design, Sustainable Wildlife Management Project (European Commission/FAO, 2018)
- UK: CITES Information Document on live trade in African elephants (Humane Society International, 2017)
- Japan: Survey and report on solitary elephants in Japan's zoos (Elephants in Japan/Zoocheck, 2017)
- Kenya: Guidelines for transboundary conservation projects in Africa (EC, 2017)
- Mongolia: Results Framework, Forest conservation project (FAO, 2015–16)
- Tanzania: Mid-term Evaluation CBNRM project suite (EC, 2015–16)
- Tanzania: MTE southern Tanzania parks (SPANEST) project (UNDP/GEF, 2015)
- Thailand: MTE Sustainable management of biodiversity (SMBT) project (UNDP/GEF, 2014–15)
- Zambia: Benefit sharing study in Zambia's Game Management Areas (UNDP, 2014–15)
- Cambodia: Revision of MTE of Sustainable Forest Management project (UNDP/GEF, 2014)
- UK/ Global: Revision of Monitoring & Reporting Framework for UNREDD, 2011-15 (FAO, 2013-14)
- Botswana: Terminal Evaluation Improved Sustainability of Protected Areas project (UNDP/GEF, 2013)
- UK/ Central Africa: Gaps & options for elephant conservation in Central Africa (CMS/UNEP, 2011)
- Kenya: National Conservation & Management Strategy for Elephants (Kenya Wildlife Service, 2007–08)
- South Africa: Contributing author SA Elephant Assessment (CSIR, 2007)
- South Africa: Corresponding member Science Round Table (Dept. Env. Affairs & Tourism, 2005–06)
- Cambodia: MTE Conservation of Cardamom Mountains forest (UNDP/GEF, 2004-05)
- UK/ Chile: Technical support at CITES CoP12 (Care for the Wild International, 2002, 2004)
- Mali: Initiating Measures to Protect Gourma Elephants (US Dept. of State/ USFWS, 2003–2005)
- Jordan: Range ecologist (IFAD, July 1995)
- Botswana: Support to stakeholders' conference: African Elephant in the Context of CITES (EU, 1994)
- Botswana: Wildlife Ecologist/ Elephant policy, Department of Wildlife & National Parks (EU, 1988-92)
- Kenya/ UK: PhD - Amboseli elephant ecology, University of Cambridge (1982-94)
- Kenya/ Canada: MSc - Amboseli elephant ecology, University of British Columbia, (1977-82)
- Kenya: Field ecologist Amboseli National Park (New York Zoological Society, 1977-79, 1983)



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- 2018: *Elephants in Japan*. PAWS International Captive Wildlife Conference 2018, 9-11 November 2018. Performing Animal Welfare Society, Los Angeles.
- 2018: *Elephant conservation: International trade in live African elephants: an update*. PAWS International Captive Wildlife Conference 2018, 9-11 November 2018. Performing Animal Welfare Society, Los Angeles.
- 2018: *The lives of elephants in the wild and in captivity*. 9<sup>th</sup> International Symposium on Primatology and Wildlife Science. 3-5 March, 2018. Primate Research Institute, Kyoto University. During March 2018, the presentation was also given to meetings for: the City Council of Kofu: a group of zoo keepers and Directors including the Executive Officer of the Japanese Association of Zoos and Aquariums in Morioka; a public audience in Tokyo.
- 2016: *Elephant conservation: International trade in ivory and living elephants*. PAWS International Captive Wildlife Conference 2016, 11-13 November 2016. Performing Animal Welfare Society, San Andreas.
- 2014: *Elephants, captivity and conservation*. PAWS International Captive Wildlife Conference 2014, 8-10 November 2014. Performing Animal Welfare Society, Los Angeles.
- 2012: *An update from Amboseli Elephant Research Project: Reliable knowledge about elephant biology and conservation*. PAWS Summit for the Elephants 2012, 28-30 March 2012. Performing Animal Welfare Society and Oakland Zoo, Oakland.
- 2012: *Foraging and ranging of wild African elephants: implications for captive management*. PAWS Summit for the Elephants 2012, 28-30 March 2012. Performing Animal Welfare Society and Oakland Zoo.
- 2011: *Elephant conservation: Living in the real world*. Toronto Elephant Summit: Elephant challenges: Climate, care and costs. 16 April 2011. Toronto City Council and Toronto Zoo.
- 2006: *Elephant needs in captivity: Learning from nature*. Chicago City Council and Lincoln Park Zoo, 23 February 2006, Chicago.

## **Exhibit III**

## **Declaration of Joyce Poole**

I, Joyce Poole, declare as follows:

### **Introduction and Qualifications**

1. My name is Joyce Poole. I graduated with a Bachelor of Art with High Honors in Biological Sciences from Smith College in 1979. I received my PhD from the University of Cambridge in 1982 from the Sub-Department for Animal Behaviour, under the supervision of Professor Robert Hinde. I completed a Postdoctoral Research Fellowship from 1984-1988 at Princeton University under the guidance of Professor Daniel Rubenstein. I reside and work in Sandefjord, Norway, and in Il Masin, Kajiado County, Kenya. I run elephant behavior and conservation projects in Maasai Mara ecosystem, Kenya, and in Gorongosa National Park, Mozambique.

2. I submit this Declaration in support of the Nonhuman Rights Project, Inc.'s petition for a writ of habeas corpus regarding the captive elephants at the Honolulu Zoo. I am a nonparty to this proceeding.

3. I have studied wild elephants in Africa and worked toward their conservation and welfare for more than 40 years. My research interests are focused on social and reproductive behavior, acoustic and gestural communication, cognitive science, decision-making, and conservation. I am currently Co-Director of ElephantVoices, a California 501(c)(3) non-profit organization I co-founded in 2002, which aims to inspire wonder in the intelligence, complexity and voices of elephants, and to secure a kinder future for them. We advance the study of elephant cognition, communication and social behavior, and promote the scientifically sound and ethical management and care of elephants through research, conservation, advocacy, and the sharing of knowledge. Specifically, I direct the research, conservation, and welfare work for ElephantVoices.

4. In addition to co-directing ElephantVoices, I have worked and conducted research for a number of organizations, including: (1) as the Research Director of the Amboseli Elephant Research Project from 2002-2007, for the Amboseli Trust for Elephants, where I oversaw the elephant monitoring, collaborative research projects, and training programs for the then 3 decades-long study of elephants; (2) as a scientific advisor for Discovery in July, 1996 and July, 1997, for the IMAX production *Africa's Elephant*

*Kingdom*; (3) as a Consultant for Richard Leakey & Associates from 1994-1997 performing training, lecturing, and advising for wildlife documentaries; (4) as an Author from 1994-1995 for *Coming of Age with Elephants* (Hyperion Press, 1996; Hodder & Stoughton, 1996); (5) as a Coordinator of the Elephant Program for the Kenya Wildlife Service from 1991-1994, setting and implementing Kenya's elephant conservation and management policy, supervising management-oriented research, reconciling land use and other conflicts between elephants and people, and building local expertise; (6) as a Consultant for the World Bank, from 1990-1991, developing Pre-Project Facility by drafting the Elephant Conservation and Management Policy and Research Policy Framework and Investment Program for the Kenya Wildlife Service; (7) as a Consultant for the International Union for the Conservation of Nature, in 1990, compiling an overview of elephant conservation in Eastern Africa for the Paris Donors Conference; (8) as a Consultant for the Tanzanian Wildlife Department in 1989, drafting a successful proposal to the Convention on Trade in Endangered Species to up list the African elephant to Appendix I of the Convention; (9) as a Consultant to the World Wildlife Fund in 1989, engaging in discussions with Japanese and Chinese government officials and ivory carvers regarding detrimental impacts of the ivory trade on elephant survival; (10) as a Researcher for the African Wildlife Foundation in 1989, assembling data on effects of poaching on East African elephant populations; and (11) as a Researcher for the Amboseli Elephant Research Project from 1975-1980.

5. I have conducted field work as part of my scientific research in multiple sites in multiple countries over my career, including: (1) elephant monitoring, conservation and research as part of the Gorongosa Restoration Project in Mozambique, ongoing since 2011; (2) elephant monitoring and conservation project in the Maasai Mara ecosystem in Kenya, ongoing since 2010; (3) the initiation of Asian elephant monitoring and conservation in the Minneriya-Kaudulla National Parks in Sri Lanka in 2008; (4) the study of elephant communication, cognition, and social behavior, conducting playback experiments, and recording elephant vocalizations and behavior in the Amboseli National Park in Kenya, 1998-2009; (5) recording elephant vocalizations and behavior in Maasai Mara National Park, Tsavo National Park, and Laikipia District in Kenya in 1998; (6) assessing the numbers and habitat use of elephants in West Kilimanjaro, Tanzania in 1997; (7) overseeing numerous elephant surveys and studies of elephants carried out under my direction by the Kenya Wildlife Service Elephant Program in

Kenya from 1990-1994; (8) studying elephant vocal and olfactory communication via vocal, visual, and chemical signaling and assessment between musth males in Amboseli National Park, Kenya from 1984-1990; (9) studying the contextual use of very low frequency calls by elephants and assessing the effects of poaching on the age structure and social and reproductive patterns of elephant populations in Amboseli, Tsavo, Queen Elizabeth, and Mikumi National Parks in Kenya, Uganda, and Tanzania in 1989; (10) Focal animal sampling musth and male-male competition among elephants in Amboseli National Park, Kenya from 1980-1982; and (11) participating in Cynthia Moss' long-term studies of elephants in Amboseli National Park, Kenya from 1975-1979.

6. Over the course of my career, I have received several awards and honors related to my research, including: (1) the Horace Dutton Taft Alumni Medal awarded by the Taft School in 2017, for “going beyond the call of duty in service”; (2) an Outstanding Lifetime Achievement Award from the Jackson Hole Wildlife Film Festival in 2015; (3) a Certificate of Recognition from the California State Legislature and Assembly in 2007, for “tireless efforts in educating people on elephant captivity”; (4) the Smith College Medal in 1996 for elephant research and conservation work “exemplifying the true purpose of a liberal arts education”; (5) an F32 National Research Service Award (NRSA) Individual Postdoctoral Fellowship from the National Institute of Mental Health from 1985-1988; (6) a Research Fellowship from the Harry Frank Guggenheim Foundation in 1984; (7) a Research Fellowship from the New York Zoological Society from 1980-1981; (8) a Graduate Study Fellowship from Smith College in 1981; (9) the Sarah. W. Wilder and Sarah W. Whipple Fellowship from 1979-1980; (10) Sigma Xi from 1979-1980; and (11) the A. Brazier Howell Award in 1979 for my paper on *musth* in African elephants, presented at the 1979 American Society of Mammalogists meetings.

7. I am affiliated with a number of professional organizations and hold several board and advisory memberships, including: (1) member of the Board for the Global Sanctuary for Elephants, from 2014-present; (2) member of the Advisory Board for the Kimmela Center for Animal Advocacy, from 2013-present; (3) member of the Scientific Advisory Board for Elephant Aid International, from 2010-present; (4) member of the Alliance for Captive Elephants, in 2010; (5) member of the Board of Directors for ElephantVoices, from 2008-present; (6) member of Ethologists for the

Ethical Treatment of Animals, from 2002-present; (7) member of the Scientific Advisory Committee for the Amboseli Elephant Research Project, from 2002-present; (8) member of the Science Advisory Board for the Captive Elephant Management Coalition, from 1988-2001; (9) member of the Panel of Experts for the Species Survival Network, in 2004; (10) Trustee for the Amboseli Trust for Elephants, from 2002-2011; and (11) member of the African Elephant Specialist Group, as part of the Species Survival Commission for the IUCN, from 1988-2001.

8. I have written two books concerning my work with elephants: (1) *Elephants* (1997, Colin Baxter Photography, Grantown-on-Spey, Scotland), and (2) *Coming of Age with Elephants* (1996, Hyperion Press, New York; 1996, Hodder & Stoughton, London).

9. I have published 39 peer-reviewed scientific articles over my career. These articles have been published in many of the world's premier scientific journals, including: *Nature*, *Science*, *Frontiers in Zoology*, *Biology Letters*, *Proceedings of the Royal Society B*, *Immunogenetics*, *PLoS ONE*, *The Ecologist*, *Animal Behaviour*, *Oryx*, *Behavioral Ecology and Sociobiology*, *Behavior*, *Journal of Reproduction and Fertility*, *Molecular Ecology*, *Journal of Consciousness Studies*, *Current Biology*, *Journal of the Acoustical Society of America*, *Etica and Animali*, and *Conservation Biology*. Specific topics of these publications include: Persistence of effects of social disruption in elephants decades after culling; Persistence of early life experiences 40 decades later on survival and success among African elephants; Poaching and wildlife conservation; Leadership in elephants: The adaptive value of age; Elephants, ivory, and trade; Simulated oestrus behavior in African elephants; Major histocompatibility complex variation and evolution in two genera of elephants; Fine-scaled population genetic structure in a fission-fusion society; Do elephants show empathy?; Elephant cognition; Behavioural inbreeding avoidance in wild African elephants; African elephants have expectations about locations of out-of-sight family members; Elephants can classify human ethnic groups by odour and garment colour; Age, musth, and paternity success in wild male African elephants; Wild African elephants discriminate between familiar and unfamiliar conspecific seismic alarm calls; Social trauma early in life can affect physiology, behavior, and culture of animals and humans over generations; Elephants are capable of vocal learning; Older bull elephants control young males; African elephants assess acoustic signals; The Aggressive state of musth in African elephants; Mate guarding, reproductive success, and female choice in



African elephants; Rutting behavior in African elephants; and Musth in the African elephant. Additionally, my research has been published in six non-peer reviewed publications.

10. My scientific work has also been published as chapters in several peer-refereed books, including *Mammals of Africa* (2013, Academic Press), *The Amboseli Elephants: A Long-Term Perspective on a Long-Lived Mammal* (2011, University of Chicago Press), *An Elephant in the Room: The Science and Well Being of Elephants in Captivity* (2008, Tufts University Cummings School of Veterinary Medicine's Center for Animals and Public Policy), *Elephants and Ethics: Toward a morality of Co-existence* (2003, Johns Hopkins University Press), *Behavioral Ecology and Conservation Biology* (1998, Oxford University Press), *The Differences Between the Sexes* (1994, Cambridge University Press), *Primate Social Relationships* (1983, Blackwell Scientific Publications). In addition to these peer-reviewed book chapters, my scientific work has been published in three additional book chapters, which were not refereed.

11. My scientific research has additionally been published in several peer-reviewed symposia proceedings, including "Vocal imitation in African savannah elephants (*Loxodonta Africana*)" in *Razprave IV* (2006, Rezreda Sazu XLVII-3); "Conservation biology: The ecology and genetics of endangered species," in *Genes in Ecology* (1991, Blackwell Scientific Publications, London, The 33<sup>rd</sup> Symposium of the British Ecological Society); "Elephant mate searching: Group dynamics and vocal and olfactory communication" and in *The Biology of Large African Mammals in their Environment* (1989, Clarendon Press, Oxford, Proceedings of the Symposium of the Zoological Society of London).

12. In addition to my peer-reviewed scientific publications, I have also published numerous technical reports for various foundations, working groups, and organizations. These reports include: (1) a series of reports relating to our work on elephants in the Maasai Mara from 2012-2015; (2) a series of reports relating to our work on elephants in Gorongosa National Park from 2012-2015 (3) a 2010 critique of "The status of African elephants (*Loxodonta africana*) in the 2008 IUCN Red List of Threatened Species"; (4) a 1997 Typescript Report describing a survey of elephants and other wildlife of the West Kilimanjaro Basin, Tanzania; (5) a 1996 report in "Decentralization and Biodiversity Conservation" as part of a World Bank Symposium; (6) a 1994 report in the *Proceedings of the 2<sup>nd</sup> International Conference on Advances*

*in Reproductive Research in Man and Animals* about the Logistical and ethical considerations in the management of elephant populations through fertility regulation; (7) a 1993 report detailing Kenya's Initiatives in Elephant Fertility Regulation and Population Control Techniques in *Pachyderm*; (8) a 1992 survey of the Shimba Hills elephant population for the Elephant Programme, Kenya Wildlife Service; (9) a 1992 report on the Status of Kenya's Elephants by the Kenya Wildlife Service and the Department of Resource Surveys and Remote Sensing; (10) a 1991 Elephant Conservation Plan for the Kenya Wildlife Service, Ministry of Tourism and Wildlife; (11) a 1990 Regional Overview of Elephant Conservation in Eastern Africa, in *Regional Perspectives and Situation Regarding Elephant Conservation and the Ivory Trade*, produced for the Paris Donors Meeting of the IUCN; (12) a 1990 report on Elephant Conservation and Management in *The Zebra Book, Policy Framework and Five-year Investment Programme* for the Kenya Wildlife Service; and (13) a 1989 report on The effects of poaching on the age structures and social and reproductive patterns of selected East African elephant populations in *The Ivory Trade and the Future of the African Elephant* for the 7<sup>th</sup> CITES Conference of the Parties.

13. In addition to my scientific publications, I have published 17 popular articles in more general publications, including: National Geographic's blog *A Voice for Elephants*, *Basecamp Explorer AS*, *Swara*, *Care for the Wild News*, *Sotokoto*, *Wildlife News*, *Komba*, *Animal Kingdom*, and *Natural History*.

14. I have been an invited speaker at international meetings and symposia throughout the world, including: (1) Keynote, Jackson Hole Wildlife Film Festival, 2015; (2) National Geographic Retreat, International Council of Advisors in Stockholm, Sweden, 2014; (3) Chinese Zoo Directors Meeting on Animal Welfare, in Shenzhen, China in 2013; (4) the Royal Geographical Society, Hong Kong, China in 2013; (5) the Explorer's Club in New York, 2013; (6) the Explorer's Symposium for National Geographic, in Washington, DC in 2012; (7) "Nature's great masterpiece: Stories of Elephants," the 2012 Sabine Distinguished Lecture in Psychology, Colorado College; (8) Panel discussion for the National Geographic Society, Washington DC in 2008; (9) Seminar on Language Evolution and Cognition held by Communication Research Centre, Northumbria University & Language Evolution and Computation Research Unit, University of Edinburgh, Scotland in 2007; (10) Public lecture at the Explorer's Club, New York in 2007; (11) lecture on communication, behavior, and social life

among elephants, for the Science Museums of the la Caixa Foundation, Barcelona, Spain in 2006; (12) speaker in series of lectures on Animal Communication, for the Science Museums of the la Caixa Foundation, in Madrid, Spain in 2006; and (13) lecture on Animal Cognition and Communication, at the Tufts Center for Animals and Public Policy in Boston in 1999.

15. In addition to my scientific research, I have also focused extensively throughout my career on public education and outreach. I have utilized many different media formats in pursuit of this goal. I currently maintain several web channels, including: (1) [www.ElephantVoices.org](http://www.ElephantVoices.org) - about elephant social behavior, communication and welfare; (2) [www.facebook.com/elephantvoices](http://www.facebook.com/elephantvoices); (3) [www.Intagram.com/elephantvoices](http://www.Intagram.com/elephantvoices); (4) [www.twitter.com/elephantvoices](http://www.twitter.com/elephantvoices); (5) [www.vimeo.com/elephantvoices](http://www.vimeo.com/elephantvoices); (6) [www.YouTube.com/elephantvoices](http://www.YouTube.com/elephantvoices); (7) [www.soundcloud.com/elephantvoices](http://www.soundcloud.com/elephantvoices); and (8) <http://www.theelephantcharter.info> – The Elephant Charter, co-written in 2008 by Joyce Poole, Cynthia Moss, Raman Sukumar, Andrea Turkalo and Katy Payne. I also currently maintain The Elephant Ethogram: A Library of African Elephant Behavior (on [The Elephant Ethogram](http://TheElephantEthogram)), which documents close to 500 behaviors with written descriptions and some 2,300 video clips.

16. My research concerning elephant social behavior and communication, as well as my conservation work, has been featured in a number of printed articles, including publications such as *Readers' Digest*, *Scientific American*, *Science*, *National Geographic Kids*, *National Geographic Magazine*, *National Geographic Adventure*, *New York Times Magazine*, *National Geographic Explorer*, *LA Times*, *Highlights for Children*, *Scholastic*, *The New York Times*, *Science Times*, *Science*, *Science News*, *Spektrumdirekt*, *National Geographic News*, *Kyodo News Washington Bureau*, *Daily Telegraph*, and *The Guardian*. Additionally, my life and work have been featured in several books, including: (1) Jodi Picoult's novel *Leaving Time*; (2) Martin Meredith's 2001 *Africa's Elephant*, a biography, and (3) Doug Chadwick's 1992 *Fate of the Elephant*. My work was also highlighted by Doug Chadwick in his 1992 feature article for *National Geographic Magazine*. My elephant recordings have featured in (1) Paul Winter's Summer Solstice Concert in New York Cathedral, in 2013; (2) in the Emmy award winning work by Paul Winter, *Miho* in 2010; (3) in *Avatar* in 2009; (4) in *Pulse of the Planet*.

17. I have been interviewed and my research has been featured on a number of radio programs, including: (1) a 2012 Sam Litzinger interview on The Animal House/NPR (WAMU 88.5); (2) Elephant welfare views featured on WBUR's Inside Out Documentary on American Zoos with Diane Toomey in 2009; (3) Elephant communication research featured in Up Front Radio, San Francisco with Sandip Roy Chowdhury in 2008; (4) Elephant communication, cognition, and welfare with Karl Losken Animal Voices 102.7fm in Vancouver, BC Canada in 2008; (5) Science Update, American Association for the Advancement of Science (AAAS) in 2005; (6) BBC Radio Science, the Leading Edge in 2005; (7) German Public Radio (SWR) program Campus in 2005; (8) NPR in 2005 about elephant vocal learning; (9) BBC News Scotland in 2005 about vocal learning in elephants; (10) ABC's Radio 702 with Rory McDonald about elephant welfare in 2005; (11) Elephant communication research featured in BBC's Beyond our Senses program Sounds of Life with Grant Sonnex, in 2004; (12) Elephant communication research featured in NPR program on elephant language in 2004; (13) WETA-FM, News 820's Openline & WNYC in 1996; and (14) Musth in the African elephant, BBC Radio 4, The living World in 1981. In addition to these radio appearances, I have also appeared on the Science and the city Podcast, in 2007.

18. I have also appeared and been featured in a variety of Television programs, including in: (1) Gorongosa Park: Rebirth of Paradise (2015), a PBS six-part series about the restoration of Gorongosa National Park in which my elephant work is highlighted in episodes 2 and 5; (2) An Apology to Elephants, an award winning 2013 documentary that explores abuse and brutal treatment of elephants; (3) War Elephants (2012), an award winning documentary about the traumatized elephants in Gorongosa National Park, Mozambique, and their recovery, by National Geographic Wild, worldwide; (4) Elephant communication research is featured in "Elephant having tales to tell" (2008), NHK, Japan (Japanese and English versions); (5) Interview on elephant communication and cognition for Smart Planet for REDES-TVE, Spain (2006); (6) Elephants and vocal learning, Daily Planet Discovery Channel Canada (2005); (7) Elephant cognition and conservation views featured on National Geographic Explorer *Elephant Rage* (2005); (8) Elephant recordings featured in Discovery Channel's Echo III (2004); (9) Elephant communication research, Elephant's Talk, featured in BBC documentary *Talking with Animals* (2002); (10) Work featured on News and Talk

shows such as CNN (1993), ABC news Women and Science, The Today Show, (1996), West 57th Street CBS News (1989), PM Magazine (1987); (11) Research featured in *Inside the Animal Mind Part 3 Animal Consciousness*, WNET Nature (1999); (12) Featured on Episode 16, *Elephants*, in series, *Champions of the Wild*, Omni Film Productions, Vancouver, Canada (1998); (13) Life, elephant research, and conservation work subject of National Geographic Special, *Coming of Age with Elephants* (1996); (14) *Wildlife Warriors*, National Geographic Special (1996); (15) *A Voice for Elephants USIA AfricaPIX* (1996); (16) Discovery Channel documentary “Ultimate Guide to Elephants” (1996); (17) *Elephants like us*, Rossellini and Associates (1990); (18) *The language of the elephants*, Rossellini and Associates (1990); (19) Elephant research and conservation work featured in National Geographic Special *Ivory Wars* (1989); (20) Research highlighted in BBC production *Trials of Life* with David Attenborough (1988); (21) Work on elephant infrasound featured in *Supersense* BBC Natural History Unit series on animal senses (1988); and (22) Featured in Sports and Adventure, *Women of the World* (1987).

19. I have testified as an expert witness in court cases in several countries, including: (1) In 1998 in South Africa in the Case of NSPCA v. Riccardo Ghiazza regarding the capture, mistreatment of 34 baby elephants. Ghiazza was eventually found guilty of cruelty; (2) In 2005 via video link in International Fund for Animal Welfare, et al. v. Minister for the Environment and Heritage et al., N2005/916 regarding the export of Asian elephants from Thailand to Australia; (3) In 2008 in Washington DC in American Society for the Prevention of Cruelty to Animals, Animal Welfare Institute, The Fund for Animals, Animal Protection Institute & Tom Rider Plaintiffs in ASCPA v. Ringling Brothers and Barnum & Bailey Circus; and (4) In 2012 in Los Angeles in Aaron Leider vs. John Lewis, City of Los Angeles, in a case regarding the welfare of the elephants of Los Angeles Zoo. I am currently involved in another case in South Africa but have not yet appeared in court.

20. My Curriculum Vitae fully sets forth my educational background and experience and is annexed hereto as “Exhibit A”.

### **Basis for Opinions**

21. The opinions I state in this Declaration are based on my professional knowledge, education, training, and years of experience observing and studying elephants, as well

as my knowledge of peer-reviewed literature about elephant behavior and intelligence published in the world's most respected journals, periodicals, and books that are generally accepted as authoritative in the field, and many of which were written by myself or colleagues whom I have known for several years and with whose research and field work I am personally familiar. A full reference list of peer-reviewed literature cited herein is annexed hereto as "Exhibit B".

## **Opinions**

### ***Premise***

22. Elephants are autonomous beings. Autonomy in humans and nonhuman animals is defined as self-determined behavior that is based on freedom of choice. As a psychological concept it implies that the individual is directing their behavior based on some non-observable, internal cognitive process, rather than simply responding reflexively. Although we cannot directly observe these internal processes in other beings, we can explore and investigate them by observing, recording and analysing their behavior, as I have done with elephants for my entire career.

23. I shall indicate which species, African (*Loxodonta Africana*) or Asian (*Elephas maximus*), specific observations relate to. If the general term 'elephants' is used with no specific delineation, it can be assumed the comment relates to the African species, though it is likely that it applies to the Asian species as well.

### ***Brain and Development***

24. Elephants are large-brained, with the biggest absolute brain size of any land animal (Cozzi et al. 2001; Shoshani et al. 2006). Even relative to their body sizes, elephant brains are large. Encephalization quotients (EQ) are a standardised measure of brain size relative to body size and illustrate by how much a species' brain size deviates from that expected for its body size. An EQ of one means the brain is exactly the size expected for that body, and values greater than one indicate a larger brain than expected (Jerison 1973). Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species). This means an elephant's brain can be up to two and a half times larger than is expected for an animal of its size; this EQ is similar to that of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years (Eisenberg 1981, Jerison 1973). Given how metabolically costly brain tissue is, the large brains of elephants must confer significant advantages; otherwise

their size would be reduced. A large brain allows for greater intelligence and behavioral flexibility (Bates et al. 2008a).

25. Generally, mammals are born with brains weighing up to 90% of the adult weight. This figure drops to about 50% for chimpanzees. Human baby brains weigh only about 27% of the adult brain weight (Dekaban & Sadowsky 1978). This long period of brain development over many years (termed ‘developmental delay’) is a key feature of human brain evolution and is thought to play a role in the emergence of our complex cognitive abilities, such as self-awareness, creativity, forward planning, decision making, and social interaction (Bjorkland 1997). Delayed development provides a longer period in which the brain may be shaped by experience and learning (Fuster 2002). Elephant brains at birth weigh only about 35% of their adult weight (Eltringham 1982), and elephants show a similarly protracted period of growth, development and learning (Lee 1986). This similar developmental delay in the elephant brain is therefore likewise associated with the emergence of similarly complex cognitive abilities.

26. Despite nearly 100 million years of separate evolution (Hedges 2001), elephants share certain characteristics of our large brains, namely deep and complex folding of the cerebral cortex, large parietal and temporal lobes, and a large cerebellum (Cozzi et al. 2001). The temporal and parietal lobes of the cerebral cortex manage communication, perception, and recognition and comprehension of physical actions (Kolb and Wishaw 2008), while the cerebellum is involved in planning, empathy, and predicting and understanding the actions of others (Barton 2012). Thus, the physical similarities between human and elephant brains occur in areas that link directly to the capacities necessary for autonomy and self-awareness.

27. Elephant brains hold nearly as many cortical neurons as do human brains: humans:  $1.15 \times 10^{10}$ ; elephants:  $1.1 \times 10^{10}$  (Roth & Dicke 2005). Elephants’ pyramidal neurons are larger than in humans and most other species (Cozzi et al. 2001). Pyramidal neurons are found in the cerebral cortex, particularly the pre-frontal cortex – the brain area that controls executive functions (a set of cognitive processes that are required for choosing and monitoring behaviors that facilitate an individual to reach certain goals, e.g., problem solving, planning, working memory, inhibitory and attentional control and cognitive flexibility).

28. The degree of complexity of pyramidal neurons is linked to cognitive ability, with more (and more complex) connections between pyramidal neurons being associated with increased cognitive capabilities (Elston 2003). Elephant pyramidal neurons have a large dendritic tree, i.e. a large number of connections with other neurons for receiving and sending signals (Cozzi et al. 2001).

29. As described below, along with these common brain and life-history characteristics, elephants share many behavioral and intellectual capacities with humans, including: self-awareness, empathy, awareness of death, intentional communication, learning, memory, and categorisation abilities. Many of these capacities have previously been considered – erroneously – to be uniquely human, and each is fundamental to and characteristic of autonomy and self-determination.

### *Awareness of Self and Others*

30. Asian elephants exhibit Mirror Self Recognition (MSR) using Gallup’s classic ‘mark test’ (Gallup 1970; Plotnik et al. 2006). MSR is the ability to recognise a reflection in the mirror as oneself, and the mark test involves surreptitiously placing a coloured mark on an individual’s forehead that it could not see or be aware of without the aid of a mirror. If the individual uses the mirror to investigate the mark, the individual recognises the reflection as herself. Besides elephants, the only other mammals that have successfully passed the mark test and exhibited MSR are the great apes (chimpanzees, bonobos, gorillas and orangutans) and bottlenose dolphins (Parker and Mitchell 1994, Reiss and Marino 2001). MSR is significant because it is considered to be the key identifier of self-awareness. Self-awareness is intimately related to autobiographical memory in humans (Prebble et al. 2013) and is central to autonomy and being able to direct one’s own behavior to achieve personal goals and desires. By demonstrating that they can recognize themselves in a mirror, elephants holding a mental representation of themselves from another perspective, and thus be aware that they are a separate entity from others (Bates and Byrne 2014).

31. A being who understands the concept of dying and death possesses a sense of self. Based on the research conducted to date, observing reactions to dead family or group members suggests an awareness of death in only two animal genera beyond humans; chimpanzees and elephants (Anderson et al. 2010, Douglas-Hamilton et al. 2006). Having a mental representation of the self – a pre-requisite for mirror-self recognition



– contributes to the ability to comprehend death. Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals (McComb et al. 2006), and have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals (Douglas-Hamilton 1972, Moss 1992, Poole 1996, Payne 2003, Douglas-Hamilton et al. 2006). Although they do not give up trying to lift or elicit movement from the body immediately, elephants appear to realise that once dead, the carcass cannot be helped anymore, and instead engage in more ‘mournful’ behavior, such as standing guard over the bodies, and protecting it from the approaches of predators (e.g. Douglas-Hamilton 1972, Croze cited in Moss 1982, Moss 1988, Poole 1996, Payne 2003, McComb et al. 2006). Others have observed them covering the bodies of dead elephants with dirt and vegetation (Moss 1992; Poole 1996). In the particular case of mothers who lose a calf, although they may remain with the calf’s body for an extended period, they do not behave towards the body as they would a live calf. Indeed, the general demeanour of elephants who are attending to a dead elephant is one of grief and compassion, with slow movements and few, if any, vocalisations (Poole 1996). These behaviors are akin to human responses to the death of a close relative or friend, and illustrate that elephants possess some understanding of life and the permanence of death. Furthermore, elephants’ interest in the bodies, carcasses and bones of elephants who have passed is so marked that when one has died, trails to the site of death are worn into the ground by the repeated visits of many elephants over days, weeks, months and even years (Poole, personal observation). The accumulation of dung around the site attests to the extended time that visiting elephants spend touching and contemplating the bones. I have observed that, over years, the bones may become scattered over tens or hundreds of square meters as elephant pick up the bones and carry them away. The tusks are of particular interest and may be carried and deposited many hundreds of meters from the site of death (Poole, personal observation).

32. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities (Gallup 1982), where empathy can be defined as identifying with and understanding another’s experiences or feelings by imagining what it would be like to be in their situation. Empathy is an important component of human consciousness and autonomy and is a cornerstone of normal social interaction. It goes beyond merely reading the emotional expressions of others. It requires

modelling of the emotional states and desired goals that influence others' behavior both in the past and future, and using this information to plan one's own actions; empathy is only possible if one can adopt or imagine another's perspective, and attribute emotions to that other individual (Bates et al. 2008b). Empathy is, therefore, a component of and reliant on 'Theory of Mind' – the ability to mentally represent and think about the knowledge, beliefs and emotional states of others, whilst recognising that these can be distinct from your own knowledge, beliefs and emotions (Premack and Woodruff 1978, Frith and Frith 2005).

33. Elephants clearly and frequently display empathy in the form of protection, comfort and consolation, as well as by actively helping those who are in difficulty, such as assisting injured individuals to stand and walk, or helping calves out of rivers or ditches with steep banks (Bates et al. 2008b, Lee 1987, Poole 1996). Elephants have been observed to react when anticipating the pain of others (e.g. seen to wince when a nearby elephant stretched her trunk toward a live wire – Poole, personal observation) and have even been observed feeding those who are not able to use their own trunks to eat (Moses Kofi Sam, personal communication) and to attempt to feed those who have just died (Croze, cited in Moss 1982).

34. In an analysis of behavioral data collected from wild African elephants over a 40-year continuous field study, I have concluded that as well as possessing their own intentions, elephants can diagnose animacy and goal directedness in others, understand the physical competence and emotional state of others, and attribute goals and mental states (intentions) to others (Bates et al. 2008b), as evidenced in the examples below:

*'IB family is crossing river. Infant struggles to climb out of bank after its mother. An adult female [not the mother] is standing next to calf and moves closer as the infant struggles. Female does not push calf out with its trunk, but digs her tusks into the mud behind the calf's front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins mother.'*

*'At 11.10ish Ella gives a 'lets go' rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp except Elspeth and her calf [<1 year] and Eudora [Elspeth's mother]. At 11.25 Eudora appears to 'lead' Elspeth and the calf to a good*

*place to enter the swamp — the only place where there is no mud.’*

In addition to the examples analyzed in Bates et al. 2008b, in what appeared to be a spontaneous attempt to prevent injury to the newborn, I observed two adult females rush to the side of a third female who had just given birth, back into her and press their bodies to her. In describing the situation I wrote:

*‘The elephants’ sounds [relating to the birth] also attracted the attention of several males including young and inexperienced, Ramon, who, picking up on the interesting smells of the mother [Ella], mounted her, his clumsy body and feet poised above the newborn. Matriarch Echo and her adult daughter Erin, rushed to Ella’s side and, I believe, purposefully backed into her in what appeared to be an attempt to prevent the male from landing on the baby when he dismounted.’*

Examples such as these demonstrate that the acting elephant(s) (the adult female in the first example, Eudora in the second, and Erin and Echo in the third) was able to understand the intentions or situation of the other (the calf in the first case, Elspeth in the second; Ella’s newborn and the male in the third) – i.e. to either climb out of or into the water, or be trampled on by the male – and they could adjust their own behavior in order to counteract the problem being faced by the other. Whilst humans may act in this helpful manner on a daily basis, such interactions have been recorded for very few non-human animals (Bates et al. 2008b). In footage of [Helping](#) behaviour in [The Elephant Ethogram](#) an allo-mother in Maasai Mara, Kenya moves a log from under the head of an infant, in what appears to be an effort to make him more comfortable (see video [here](#)). There are numerous other examples of empathy in [The Elephant Ethogram](#) under [Helping](#) behaviour, including a [dramatic rescue](#) of an infant by two allomothers who, among other behaviours, prevent him from drowning by lifting his trunk out of the water so he can breathe. In a further example of understanding goal directedness of others, elephants appear to understand that vehicles drive on roads or tracks and furthermore they appear to know where these tracks lead. In Gorongosa, Mozambique, where elephants exhibit a culture of aggression toward humans, charging, chasing and attacking vehicles, adult females anticipate the direction the vehicle will go and attempt to cut it off by taking shortcuts *before* the vehicle has begun to turn (Poole personal observation 2012). The roots of empathetic behavior begin early in elephants. Just as in humans where rudimentary sympathy for others in distress has been recorded in

infants as young as 10 months old (Kanakogi et al. 2013, see <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0065292>), young elephants exhibit behavior that indicates that they feel sympathy for others. For instance, during fieldwork in the Maasai Mara in 2011 I filmed a mother elephant using her trunk to assist her one-year-old female calf up a steep bank. Once the calf was safely up the bank she turned around to face her five-year-old sister, who was also having difficulties getting up the bank. As the older calf clambered up the bank with effort the younger calf approached her and first touched her mouth (a gesture of reassurance among family members) and then reached her trunk out to touch the leg that had been having difficulty. Only when her sibling was safely up the bank did the calf turn to follow her mother ([video](#) filmed by Poole, 2011).

35. Experimental evidence from captive African elephants further demonstrates that elephants attribute intentions to others, as they follow and understand human pointing gestures (the only animal so far shown to do so spontaneously). The elephants understood that the human experimenter was pointing in order to communicate information to them about the location of a hidden object (Smet and Byrne 2013). Attributing intentions and understanding another's reference point is central to empathy and theory of mind.

36. Our analysis of simulated oestrus behaviors (see [Simulate-Estrus](#)) in African elephants – whereby a non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive, even though she is not ready to mate or breed again – shows that these knowledgeable females adopt false oestrus behaviors in order to demonstrate to naïve young females how to attract and respond appropriately to suitable males. The experienced females may be taking the youngsters lack of knowledge into account and actively showing them what to do; a possible example of true teaching as it is defined in humans (see an example [here](#)). Whilst this possibility requires further investigation, this evidence, coupled with the data showing that they understand the ostensive cues in human pointing, demonstrates that elephants do share some executive skills with humans, namely understanding the intentions and knowledge states (minds) of others. Ostensive communication refers to the way humans use particular behavior such as tone of speech, eye contact, physical contact to emphasize that a particular communication is important. Lead elephants in family groups use ostensive communication frequently (e.g. [Ear-Flap-Slide](#), [Ear-Slap](#), [Walk-](#)

[Wait](#), [Foot-Swinging](#), [Trunk-Sweep](#), [Body-Axis-Pointing](#) as described in Poole & Granli 2011 and The Elephant Ethogram; [Comment-Rumble](#) described in Poole, 2011) as a way to say, “Heads up – I am about to do something that you should pay attention to.”

37. Further related to empathy, coalitions and cooperation have been documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when a family group tries to ‘kidnap’ a calf from an unrelated family (Lee 1987, Moss and Poole 1983) or during the extraordinary teamwork executed by elephants when they defend themselves against predators, particularly, human beings (Poole and Granli 2011; Poole 2011). These latter behaviors are preceded by gestural and vocal signals typically given by the matriarch and acted upon by family members and have been documented many times amongst the Gorongosa elephants and in elephant behavior footage from there that we are currently analyzing. These behaviors are based on one elephant understanding the signals, emotions and goals of the coalition partner(s) (Bates et al. 2008b).

38. Cooperation is also evident in experimental tests with captive Asian elephants, whereby elephants demonstrated they can work together in pairs to obtain a reward, and understood that it was pointless to attempt the task if their partner was not present or could not access the equipment (Plotnik et al. 2011). Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal and the sequence of behaviors that is required to achieve that goal; it is based on (at the very least) short-term action planning.

39. Wild elephants have frequently been observed engaging in cooperative problem solving, for example when retrieving calves that have been kidnapped by other groups, when helping calves out of steep, muddy river banks (Bates et al. 2008b), when rescuing a calf attacked by a lion (acoustic recording calling to elicit help from others (Poole 2011) by or the vocal and gestural communication used when they are negotiating a plan of action (e.g. when elephants use [Cadenced-Rumblings](#), Poole 2011, or [High-Fiving](#) to lend their “voice” to a proposed or targeted plan of action; see video [here](#)) or when they must navigate through human-dominated landscapes to reach a desired destination (e.g. habitat, salt-lick, waterhole) as evidenced in video footage of Selengei and her family filmed in 2015. These behaviors demonstrate the purposeful and well-coordinated social system of elephants and show that elephants can hold

particular aims in mind and work together to achieve those goals. Such intentional, goal-directed action forms the foundation of independent agency, self-determination, and autonomy.

40. Elephants also show innovative problem-solving in experimental tests of insight (Foerder et al. 2011), where insight can be defined as the ‘a-ha’ moment when a solution to a problem ‘suddenly’ becomes clear. (In cognitive psychology terms, insight is the ability to inspect and manipulate a mental representation of something, even when you can’t physically perceive or touch the something at the time.) Or more simply, insight is thinking and using only thoughts to solve problems (Richard Byrne, *Evolving Insight*, Oxford Online Press, 2016). A juvenile male Asian elephant demonstrated just such a spontaneous action by moving a plastic cube and standing on it to obtain previously out-of-reach food. After solving this problem once, he showed flexibility and generalization of the technique to other, similar problems by using the same cube in different situations, or different objects in place of the cube when it was not available. This experiment again demonstrates that elephants can choose the appropriate action and incorporate it into a sequence of behavior in order to achieve a goal, which they kept in mind throughout the process.

41. Further experiments also demonstrate Asian elephants’ ability to understand goal-directed behavior. When presented with food that was out of reach, but with some bits resting on a tray that could be pulled within reach, the elephants learned to pull only those trays that were baited with food (Irie-Sugimoto et al. 2007). Success in this kind of ‘means-end’ task demonstrates causal knowledge, which requires understanding not just that two events are associated with each other but also that there is some mediating force that connects and affects the two which may be used to predict and control events. Moreover, understanding causation and inferring object relations may be related to understanding psychological causation, i.e., the appreciation that others are animate beings that generate their own behavior and have mental states (e.g., intentions).

### ***Communication and Social Learning***

42. Speech is a voluntary behavior in humans, whereby a person can choose whether to utter words and thus communicate with another. Therefore, speech and language reflect autonomous thinking and intentional behavior. Elephants also intentionally use their vocalisations to share knowledge and information with others (Poole 2011). Females

and dependents call to emphasise and reinforce their social units and to coordinate movement. Male elephants primarily communicate about their sexual status, rank and identity, though like females they also use calls to coordinate movement and interactions in their social groups. Call types (47 have been described by Poole 2011) can generally be separated into laryngeal calls (such as rumbles, cries, roars) or trunk calls (such as trumpets, snorts), with different calls in each category being used in different contexts (Poole et al. 1988; Poole 2011; Poole and Granli 2004; Soltis et al. 2005; Wood et al. 2005, examples of each can be found under "sounds of elephants" on the Search Portal on The Elephant Ethogram). Field experiments have shown that African elephants distinguish between different call types (for example, [Contact-Calls](#) – rumbles that travel long distances to maintain associations between elephants that could be several kilometres apart, [Estrous-Rumbles](#) – that occur after a female has copulated or Musth-Rumbles that are made by males in the heightened sexual and aggressive state of musth) and these different call types elicit different responses in the listeners. Elephant vocalisations are not simply reflexive, they have distinct meanings to listeners and they are truly communicative, similar to the volitional use of language in humans (Leighty et al. 2008; Poole 1999; Poole 2011).

43. Elephants display a wide variety (> 300 described) of gestures, signals and postures, used to communicate information to the audience (Poole and Granli 2011 and [The Elephant Ethogram](#)). Such signals are adopted in many different contexts, such as aggressive, sexual or socially integrative situations, and each signal is well defined and results in predictable responses from the audience. That is, each signal or gesture has a specific meaning both to the actor and recipient. Elephants' use of gestures demonstrates that they communicate intentionally and purposefully to share information with others and/or alter the others' behavior to fit their own will.

44. Elephants use specific calls and gestures to plan and discuss a course of action. These may involve responding to a threat by a group retreat or mobbing action (including celebration of successful efforts - See [High-Fiving](#)), or planning and discussing where, when and how to move to a new location (Let's-Go-Rumble and Cadenced-Rumble as described earlier). I have studied elephant communication for two decades and have field notes, acoustic recordings, and raw footage of numerous examples of such communication.

45. In group-defensive situations elephants respond with highly coordinated behavior, both rapidly and *predictably*, to specific calls uttered and particular gestures exhibited by group members. In other words, these elephant calls and gestures hold specific meanings not only to elephant listeners, but also, through experience, to human observers. The rapid, predictable and collective response of elephants to these calls and gestures indicates that elephants have the capability of understanding the goals and intentions of the signalling individual. For example, as was documented and described by me in Episode 2 of PBS six-part series *Gorongosa Park: Rebirth of Paradise*, matriarch Provocadora's contemplation of us ([Listening](#), [J-Trunk](#)) followed by her purposeful [Perpendicular-Walk](#) (in relation to us) toward her family and her [Ear-Flap-Slide](#) was a clear indication to her family to begin a [Group-Advance](#) (on us). This particular elephant attack is a beautiful example of elephants' use of empathy, coalition and cooperation. Provocadora's instigation of the Group-Advance led to a two and a half minute [Group-Charge](#) in which the three other large adult females of the 36-member family took turns to lead the charge, passing the baton, in a sense, from one to the next. Once they succeeded in their goal of chasing us away they celebrated their victory [High-Fiving](#) (with their trunks) and engaging in an [End-Zone-Dance](#). High-Fiving is also typically used to initiate a coalition and is both preceded by and associated with other specific gestures and calls that lead to very goal oriented collective behavior. Elephant group defensive behavior is highly evolved and involves a range of different tactical manoeuvres adopted by different elephants. The calls and gestures used are too many to mention here but are described in Poole 2011 and on The Elephant Ethogram.

46. In planning and communicating intentions regarding a movement, elephants use both vocal and gestural communication. For example, I have observed that a member of a family will use the axis of her body, [Body-Axis-Pointing](#), to point in the direction she wishes to go and then vocalize, every couple of minutes, with a specific call known as a ["Let's-Go" Rumble](#) (Poole et al. 1988; Poole 2011), "I want to go this way, let's go together." The elephant will also use intention gestures – such as [Walk-Wait](#), [Foot-Swinging](#) – to indicate her intention to move and will [Look-Back](#) to see whether anyone is coming. Such a call may be successful or unsuccessful at moving the group or may lead to a longer (45 minutes or more) discussion (series of rumble exchanges known as [Cadenced-Rumbles](#)) that I interpret as negotiation. A nice example of this behaviour, though without sound, can be seen in this [video](#) filmed in the Maasai Mara when



members of Big Mama's family wanted to go in opposite directions. Sometimes such negotiation leads to disagreement and the group may spilt and go different ways for a period of time. In situations where the security of the group is at stake, for instance when a movement is planned through or near to human settlement, all group members are focused on the decision of the matriarch. So while “Let’s-Go”-Rumbles are uttered, others adopt a [Waiting](#) posture until the matriarch, after much [Listening](#), and [Contemplation](#) decides it is safe to proceed (see for example this video of matriarch [Selengei](#)), where upon they bunch together and move purposefully, and at a fast pace in a [Group-March](#) (see this example led by [Selengei](#) in Maasai Mara, 2015). Elephants typically move through dangerous habitat at high speed and at night in a very goal-oriented manner known as “streaking,” which has been described and documented through the movements of elephants wearing satellite tracking collars (Douglas-Hamilton et al. 2005). The many different signals – calls, postures, gestures and behaviors elephants use to contemplate and initiate such movement (including others e.g. [Ear-Slap](#), [Ear-Flap-Slide](#)) are clearly understood by other elephants (just as they can be by long-term study by human observers), mean very specific things and indicate that elephants 1) have a particular plan which they can communicate with others; 2) can adjust this plan according to their immediate assessment of risk or opportunity 3) can communicate and execute the plan in a coordinated manner.

47. Furthermore, elephants have been shown to vocally imitate the sounds they hear around them, from the engines of passing trucks (see for example [Trunk-Like-Call](#)) and the calls of other species to the commands of human zookeepers (Poole et al. 2005, Stoeger et al. 2012). Imitating another’s behavior demonstrates a sense of self, as it is necessary to understand how one’s own behavior relates to the behavior of others.

48. Experimental evidence demonstrates that African elephants recognize the importance of visual attentiveness of the intended recipient (in this case, human experimenters) of gestural communication (Smet & Byrne 2014), further supporting the conclusion that elephants’ gestural communication is intentional and purposeful. Furthermore, the ability to understand the visual attentiveness and perspective of others is crucial for empathy and mental-state understanding.

### ***Memory and Categorisation***

49. Elephants have both extensive and long-lasting memories, just as the folk stories

and adages encourage us to believe. McComb et al. (2000), using experimental playback of long-distance contact calls in Amboseli National Park, Kenya, showed that African elephants remember and recognize the voices of at least 100 other elephants. Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14 families in the population. When the calls were from a familiar family – that is, one that had previously been shown to have a high association index with the test group – the test elephants contact-called in response and approached the location of the loudspeaker. When a test group heard unfamiliar contact calls (from groups with a low association index with the test group), they bunched together and retreated from the area.

50. McComb et al. (2001) went on to show that this social knowledge accrues with age, with older females having the best knowledge of the contact calls of other family groups. McComb et al. (2011) also showed that older females are better leaders, with more appropriate decision-making in response to potential threats (in this case, in the form of hearing lion roars). Younger matriarchs under-reacted to hearing roars from male lions. Sensitivity to hearing this sound increased with increasing matriarch age, with the oldest, most experienced females showing the strongest response to this danger. These experimental studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they grow older.

51. Elephants' long-term memory is further demonstrated from data on their movement patterns. African elephants are known to move over very large distances in their search for food and water. Leggett (2006) used GPS collars to track the movements of elephants living in the Namib Desert. He recorded one group traveling over 600 km in five months, and Viljoen (1989) showed that elephants in the same region visited water holes approximately every four days, even though some of them were more than 60km apart. Elephants inhabiting the deserts of both Namibia and Mali have been described traveling hundreds of kilometers to arrive at remote water sources shortly after the onset of a period of rainfall (Blake et al. 2003; Viljoen 1989), sometimes along routes that researchers believe have not been used for many years. These remarkable feats suggest exceptional cognitive mapping skills, reliant on the long-term memories of older individuals who traveled that path sometimes decades earlier. Indeed it has been

confirmed that family groups with older matriarchs are better able to survive periods of drought. The older matriarchs lead their families over larger areas during droughts than those with younger matriarchs, again apparently drawing on their accrued knowledge (this time about the locations of permanent, drought-resistant sources of food and water) to better lead and protect their families (Foley, Pettoirelli, and Foley 2008).

52. It has recently been shown that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to ‘management’ practices initiated by humans. Shannon et al. (2013) demonstrated that elephants in South Africa who had experienced trauma decades earlier showed significantly reduced social knowledge. During archaic culling practices, these elephants were forcibly separated from family members and subsequently translocated to new locations. Two decades later, they still showed impoverished social knowledge and skills and impaired decision-making abilities, compared with an undisturbed population in Kenya. Disrupting elephants’ natural way of life can negatively impact their knowledge and decision-making abilities.

53. Elephants demonstrate advanced ‘working memory’ skills. Working memory is the ability to temporarily store, recall, manipulate and coordinate items from memory. Working memory directs attention to relevant information, and results in reasoning, planning, and coordination and execution of cognitive processes through use of a ‘central executive’ (Baddeley 2000). Adult human working memory is generally thought to have a capacity of around seven items. In other words, we can keep about seven different items or pieces of information in mind at the same time (Miller 1956). We conducted experiments with wild elephants in Amboseli National Park, Kenya, manipulating the location of fresh urine samples from related or unrelated elephants. The elephants’ responses to detecting urine from known individuals in surprising locations showed that they are able to continually track the locations of at least 17 family members in relation to themselves, as either absent, present in front of self, or present behind self (Bates et al. 2008a). This remarkable ability to hold in mind and regularly update information about the locations and movements of a large number of family members is best explained by elephants possessing an unusually large working memory capacity, apparently much larger than that of humans.

54. Elephants show sophisticated categorisation of their environment, with skills on a

par with those of humans. My colleagues and I experimentally presented the elephants of Amboseli National Park, Kenya, with garments that gave olfactory or visual information about their human wearers – either Maasai moran (male warriors who traditionally attack and spear elephants on occasion as part of their rite of passage), or Kamba men (who are agriculturalists and traditionally pose little threat to elephants). In the first experiment, the only thing that differed between the cloths was the smell, derived from the ethnicity and/or lifestyle of the wearers. The elephants were significantly more likely to run away when they sniffed cloths worn by Maasai than those worn by Kamba men or no one at all. In a second experiment, we presented the elephants with two cloths that had not been worn by anyone, but here one was white (a neutral stimulus) and the other was red—the color that is ritually worn by Maasai moran. With access only to these visual cues, the elephants showed significantly greater reaction to red garments than white, often including signs of aggression. We concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e. ‘dangerous’ or ‘low risk’) based on either olfactory or visual cues alone (Bates et al. 2007). McComb et al. went on to show that the same elephant population can also distinguish between human groups based on our voices: The elephants reacted differently (and appropriately) depending on whether they heard Maasai or Kamba men speaking, and also when they heard male or female Maasai (where female Maasai pose no threat as they are not involved in spearing events), and adult Maasai men or young Maasai boys (McComb et al. 2014). Scent, sounds and visual signs associated specifically with Maasai men are categorized as ‘dangerous’, while neutral signals are attended to but categorized as ‘low risk’. These sophisticated, multi-modal categorization skills may be exceptional among non-human animals.

### ***Sanctuary is Often the Best Option for Captive Elephants***

55. Elephants are highly intelligent, social animals. In elephant society an intricate network of relationships radiates outward from the mother-offspring bond through the extended family and the bond group, to clan, population and beyond to strangers, including the primary predatory threat to their survival: Humans. Some 300 documented behaviors, gestures and calls have evolved helping to mediate and maintain these relationships, to communicate over miles, and to direct extraordinarily coordinated bonding ceremonies and group defense.

56. Over millions of years elephants have roamed the earth as intelligent and social mammals, capable of planning, negotiating and engaging in collective decision making. Active more than 20 hours each day elephants move many miles across landscapes to locate resources to maintain their large bodies, to connect with friends and to search for mates. Elephants have evolved to move. Holding them captive and confined prevents them from engaging in normal, autonomous behavior and can result in the development of arthritis, osteoarthritis, osteomyelitis, boredom, and stereotypical behavior. Held in isolation elephants become bored, depressed, aggressive, catatonic, and fail to thrive. Human caregivers are no substitute for the numerous, complex social relationships and the rich gestural and vocal communication exchanges that occur between free-living elephants. And while a captive elephant is generally better off with the company of another elephant, this is at best a small comfort and no justification for the deprivation of autonomy and free movement that results.

57. For elephants in captivity, especially those born into it or kept there for a majority of their lives, going back to the “wild” is unfortunately not an option. For these elephants, human-run sanctuaries are currently the best option. The reasons are explained in detail in Poole & Granli, 2008 and relate to the orders of magnitude of greater space that is offered in sanctuaries. Such space permits autonomy and allows elephants to develop more healthy social relationships and to engage in a near natural movement, foraging, and repertoire of behavior.

58. Elephants are highly social animals and, whether male or female, they are suited to the company of other elephants. Elephants in captivity often do not get on with the elephants their captors select to put them with. Being fenced into areas too small to permit them to select between different companions and when to be with them, they have no autonomy. Elephants need a choice of social partners, and the space to permit them to be with the ones they want, when they want, and to avoid particular individuals, when they want.

59. Compliance with Association of Zoos and Aquariums (AZA) Standards for Elephant Management and Care, the United States federal Animal Welfare Act, or similar standards, laws, and regulations is inadequate for ensuring the wellbeing of elephants. I have long promoted the development of elephant sanctuaries and co-founded one of them (Santuário de Elefantes Brasil), because our more than four

decades long study of free living elephants shows that the AZA specifications are woefully inadequate for meeting the needs of elephants (Poole & Granli 2008).

### *Examples of Successful Releases of Elephants to Sanctuary*

60. Elephants with serious physical or psychological problems in zoos have usually become more normal functioning elephants when given more appropriate space in a sanctuary such as the Performing Animal Welfare Society (PAWS) in Northern California.

61. For example, Maggie was considered to be an anti-social, aggressive elephant and by the time she was moved from the Alaska Zoo to PAWS she was in such poor condition she could barely stand. She is now a thriving, socially active elephant. Indeed she is considered to be PAWS' most social elephant (Ed Stewart, pers. comm.).

62. Ruby was transferred from the LA Zoo to the Knoxville Zoo in Tennessee where she did not successfully integrate with their elephants. When she was moved to PAWS she integrated easily with the other elephants and has become respected leader of her group (Ed Stewart, pers. comm.).

63. Sissy is another classic example. She had been transferred four times and had spent a decade and a half alone before being sent to the Houston Zoo, where she was labeled autistic and antisocial. She was returned to her solitary zoo where she killed a person. She was moved again to El Paso Zoo, where she was beaten because she was a killer elephant. In 2000 she was transferred to The Elephant Sanctuary in Tennessee (TES) and within six months of arrival she was calm and cooperative. She became a leader, putting all elephants at ease. In 2000 the United States Department of Agriculture (USDA) had given Sissy only a year to live. Twenty years later she is still going strong (Scott Blais, pers. comm.).

64. Bunny had been transferred four times and had only known a less than half an acre exhibit when she arrived at TES. She was 47 years old and had spent 40 years alone. Within 24 hours of arriving at sanctuary she was completely and seamlessly integrated into the group (Scott Blais, pers. comm.).

65. Maia and Guida, the first two elephants at Santuário de Elefantes Brasil, had lived together for 40 years. For most of these years Maia was aggressive to Guida, knocking her over, pushing her down and pinning her to the ground. Within 12 hours of arriving at the sanctuary the gates were opened up between them. From that day no further

aggression was seen. The sanctuary is currently home to five rescued elephants who share 75 acres, including one area of 40 acres, another of 22 acres and three other smaller areas ranging from 1.5 to 4 acres. The three smaller yards are introductory areas to help assimilate and provide flexible care depending on the physical and emotional needs of the elephants, and they are generally left open into the larger habitats to permit a greater level of exploration and autonomous living. This combination of possible spaces allows easy integration of new elephants. The plan is to expand the space for Asian elephants to multiple hundred acres and possibly a thousand or more, depending upon whether males and females can be integrated. There are also plans to create separate habitat for African elephants. Santuário de Elefantes Brasil owns a total of 2800 acres (Scott Blais, pers. comm.).

66. In South Africa, African elephants that have been released from long-term captivity to the wild, after a period of suitable rehabilitation, have all adapted entirely, successfully resuming life as wild elephants despite decades in captivity, and not having lived in the 'wild' since they were juveniles (see Elephant Reintegration Trust – <https://www.elephantreintegrationtrust.com/projects>).

67. As the above examples illustrate, the problems seen in captive elephants can usually be mitigated with the proper attention and environment. There is no basis for arguing that captive and wild elephants are fundamentally different. They have the same biology and needs, but the failure of captivity to meet these needs results in physical and psychological problems.

68. Captive elephants have been safely and successfully transferred long distances to sanctuary. For example, PAWS has been involved in moving more than a dozen elephants over the years without incident. These moves include older females and from places as far away as Alaska and Toronto, Canada. Some of these elephants had lived in their prior facilities for over 40 years. There is no evidence that the inevitable stress of these moves has had a long-term effect on any of the elephants. Santuario de Elefantes Brasil moved Rana (<https://globalelephants.org/rana/>), a confiscated ex-circus elephant in her 50s, 1,675 miles to their sanctuary in late December 2018. In May 2020, in the midst of the global COVID-19 pandemic, an elephant named Mara (<https://globalelephants.org/mara/>) was transferred nearly 1,700 miles from the Buenos Aires Zoo to the same sanctuary, where she almost immediately bonded with Rana and

has adapted well to life in sanctuary.<sup>1</sup> In November 2020, following an order of the Islamabad High Court, a male Asian elephant named Kaavan was flown about 2,500 miles from the Marghazar Zoo in Islamabad, Pakistan to the Kulen Promtep Wildlife Sanctuary in Cambodia, where he is adjusting and immediately began interacting with other elephant residents.<sup>2</sup>

***Summary***

69. Scientific knowledge about elephant intelligence has been increasing rapidly in the past decade: what we currently know is only a tiny fraction of what elephant brains are likely capable of, and yet more amazing abilities are still likely to be discovered. But even based on what we know at this stage, including through my own and my colleagues' extensive experience, observations and studies, both African and Asian elephants share many key traits of autonomy with humans and like humans are autonomous beings.

I, Joyce Pool, Ph.D., declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 05/24/2023



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(Signature)

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<sup>1</sup> Brook Jarvis, "How to Move Your Elephant During a Pandemic," New York Times (Aug. 9, 2020), available at: <https://www.nytimes.com/2020/08/09/science/coronavirus-elephants-wildlife-zoo.html>.

<sup>2</sup> Kelli Bender, "Kaavan the 'World's Loneliest Elephant' Makes an Elephant Friend for the First Time in 8 Years," People (Dec. 1, 2020), available at: <https://people.com/pets/kaavan-worlds-loneliest-elephant-meets-first-elephant-in-8-years/>.



# **Exhibit A**

# CURRICULUM VITAE

## DR. JOYCE H. POOLE

(Updated 2 February 2022)

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**Born in Germany, 1 May 1956; United States citizen**

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**Facebook:** [www.fb.com/elephantvoices](http://www.fb.com/elephantvoices); **Instagram:** [www.instagram.com/elephantvoices](http://www.instagram.com/elephantvoices)

**Twitter:** [www.twitter.com/elephantvoices](http://www.twitter.com/elephantvoices)

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### RESEARCH INTERESTS

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Acoustic communication, Cognitive science, Decision-making, Conservation.

### EDUCATION

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Postdoctoral Princeton University Research Fellow 1984-1988; Advisor: Daniel Rubenstein.

Ph.D. 1982 University of Cambridge, U.K, Sub-Department Animal Behaviour. Dissertation: *Musth and male-male competition in the African elephant*; Supervisor: Robert Hinde.

B.A. 1979 Smith College, High Honours in the Biological Sciences. Dissertation: *Behavioral-Ecology of the African elephant*.

### HONOURS AND AWARDS

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2017 The Taft School - Horace Dutton Taft Alumni Medal

2015 Jackson Hole Wildlife Film Festival - Outstanding Achievement Award

2007 California Legislature Assembly - Certificate of Recognition *for tireless efforts in educating people on elephant captivity.*

1996 Smith College Medal - for elephant research and conservation work, *exemplifying the true purpose of a liberal arts education.*

1979 American Society of Mammalogists - A. Brazier Howell Award for paper on *musth* in African elephants.

### PROFESSIONAL SOCIETIES/ BOARD and ADVISORY MEMBERSHIPS

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2019 Member, Honorary Board of Directors, Performing Animal Welfare Society, PAWS

2017-present Member, African Elephant Specialist Group, IUCN

2015-present Member, Board of Directors, Global Sanctuary for Elephants

2015-present Member, Conservation Alliance of Kenya

2010-present Member, Kenya Elephant Forum

2010 Member, Alliance for Captive Elephants

2008-present Member, Board of Directors, ElephantVoices

2004 Member, Panel of Experts, Species Survival Network

2002-2009 Member, Scientific Advisory Committee, Amboseli Elephant Research Project

2002-2011 Trustee, Amboseli Trust for Elephants

2001 Member, Science Advisory Board, Captive Elephant Management Coalition

1988-present National Geographic Explorer

1988-2001 Member, African Elephant Specialist Group, Species Survival Commission, IUCN

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## EMPLOYMENT

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- 2002-present **Scientific Director, ElephantVoices:** Directing the research, conservation and welfare work of the US non-profit organisation, ElephantVoices.
- 2002-2007 **Research Director, Amboseli Elephant Research Project:** Amboseli Trust for Elephants: Overseeing the elephant monitoring and collaborative research projects, and training programs for the 3 decades long study of elephants.
- 1999-2001 **Consultant, Basecamp Explorer AS:** Wildlife issues.
- 7/96 & 7/97 **Consultant, IMAX:** Scientific Advisor *Africa's Elephant Kingdom*, Discovery.
- 1994-1997 **Consultant, Richard Leakey & Associates:** Training; Lecturing; Advisor, wildlife documentaries.
- 1994-1995 **Author, *Coming of Age with Elephants*** (Hyperion Press, 1996; Hodder & Stoughton, 1996).
- 1991-1994 **Coordinator, Elephant Program, Kenya Wildlife Service:** Setting and implementing Kenya's elephant conservation and management policy; supervising management-oriented research; reconciling land use and other conflicts between elephants and people; building local expertise.
- 1990-1991 **Consultant, World Bank:** Pre-Project Facility, drafting the Elephant Conservation and Management Policy and Research Policy Framework and Investment Program, Kenya Wildlife Service.
- 1990 **Consultant, International Union for the Conservation of Nature:** Compiling overview of elephant conservation in Eastern Africa for Paris Donors Conference.
- 1989 **Consultant, Tanzanian Wildlife Department:** Drafting successful proposal to the Convention on Trade in Endangered Species to up list the African elephant to Appendix I of the Convention.
- 1989 **Consultant, World Wildlife Fund:** Discussions with Japanese and Chinese government officials and ivory carvers regarding detrimental impacts of the ivory trade on elephant survival.
- 1989 **Researcher, African Wildlife Foundation:** Assessing effects of poaching on East African elephant populations.

## FIELD RESEARCH

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- 2020-ongoing **Kenya:** Amboseli National Park: Documenting elephant behavior and communication for The Elephant Ethogram
- 2011-2019 **Mozambique:** Elephant monitoring and research, as part of the Gorongosa Restoration Project, Gorongosa National Park.
- 2011-2016 **Kenya:** Elephant conservation and citizen-science project in the Maasai Mara ecosystem.
- 2008 **Sri Lanka:** Minneriya-Kaudulla National Parks: Initiating an Asian elephant conservation project and behavior study.
- 1998-2009 **Kenya:** Amboseli National Park: Elephant communication, cognition and social behavior, conducting playback experiments and recording elephant vocalisations and behavior.
- 1998 **Kenya:** Maasai Mara National Park, Tsavo National Park & Laikipia District: Recording elephant vocalisations and behavior.
- 1997 **Tanzania:** West Kilimanjaro: Assessing elephant numbers and habitat use.
- 1990-1994 **Kenya:** Overseeing numerous elephant surveys and studies of elephants carried out under my direction by the Kenya Wildlife Service Elephant Program.
- 1975-1990 **Kenya:** Amboseli National Park: Male elephant behaviour; reproductive behavior; elephant vocal, gestural and olfactory communication.
- 1989 **Kenya, Uganda, Tanzania:** Amboseli, Tsavo, Queen Elizabeth and Mikumi National Parks: Assessing the effects of poaching on the age structure and social and reproductive patterns of elephant populations in East Africa.
- 1980-1982 **Kenya:** Amboseli National Park: Focal animal sampling *Musth* and male male competition among elephants.
- 1975-1979 **Kenya:** Amboseli National Park: participating in Cynthia Moss' long-term studies of elephants, identifying individual elephants, and collecting social behavior, demographic and ranging data.
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## LANGUAGES

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English: Mother tongue  
Kiswahili: Fluent  
Norwegian: Working knowledge

## PUBLICATIONS

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*Refereed articles, chapters, theses:*

Published:

- Lee, P.C., Moss, C.J., Njiraini, N., Poole, J.H., Sayialel, K. Fishlock, V.L. 2021. Cohort consequences of drought and family disruption for male and female African elephants. *Behavioral Ecology*, <https://doi.org/10.1093/beheco/arab148>
- Campbell-Staton, SC, Arnold, BJ Gonçalves, D., Granli, P., Poole, J., Long, R.A., Pringle, R.M. 2021. Ivory poaching and the rapid evolution of tusklessness in African Elephants. *Science*, 374: 483-487. <https://doi.org/10.1126/science.abe7389>
- Hedwig, D., Poole, J. Granli, P. 2021. Does social complexity drive vocal complexity? Insights from the two African elephant species. *Animals* 2021, 3017, <https://doi.org/10.3390/ani11113071>.
- Poole, J.H., Granli, P.K. 2021. The Elephant Ethogram: A Library of African Elephant Behavior. *Pachyderm*, 62: 105-111 <https://pachydermjournal.org/index.php/pachyderm/article/view/462/485>
- Poole, J.H., Granli, P.K. 2021. The Elephant Ethogram: A Library of African Elephant Behavior. <https://www.elephantvoices.org/elephant-ethogram.html>
- Moolman, L., de Morney, M.A., Ferreira, S.M., Ganswindt, A., Poole, J.H., Kerley, I.H. 2019. And then there was one: A camera trap survey of the declining population of African elephants in Knysna, South Africa. *African Journal of Wildlife Research* 49: 16–26 <https://doi.org/10.3957/056.049.0016>
- Pardo, M.A. Poole, J.H., Stoeger, A.S., Wrege, P.H., O’Connell-Rodwell, C.E., Padmalal,U.K., de Silva, S. 2019 Differences in combinatorial calls among the three elephant species cannot be explained by phylogeny. *Behavioral Ecology*. 30(3), 809-820. <https://doi.org/10.1093/beheco/arz018>.
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- Shannon, G., Slotow, R., Durant, S.M., Sayialel, K.N., Poole, J., Moss, C., McComb, K. 2014. Effects of social disruption in elephants persist decades after culling. *Frontiers in Zoology*, 10:62; <http://www.frontiersinzoology.com/content/10/1/62>
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- Nowak, K., Dobson, A., Poole, J., Granli, P., Kahumbu, P., Lee, P., Kiiru, W., Joram, P., Malima, C., Moss, C. 2013. [Elephants are not diamonds. The Ecologist](#).
- Lee, P.C., Bussière, L.F., Webber, C.E., Poole, J.H., Moss, C.J. 2013. [Enduring consequences of early experiences: 40 year effects on survival and success among African elephants \(Loxodonta africana\)](#). *Biology Letters*. 04/2013; 9(2):20130011. <https://royalsocietypublishing.org/doi/10.1098/rsbl.2013.0011>.
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- Lee, P.C., Poole, J.H., Njiraini, N. & Moss, C.J. 2011. Male social dynamics: Independence and beyond. In: *The Amboseli Elephants: A Long-Term Perspective on a Long-Lived Mammal*. Moss, C.J., Croze, H.J & Lee, P.C. (Eds.) University of Chicago Press.
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## PUBLIC EDUCATION

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### *Websites and Social Media*

ElephantVoices website	<a href="http://www.ElephantVoices.org">www.ElephantVoices.org</a>
ElephantVoices on Facebook	<a href="http://www.facebook.com/elephantvoices">www.facebook.com/elephantvoices</a>
ElephantVoices on Instagram	<a href="http://www.instagram.com/elephantvoices">www.instagram.com/elephantvoices</a>
ElephantVoices on Twitter	<a href="http://www.twitter.com/elephantvoices">www.twitter.com/elephantvoices</a>
ElephantVoices on Vimeo	<a href="http://www.vimeo.com/elephantvoices">www.vimeo.com/elephantvoices</a>
ElephantVoices on SoundCloud	<a href="http://www.soundcloud.com/elephantvoices">www.soundcloud.com/elephantvoices</a>
The Elephant Charter	<a href="http://www.theelephantcharter.info">www.theelephantcharter.info</a>

### *Online Databases & Apps*

[The Elephant Ethogram: A Library of African Elephant Behavior](#) Over 400 African savanna elephant behaviors documented with written descriptions, 2,400+ educational video clips and hundreds of audio files and images.

[Gorongosa Elephants Who's Who & Whereabouts](#) houses identity, demographic and sightings data for 396 adult elephants from Gorongosa National Park population, Mozambique. (Password-protected)

[Mara Elephants Who's Who & Whereabouts](#) houses identity, demographic and sightings data for 1,282 adult elephants from the Maasai Mara population, Kenya.

Mara EleApp: A [cellphone application for data collection](#) by scientists and citizen scientists for upload to the [Mara Elephants Who's Who & Whereabouts](#)

Gorongosa EleApp: A multi-language (English, Portuguese) cellphone application for data collection by scientists and citizen scientists for upload to the [Gorongosa Elephants Who's Who & Whereabouts](#) (Password-protected)

### *Printed Articles and books highlighting the work of Joyce Poole (a selection)*

Elephant social behavior and communication research and conservation work featured in:

Aftenposten, Daily Telegraph, LA Times, Highlights for Children, Kyodo News, National Geographic Adventure, National Geographic Explorer, National Geographic Kids, National Geographic Magazine, National Geographic News, New York Times Magazine, New York Times, Readers' Digest, Science, Science News, Science Times, Scientific American, Scholastic, Spektrumdirekt, The Guardian.

2021 [What Has Four Legs, a Trunk and a Behavioral Database](#), New York Times.

2021 [The First Google Translate for Elephants Debuts](#), Scientific American.

2021 [What are elephants saying? First-ever library reveals communication mysteries](#), National Geographic.

2021 [Roar-Rumble And Squeal-Trumpet: Scientists Compile An Elephant Lexicon](#), Forbes.

2014 Jodi Picoult, *Leaving Time*, a novel.

2005 Kay Redfield Jamison, *Exuberance: A Passion for Life*, non-fiction.

2001 Martin Meredith's *Africa's Elephant*, a biography.

1992 Doug Chadwick, *Fate of the Elephant*.

1992 Doug Chadwick in his feature article for National Geographic Magazine.

### *Artistic work featuring elephant calls recorded by Joyce Poole (a selection)*

2016 Carlos Casas, *Cemetery*, film, a visual and acoustic work in progress.

2013 Paul Winter, *Summer Solstice Celebration Performance* June 22 at the Cathedral in New York.

2010 Paul Winter, *Miho, Journey to the Mountain*.

2009 James Cameron, *Avatar*, film.

2002 Ruichi Sakamoto, *Elephantism*, DVD Book interviews and discussions.

2002 Jim Metzner, *Pulse of the Planet: Extraordinary Sounds from the Natural World*.

*Radio (a selection)*

- 2021 Scientist Joyce Poole [On What Elephants Have To Say](#), NPR.
- 2012 Sam Litzinger interview on The Animal House/NPR (WAMU 88.5).
- 2009 Elephant welfare views featured on WBUR's Inside Out Documentary on American Zoos with Diane Toomey.
- 2008 Elephant communication research featured in Up Front Radio, San Francisco with Sandip Roy Chowdhury.
- 2008 Elephant communication, cognition and welfare with Karl Losken Animal Voices 102.7fm in Vancouver BC Canada.
- 2005 Science Update, American Association for the Advancement of Science (AAAS).
- 2005 BBC Radio Science, the Leading Edge.
- 2005 German Public Radio (SWR) program Campus.
- 2005 NPR Elephant vocal learning.
- 2005 BBC News Scotland Vocal Learning in elephants.
- 2005 Elephant welfare ABC's Radio 702 with Rory McDonald.
- 2004 Elephant communication research featured in BBC's Beyond our Senses program Sounds of Life with Grant Sonnex.
- 2004 Elephant communication research featured in NPR program on elephant language.
- 1996 WETA-FM, News 820's Openline & WNYC.
- 1981 Musth in the African elephant, BBC Radio 4, The living World.

*Television (a selection)*

- 2019 *Women of Impact*, National Geographic.
- 2016 *Mind of a Giant*, award winning documentary, National Geographic and Vulcan Productions.
- 2015 *Rebirth of Paradise, Episodes 2 and 5* National Geographic and PBS.
- 2013 *An apology to elephants*, HBO.
- 2012 *War Elephants*, award winning documentary about the traumatised elephants in Gorongosa National Park, Mozambique, and their recovery. National Geographic Wild, worldwide.
- 2012 [Live conversation](#) on National Geographic's Facebook Page.
- 2008 Elephant communication research is featured in Elephant having tales to tell, NHK, Japan (Japanese and English versions).
- 2006 Interview on elephant communication and cognition for Smart Planet for REDES-TVE, Spain.
- 2005 Elephants and vocal learning, Daily Planet Discovery Channel Canada.
- 2005 Elephant cognition and conservation views featured on National Geographic Explorer *Elephant Rage*.
- 2004 Elephant recordings featured in Discovery Channel's Echo III.
- 2002 Elephant communication research, Elephant's Talk, featured in BBC documentary *Talking with Animals*.
- 1999 Research featured in *Inside the Animal Mind Part 3 Animal Consciousness*, WNET Nature.
- 1998 Featured on Episode 16, *Elephants*, in series, *Champions of the Wild*, Omni Film Productions, Vancouver, Canada.
- 1996 Life, elephant research and conservation work subject of National Geographic Special, *Coming of Age with Elephants*.
- 1996 *Wildlife Warriors*, National Geographic Special.
- 1996 *A Voice for Elephants* USIA AfricaPIX.

- 1996 Discovery Channel documentary "Ultimate Guide to Elephants".
- 1990 *Elephants like us*, Rossellini and Associates.
- 1990 *The language of the elephants*, Rossellini and Associates.
- 1989 Elephant research and conservation work featured in National Geographic Special *Ivory Wars*.
- 1988 Research highlighted in BBC production *Trials of Life* with David Attenborough.
- 1988 Work on elephant infrasound featured in *Supersense* BBC Natural History Unit series on animal senses.
- 1987 Featured in Sports and Adventure, *Women of the World*.

Work also featured on News and Talk shows such as CNN, 1993, ABC news Women and Science, The Today Show, 1996, West 57<sup>th</sup> Street CBS News, 1989, PM Magazine, 1987.

## **Exhibit B**

## Exhibit B

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## **Exhibit IV**

## **Declaration of Karen McComb**

I, Karen McComb, declare as follows:

### **Introduction and Qualifications**

1. My name is Karen McComb. I was awarded my Bachelors of Science with 1<sup>st</sup> Class Honours in Zoology from the University of Edinburgh in 1984. I earned my PhD from the University of Cambridge from 1984-1988, under the supervision of Professor T.H. Clutton-Brock, for a thesis entitled “Roaring and reproduction in red deer (*Cervus elaphus*)”. I completed a Postdoctoral Research Fellowship from 1989-1990 at the University of Minnesota, and then was a Research Fellow at Newnham College, at the University of Cambridge, from 1990-1993. I have worked at the University of Sussex since 1993, where I have been a Lecturer/Senior Lecturer from 1993-2004, a Reader from 2004-2013, and a Professor (of Animal Behaviour and Cognition) since 2013. I work in the School of Psychology at University of Sussex in Brighton, United Kingdom and reside in East Sussex.

2. I submit this Declaration in support of the Nonhuman Rights Project, Inc.’s petition for a writ of habeas corpus regarding the captive elephants at the Honolulu Zoo. I am a nonparty to this proceeding.

3. My current research is directed towards the investigation of emotional awareness as a basis for social success in the domestic horse. Although the essential role that emotional intelligence plays in human social behaviour is well recognized, we collectively still know very little of how individual variation in the ability to identify and respond appropriately to emotional signals influences social integration and success in animal groups. My research team is designing a broad array of naturalistic tests to quantitatively assess individual differences in emotional abilities, which we will examine in relation to measures of social success. In addition to the scientific significance of my research, there are considerable implications for animal welfare, and my group’s findings will allow us to more accurately understand the emotional capacities and requirements of individual horses within the domestic environment.

4. My research career has centered on using naturalistic experiments to probe and understand vocal communication and cognitive abilities in a wide range of mammals, including African elephants, horses, lions, red deer, and domestic cats and dogs. Through the design and implementation of novel experiments which provide a window

into abilities that animals use to make every-day decisions in their native environments, I have made breakthroughs that have significantly advanced our fundamental understanding of animal minds and social behaviour. My research has contributed significantly towards advances in: (1) Understanding social cognition and conceptual knowledge. My work focusing on social cognition in domestic horses has led to fundamental insights about how individuals within a group recognize each other, and my research team provided the first systematic demonstration of cross-modal individual recognition of conspecifics in a nonhuman. This finding demonstrates how multi-sensory representations can underlie animals' knowledge of each other, and fundamentally advances our understanding of how conceptual knowledge may have arisen evolutionarily; (2) Understanding social intelligence in wild mammals. My original work evaluating social cognition in African lions laid the groundwork for understanding how the potential costs of fighting with larger groups over limited resources may have provided a selective evolutionary pressure for numerical assessment skills in social species. This potential biological basis for the evolution of mathematical abilities has led broadly to new research on other species based largely on my experimental paradigm. In my research with African elephants, I have demonstrated that the collective experiences and knowledge found in the oldest members of a group can influence the social knowledge of the group as a whole, which has provided fundamental insights into how cognitively advanced social mammals acquire and store information in the wild. Subsequent work provided the first empirical evidence that groups benefit from older leaders specifically due to the group's collectively enhanced ability to respond to predators based on the knowledge of the oldest individual, allowing for the development of intriguing hypotheses for the evolutionary benefits of longevity. More recent work demonstrated for the first time that elephants' knowledge of human predators is much more sophisticated than previously recognized, by showing that elephants can determine ethnicity, gender, and age of humans from acoustic cues in human voices; and (3) Understanding sexual signals and the origins of language. My original research on the function of roaring in red deer provided the foundation for a novel, systematic experimental approach to studying the role of vocal signaling in sexual selection in mammals. In a series of influential papers, my research group showed that formants, key parameters in human speech, play a critical role in the communication of non-human mammals. In addition, I have used a comparative approach to demonstrate that increases in non-human primate

group size and extent of social bonding are related to the development of larger vocal repertoires, providing new information for the scientific investigation of language evolution.

5. In addition to the scientific implications of my research, it has also had impacts for animal conservation and welfare. Specifically, by demonstrating the crucial role that the oldest individuals play in elephant social groups, we have shown how entire populations of cognitively advanced social mammals can be severely disrupted by the removal of even a few critical individuals. Our recent work has also shown that the effects of social disruption can have severe, long-term effects on the cognitive abilities of elephants. This research has significant implications for the conservation and welfare of both wild and captive animals, not just elephants but also other long-lived, large-brained social mammals such as whales and dolphins. Due to this work, I was invited to contribute to the recommendations of the recent Convention on the Conservation of Migratory Species of Wild Animals (CMS).

6. Along with my colleague David Reby, I developed a very successful research group in Mammal Vocal Communication and Cognition (<http://www.lifesci.sussex.ac.uk/cmvcr/Home.html>) at the University of Sussex. This research group has attracted and supported many talented postgraduates and independent research fellows. Currently, I have 3 PhD students and a postdoc, working with me on projects ranging from emotional awareness in domestic animals to investigating cultural differences between elephant populations.

7. I have been awarded significant extramural grants to fund my research throughout my career from a number of foundations and organizations, including: (1) Levehulme Trust Research Grants, in both 2009 and 2014; (2) a National Geographic grant in 2006; (3) a Waltham Foundation grant in 2002; (4) an EU Marie Curie grant in 2000; (5) a BBSRC research grant in 1996; (6) Tusk Trust grants, in 1994, 1995, and 1996; (7) a Nuffield Foundation grant in 1994; (8) a Royal Society Research grant in 1994; (9) and an NERC small project grant in 1993. Additionally, I have received a number of Royal Society Conference grants throughout my career, most recently in 2005 and 2009.

8. Over the course of my career, I have received several awards and honors related to my research, including; (1) the 2008 PNAS Cozzarelli Prize for outstanding originality and scientific excellence for the article “Cross-modal individual recognition in

domestic horses (*Equus caballus*)” with L. Proops and D. Reby; (2) the prize for best talk by a research student at the Association for the Study of Animal Behaviour Spring Conference in 1987 during my PhD at Cambridge; (3) The University of Edinburgh Class Medal & Ashworth Prize in Zoology in 1984; (4) the Class Medal and William Turner Award in Zoology in 1983; (5) the Moira Lyndsay Stewart Award in Zoology in 1982; and (6) the Jack Roberts Memorial Prize in Botany in 1982.

9. I have served with a number of professional organizations throughout my career, including: (1) as an appointed Reviewer for European Research Council grants in 2012; (2) as an academic Editor for *PLoS One* since 2007; (3) as part of the Editorial Board for *Bioacoustics* since 1997; (4) as a consulting Editor for *Animal Behaviour* from 1996-1998; (5) as a Council Member for the Association for the Study of Animal Behaviour (ASAB) from 1993-1997; (6) as a liaison representative for the ASAB with the Institute of Biology from 1995-1997; and (7) as a manuscript reviewer for a number of premier scientific publications, including *Science*, *Nature*, *Current Biology*, *Proceedings of the Royal Society B*, *Proceedings for the National Academy of Sciences*, *PLoS One*, and *Animal Behaviour*, as well as other journals.

10. I have organized a number of conferences during my career, including: (1) a symposium on “Mammal Vocal Communication: Insights into cognitive abilities and the origins of language” at the International Ethological Congress in Budapest, in August 2005 (with David Reby); and (2) the 1999 Association for the Study of Animal Behaviour Conference on “Evolution of Mind” in London, attended by more than 200 people.

11. I have given numerous professional academic lectures throughout my career. Some of these include: (1) an invited lecture to the Cetacean Culture Workshop in 2014, organized jointly by the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and Whale and Dolphin Conservation (WDC); (2) a Plenary talk at the 2012 Association for the Study of Animal Behaviour meeting on “Cognition in the Wild”; (3) an invited lecture at the 2011 international workshop on communication and social cognition at the Institute of Evolutionary Biology and Environmental Studies at the University of Zurich; (4) an invited lecture at the 2010 International workshop on referential communication at the Wissenschaftskolleg zu Berlin, Institute for Advanced Study in Berlin; (5) a Plenary lecture at the 2010 Nordic meeting of the International Society for Applied Ethology, in Kuopio, Finland; (6) an invited lecture at the 2009

International Ethological Congress in Rennes, France; (7) an invited lecture in 2009 at the Ecology and Evolutionary Biology Department at the University of Princeton; (8) an invited lecture at the Novartis day at the 2006 Royal Society Discussion meeting on Social Intelligence, in London; (9) an invited lecture (and conference organizer) at the 2005 International Ethological Congress Symposium on “Mammal Vocal Communication: insights into cognitive abilities and the origin of language” in Budapest; (10) a Keynote lecture at the 2003 British Association for the Advancement of Science Symposium on “Where do numbers come from?” at Salford, England; (11) a Plenary lecture at the 2002 Association for the Study of Animal Behaviour conference on “Information Gathering”; (12) an invited lecture at the 2001 symposium on Alternative Approaches to Studying Social Cognition at the International Ethological Congress in Tübingen, Germany; (13) an invited lecture at a 2000 International workshop on animal signaling, Talkbank, at the University of Philadelphia; and (14) a Plenary lecture at the 1999 Association for the Study of Animal Behaviour Conference on “Communication and Social Behaviour” in Lisbon.

12. In addition to academic lectures, I have given a number of public lectures over the course of my career, including: (1) as an invited panel member/speaker at the 2014 Festival of Sound, organized by Magdalene College at the University of Cambridge; (2) as an invited member/speaker at the 2012 Gulbenkian Foundation Supersonix Festival, organized on behalf of the Exhibition Road Cultural Group to focus on the art and science of sound and music-making; (3) a public lecture on “Animal Communication” in the “Learning about Animals” series in London in 2007; (4) a lecture to the 2006 Pet Care Trust Conference in Edinburgh; (5) a Press conference for the launch of my *Science* paper, organized by the American Academy for the Advancement of Science, at the London Zoo in 2001; (6) a lecture at the British Library National Sound Archive in 2000; and (7) a joint lecture with Cynthia Moss at a Royal Geographical Society lecture, attended by more than 600 members of the public, in 1996.

13. I have published over 50 peer-reviewed scientific articles over my career. These articles have been published in many of the world’s premier scientific journals, including: *Nature*, *Science*, *PNAS*, *Frontiers in Zoology*, *Animal Behaviour*, *Current Biology*, *Biology Letters*, *PLoS ONE*, *Proceedings of the Royal Society B*, *Ethology*, *Animal Cognition*, *Journal of the Acoustical Society of America*, *Journal of*

*Comparative Psychology, Advances in the Study of Behaviour, American Journal of Primatology, Behavioural Ecology, and Trends in Ecology & Evolution.* Six of these publications have been featured as cover articles in the journals *Science, Nature, PNAS, Proceedings of the Royal Society B, and Biology Letters.* Specific topics of these publications have included: Animals remember previous facial expressions that specific humans have exhibited; Elephants can determine ethnicity, gender, and age from acoustic cues in human voices; The Equine Facial Action Coding System; The eyes and ears are visual indicators of attention in domestic horses; Cross-modal discrimination of human gender by domestic dogs; Effects of social disruption in elephants persist decades after culling; The responses of young domestic horses (*Equus caballus*) to human-given cues; Leadership in elephants: the adaptive value of age; African wild dogs as a fugitive species: playback experiments investigate how wild dogs respond to their major competitors; Cross-modal perception of body size in domestic dogs; the use of human-given cues by domestic horses; Acoustic bases of motivational misattributions; Oestrus red deer hinds prefer male roars with higher fundamental frequencies; Size communication in domestic dog (*Canis familiaris*) growls; Manipulation by domestic cats: the cry embedded within the purr; Context-related variation in the vocal growling behaviour of the domestic dog; Cross-modal individual recognition in domestic horses; Human listeners attend to size information in domestic dog growls; Experimental investigation of referential looking in free-ranging barbary macaques; Female perception of size-related formant shifts in red deer (*Cervus elaphus*); African elephants show high levels of interest in the skulls and ivory of their own species; Co-evolution of vocal communication and sociality in primates; Long-distance communication of cues to social identity in African elephants; Vocal communication and reproduction in deer; Information content of female copulation calls in yellow baboons; Matriarchs act as repositories of social knowledge in African elephants; Elephant hunting and conservation; Roaring and social communication in African lions; Unusually extensive networks of vocal recognition in African elephants; Perception of female reproductive state from vocal cues; Female grouping as a defense against infanticide by males; Behavioural deception; Roaring and numerical assessment in contests between groups of female lions; Female lions can identify potentially infanticidal males from their roars; Roaring and oestrus; Roaring by red deer stags advances date of oestrus in hinds; and Are talkers the only thinkers?.



14. My scientific work has also been published as chapters in several books and edited volumes, including (1) *The Social Dog* (2014, editors J. Kaminski and S. Marshall-Pescini, Elsevier); (2) *The Amboseli Elephants: A Long-Term Perspective on a Long-Lived Mammal* (2011, University of Chicago Press); (3) *New Encyclopedia of Neuroscience* (2008, editor L.R. Squire, Academic Press); (4) *The Barbary macaque: biology, management, and conservation* (2006, editors J.K. Hodges and J. Cortes, Nottingham University Press); (5) *Animal Communication Networks* (2005, editor P.K. McGregor, Cambridge University Press); (6) *Studying Elephants* (1996, African Wildlife Foundation Technical Handbook series); and (7) *Playback and Studies of Animal Communication* (1992, editor P.K. McGregor, Plenum Publishing Corporation).

15. My work has garnered significant media coverage over the course of career. I have made appearances on British, American, Australian, Canadian, and German TV and radio stations (including BBC TV news, Discovery Channel, Radio 4 Today programme, and BBC Science in Action) and my work has been featured in articles in major British, European, and American newspapers (including The Guardian, Times, Liberation, National Geographic magazine, and New Scientist).

16. In April 2001, *Science* organized a press conference in London for the launch of my paper, which was featured as their cover story. Later cover stories in *Biology Letters* (2006), *PNAS* (2009), and *Proceedings of the Royal Society B* (2011) also generated significant media attention, as did my *Current Biology* paper in 2009 which featured as the most popular story on the BBC website, as well as the top Science and Entertainment story.

17. Several of my recent papers, including *Current Biology* (2018), *PNAS* (2014) and *Frontiers in Zoology* (2013) received unusually extensive world-wide media coverage. This included interviews on the Radio 4 Today Programme, ITV News at Ten, BBC World TV News, Newsround, BBC World Service, and Science in Action, as well as coverage in BBC Breakfast, BBC Radio 2, 3, and 4 news reports, Time magazine, The Economist, *Nature*, *Science*, National Geographic, and by more than 200 other news outlets in the UK and around the world.

18. My elephant research was covered in BBC's "Inside the Animal Mind" in February 2014, and my horse research was filmed for the BBC series "Talk to the Animals" which aired in July 2014. Both programmes were shown in prime-time slots and were

very well received by the public. My recent research on emotional awareness in horses also featured in the award-winning CBC documentary “Equus: story of the horse”.

19. I have done regular consultancies for the BBC and other companies making wildlife documentaries on animal communication. Most recently, I was a scientific consultant for the popular two-part BBC documentary “Talk to the Animals” (2014). I have also provided sound recordings for wildlife documentaries by the BBC and Windfall films, and have a sound recording credit (with Martyn Colbeck) on the BBC’s “Echo of the elephants: the next generation” (1995).

20. My work has been featured in a number of textbooks and popular books, including: (1) John Alcock’s and Lee Dugatkin’s major textbooks on Animal Behaviour; (2) new edition of the Krebs & Davies *An Introduction to Behavioural Ecology*; (3) new edition of Bradbury and Vehrencamp’s *Principles of Animal Communication*; (4) new edition of Shettleworth’s *Cognition, Evolution, and Behavior*; (5) Brian Butterworth’s *The Mathematical Brain*; (6) Tim Clutton-Brock’s *Mammal Societies*; and (7) as a chapter in the best-selling *Animal Wise* by Virginia Morell.

21. I provided photographic material to The Field Museum, in Chicago, for an exhibition on Mammoths and Mastodons, Titans of the Ice Age. This exhibit has been touring internationally.

22. My Curriculum Vitae fully sets forth my educational background and experience and is annexed hereto as “Exhibit A”.

### **Basis for opinions**

23. The opinions I state in this Declaration are based on my professional knowledge, education, training, and years of experience observing and studying elephants and other social mammals, as well as my knowledge of peer-reviewed literature about elephant behaviour and intelligence published in the world’s most respected journals, periodicals and books that are generally accepted as authoritative in the field, and many of which were written by myself or colleagues whom I have known for several years and with whose research and field work I am personally familiar. A full reference list of peer-reviewed literature cited herein is annexed hereto as “Exhibit B”.

### **Opinions**

#### ***Premise***

24. Autonomy in humans is defined as self-determined behaviour that is based on freedom of choice. As a psychological concept it implies that the individual is directing their behaviour based on some non-observable, internal cognitive process, rather than simply responding reflexively. Although we cannot directly observe these internal processes in other people, we can explore and investigate them by observing, recording and analysing behaviour. For non-human animals, observing similar behaviour and recording evidence of shared cognitive capacities should, parsimoniously, lead to similar conclusions about autonomy.

25. I shall indicate which species, African (*Loxodonta Africana*) or Asian (*Elephas maximus*), specific observations relate to. If the general term “elephants” is used with no specific delineation, it can be assumed the comment relates to both species.

### ***Brain And Development***

26. Elephants are large-brained, with the biggest absolute brain size of any land animal (Cozzi et al 2001; Shoshani et al 2006). Even relative to their body sizes, elephant brains are large. Encephalization quotients (EQ) are a standardised measure of brain size relative to body size, and illustrate by how much a species’ brain size deviates from that expected for its body size. An EQ of one means the brain is exactly the size expected for that body, and values greater than one indicate a larger brain than expected (Jerison 1973). Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species). This means an elephant’s brain can be up to two and a half times larger than is expected for an animal of its size; this EQ is similar to that of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years (Eisenberg 1981, Jerison 1973). Given how metabolically costly brain tissue is, the large brains of elephants would be expected to confer significant advantages; otherwise their size would be reduced. Presumably this advantage is allowing greater cognitive capacities and behavioural flexibility (Bates et al 2008a).

27. Generally, mammals are born with brains weighing up to 90% of the adult weight. This figure drops to about 50% for chimpanzees. Human baby brains weigh only about 27% of the adult brain weight (Dekaban & Sadowsky 1978). This long period of brain development over many years (termed ‘developmental delay’) is a key feature of human brain evolution and is thought to play a role in the emergence of our complex cognitive abilities, such as self-awareness, creativity, forward planning, decision making and

social interaction (Bjorkland 1997). Delayed development provides a longer period in which the brain may be shaped by experience and learning (Fuster 2002). Elephant brains at birth weigh only about 35% of their adult weight (Eltringham 1982), and elephants show a similarly protracted period of growth, development and learning (Lee 1986). This similar developmental delay in the elephant brain is therefore likely associated with the emergence of similarly complex cognitive abilities.

28. Despite nearly 100 million years of separate evolution (Hedges 2001), elephants share certain characteristics of our large brains, namely deep and complex folding of the cerebral cortex, large parietal and temporal lobes, and a large cerebellum (Cozzi et al 2001). The temporal and parietal lobes of the cerebral cortex manage communication, perception, and recognition and comprehension of physical actions, while the cerebellum is involved in planning, empathy, and predicting and understanding the actions of others (Barton 2012). Thus, the physical similarities between human and elephant brains occur in areas that are relevant to capacities necessary for autonomy and self-awareness.

29. Elephant brains hold three times more neurons than do human brains, with 97% of their found neurons in the cerebellum and 5.6 billion neurons in the cerebral cortex (Herculano-Houzel et al 2014); This figure for cortical neurons is lower than previous estimates, which suggested 11 billion cortical neurons for elephants and 11.5 billion for humans (Roth & Dicke 2005).

30. Elephant pyramidal neurons have a large dendritic tree, i.e. a large number of connections with other neurons for receiving and sending signals (Cozzi et al 2001; Jacobs et al 2011; Maseko et al 2012). The degree of complexity of pyramidal neurons is linked to cognitive ability, with more (and more complex) connections between pyramidal neurons being associated with increased cognitive capabilities (Elston 2003).

31. As described below, research demonstrates that along with these common brain and life-history characteristics, there is evidence that elephants may share many behavioural and intellectual capacities with humans, including: self-awareness, empathy, awareness of death, intentional communication, learning, memory, and categorisation abilities. Many of these capacities have previously been considered – erroneously – to be uniquely human, and each is fundamental to and characteristic of autonomy and self-determination.

### *Awareness Of Self And Others*

32. An Asian elephant has been shown to exhibit Mirror Self Recognition (MSR) using Gallup's classic 'mark test' (Gallup 1970; Plotnik et al 2006). MSR is the ability to recognise a reflection in the mirror as oneself, and the mark test involves surreptitiously placing a coloured mark on an individual's forehead that it could not see or be aware of without the aid of a mirror. If the individual uses the mirror to investigate the mark, it is logical to assume that the individual recognises the reflection as itself. (See video [here](#)). Almost all animal species tested on this task fail: they do not recognise the image in the mirror as being a reflection of themselves. Indeed, the only other mammals beyond humans who have successfully passed the mark test and exhibit MSR are the great apes (chimpanzees, bonobos, gorillas, and orangutans) and bottlenose dolphins (Parker and Mitchell 1994, Reiss and Marino 2001). MSR is significant because it is considered by many to be a key identifier of self-awareness. Self-awareness is intimately related to autobiographical memory in humans (Prebble et al 2013), and is central to autonomy and being able to direct one's own behaviour to achieve personal goals and desires. By demonstrating that they can recognize themselves in a mirror, elephants appear to be holding a mental representation of themselves from another perspective, and thus be aware that they are a separate entity from others (Bates and Byrne 2014).

33. Related to possessing a sense of self is an understanding of death. Observing reactions to dead family or group members suggests such an awareness of death in only two animal genera beyond humans; chimpanzees and elephants (Anderson et al 2010, Douglas-Hamilton et al 2006). Having a mental representation of the self – a prerequisite for mirror-self recognition – probably also confers an ability to comprehend aspects of death. Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals (McComb et al 2006) (See video [here](#)), and they have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals (Poole & Granli, 2011). Although they do not give up trying to lift or elicit movement from the body immediately, elephants appear to realise that once dead, the carcass cannot be helped anymore, and instead they engage in apparently “grief-stricken” behaviour, such as standing guard over the body, and protecting it from the approaches of predators (Poole & Granli, 2011). They also have been observed to cover the bodies of dead elephants

with dirt and vegetation (Moss 1992; Poole 1996). In the particular case of mothers who lose a calf, although they may remain with the calf's body for an extended period, they do not behave towards the body as they would a live calf. Indeed, the general demeanour of elephants who are attending to a dead elephant is one of grief, with slow movements and few vocalisations (Poole, pers. comm.). These behaviours are akin to human responses to the death of a close relative or friend, and illustrate that elephants appear to possess some understanding of life and the permanence of death (See photographs [here](#)).

34. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities (Gallup 1982), where empathy can be defined as identifying with and understanding another's experiences or feelings by relating personally to their situation. Empathy is an important component of human consciousness and autonomy, and is a cornerstone of normal social interaction. It goes beyond merely reading the emotional expressions of others. It requires modelling of the emotional states and desired goals that influence others' behaviour both in the past and future, and using this information to plan one's own actions; cognitive empathy is possible if one can adopt another's perspective, and attribute emotions to that other individual (Bates et al 2008b). Empathy is, therefore, a component of and reliant on 'Theory of Mind' - the ability to mentally represent and think about the knowledge, beliefs and emotional states of others, whilst recognising that these can be distinct from your own knowledge, beliefs and emotions (Premack and Woodruff 1978/ Frith and Frith 2005).

35. Elephants clearly and frequently display empathy in the form of protection, comfort, and consolation, as well as by actively helping those who are in difficulty, such as assisting injured individuals to stand and walk, or helping calves out of rivers or ditches with steep banks (Bates et al 2008b, Lee 1987) (See video [here](#)). Elephants have even been observed feeding those who are not able to use their own trunks to eat (see Poole and Granli, 2011).

36. In an analysis of behavioural data collected from wild African elephants over a 40-year continuous field study, Bates and colleagues concluded that as well as possessing their own intentions, elephants can diagnose animacy and goal directedness in others, understand the physical competence and emotional state of others, and attribute goals

and mental states (intentions) to others (Bates et al 2008b), as evidenced in the examples below:

*'IB family is crossing river. Infant struggles to climb out of bank after its mother. An adult female [not the mother] is standing next to calf and moves closer as the infant struggles. Female does not push calf out with its trunk, but digs her tusks into the mud behind the calf's front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins mother.'* (See video [here](#))

*'At 11.10ish Ella gives a 'lets go' rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp except Elspeth and her calf [<1 year] and Eudora [Elspeth's mother]. At 11.25 Eudora appears to 'lead' Elspeth and the calf to a good place to enter the swamp — the only place where there is no mud.'*

Examples such as these demonstrate that the acting elephant (the adult female in the first example, and Eudora in the second) was able to understand the intentions of the other (the calf in the first case, and Elspeth in the second) – i.e. to either climb out of or into the water – and they could adjust their own behaviour in order to counteract the problem being faced by the other. Whilst humans may act in this helpful manner on a daily basis, such interactions have been recorded for very few non-human animals (Bates et al 2008b).

37. Experimental evidence from captive African elephants further demonstrates that elephants have the potential to attribute intentions to others, as they follow and understand human pointing gestures. The elephants understood that the human experimenter was pointing in order to communicate information to them about the location of a hidden object (Smet and Byrne 2013) (See video [here](#)). Attributing intentions and understanding another's reference point is central to empathy and theory of mind.

38. Evidence of 'natural pedagogy' is rare among non-human animals, with only a few potential examples of true teaching (whereby the teacher takes into account the knowledge states of the learner as they pass on relevant information) recorded anecdotally in chimpanzees (Boesch 1991) and killer whales (Guinet and Bouvier

1995)<sup>1</sup>. Teaching is therefore still widely considered to be unique to humans (Csibra and Gergely 2009). Bates & Byrne's analysis of simulated oestrus behaviours in African elephants – whereby a non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive, even though she is not ready to mate or breed again – shows that these knowledgeable females can adopt false oestrus behaviours in order to demonstrate to naïve young females how to attract and respond appropriately to suitable males. The experienced females may be taking the youngster's lack of knowledge into account and actively showing them what to do; a possible example of true teaching as it is defined in humans. Whilst this possibility requires further investigation, this evidence, coupled with the data showing that they understand the ostensive cues in human pointing, suggests that elephants do share some executive skills with humans, namely understanding the intentions and knowledge states (minds) of others.

39. Further related to empathy, the occurrence of coalitions and cooperation have been documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when a family group tries to 'kidnap' a calf from an unrelated family (Lee 1987, Moss and Poole 1983). These behaviours are based on one elephant understanding the emotions and goals of the coalition partner (Bates et al 2008b).

40. Cooperation is also evident in experimental tests with captive Asian elephants, whereby elephants demonstrated they can work together in pairs to obtain a reward, and understood that it was pointless to attempt the task if their partner was not present or could not access the equipment (Plotnik et al. 2011) (See video [here](#)). Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal and the sequence of behaviours that is required to achieve that goal; it is based on (at the very least) short-term action planning.

41. Wild elephants have frequently been observed engaging in cooperative problem solving, for example when retrieving calves that have been kidnapped by other groups, or when helping calves out of steep, muddy river banks (Bates et al 2008b, Moss, 2011) These behaviours demonstrate the purposeful and well-coordinated social system of

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<sup>1</sup> Functional teaching has been experimentally demonstrated in various animal species including ants, babblers, meerkats, cheetahs and some primates, but this is not the same as deliberate pedagogy, as it does not rely on representing the knowledge states of the learners.



elephants, and show that elephants can hold particular aims in mind and work together to achieve those goals. Such intentional, goal-directed action forms the foundation of independent agency, self-determination, and autonomy.

42. Elephants also show innovative problem solving in experimental tests of insight (Foerder et al 2011), where insight can be described as the ‘a-ha’ moment when a solution to a problem ‘suddenly’ becomes clear. (In cognitive psychology terms, insight is the ability to inspect and manipulate a mental representation of something, even when you can’t physically perceive or touch the something at the time. Or more simply, insight is thinking and using only thoughts to solve problems (*see* Richard Byrne, *Evolving Insight*, Oxford Online Press, 2016<sup>2</sup>). A juvenile male Asian elephant demonstrated just such a spontaneous action by moving a plastic cube and standing on it to obtain previously out-of-reach food. After solving this problem once, he showed flexibility and generalization of the technique to other, similar problems by using the same cube in different situations, or different objects in place of the cube when it was not available. (See video [here](#)). This experiment again demonstrates that elephants can choose the appropriate action and incorporate it into a sequence of behaviour in order to achieve a goal, which they kept in mind throughout the process.

43. Further experiments also demonstrate Asian elephants’ ability to understand goal-directed behaviour. When presented with food that was out of reach, but with some bits resting on a tray that could be pulled within reach, the elephants learned to pull only those trays that were baited with food (Irie-Sugimoto et al 2008). Success in this kind of ‘means-end’ task is a demonstration of causal knowledge, which requires understanding not just that two events are associated with each other but also that there is some mediating force that connects and affects the two which may be used to predict and control events. Moreover, understanding causation and inferring object relations may be related to understanding psychological causation, i.e., the appreciation that others are animate beings that generate their own behaviour and have mental states (e.g., intentions).

### ***Communication and social learning***

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<sup>2</sup> Available at <https://global.oup.com/academic/product/evolving-insight-9780198757078?cc=us&lang=en&>.

44. Speech is a voluntary behaviour in humans, whereby a person can choose whether to utter words and thus communicate with another. Therefore speech and language are reflections of autonomous thinking and intentional behaviour. Elephants also use their vocalisations to share knowledge and information with others, apparently intentionally (Poole 2011). Male elephants primarily communicate about their sexual status, rank and identity, whereas females and dependents call to co-ordinate and reinforce their social units. Call types can generally be separated into calls produced primarily by the larynx (such as rumbles) or trunk calls (such as trumpets), with different calls in each category being used in different contexts (Poole 2011; Poole and Granli 2004; Soltis et al 2005; Wood et al 2005). Field experiments have shown that African elephants distinguish between different call types (for example, contact calls – rumbles that travel long distances to maintain associations between elephants that could be several kilometres apart, or oestrus rumbles – that occur after a female has copulated) and these different call types elicit different responses in the listeners. Elephant vocalisations are not simply reflexive, they have distinct meanings to listeners and they are truly communicative, similar to the volitional use of language in humans (Leighty et al 2008; Poole 1999; Poole 2011).

45. Furthermore, elephants have been shown to vocally imitate the sounds they hear around them, from the engines of passing trucks to the commands of human zookeepers (Poole et al 2005, Stoeger et al 2012). Imitating another's behaviour is demonstrative of a sense of self, as it is necessary to understand how one's own behaviour relates to the behaviour of others.

46. Elephants display a wide variety of gestures, signals and postures, used to communicate information to the audience (Poole and Granli gestures chapter 2011). Such signals are adopted in many different contexts, such as aggressive, sexual or socially integrative situations, and each signal is well defined and results in predictable responses from the audience. That is, each signal or gesture has a specific meaning both to the actor and recipient. Elephants' use of gestures demonstrates that they communicate intentionally and purposefully to share information with others and/or alter the others' behaviour to fit their own desires.

47. Experimental evidence demonstrates that African elephants recognize the importance of visual attentiveness of the intended recipient (in this case, human experimenters) of gestural communication (Smet & Byrne 2014), further supporting

the suggestion that elephants' gestural communication is intentional and purposeful. Furthermore, the ability to understand the visual attentiveness and perspective of others is crucial for empathy and mental-state understanding.

### ***Memory And Categorisation***

48. Elephants have both extensive and long-lasting memories, just as the folk stories and adages encourage us to believe. McComb et al. (2000), using experimental playback of long-distance contact calls in Amboseli National Park, Kenya, showed that African elephants remember and differentiate the voices of at least 100 other elephants. Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14 families in the population. When the calls were from the test elephants' own family, they contact-called in response and approached the location of the loudspeaker and when they were from another non-related but familiar family — that is, one that had previously been shown to have a high association index with the test group — they listened but remained relaxed. However, when a test group heard unfamiliar contact calls (from groups with a low association index with the test group), they bunched together and retreated from the area.

49. McComb et al. (2001) went on to show that this social knowledge accumulates with age, with older females having the best knowledge of the contact calls of other family groups. McComb et al. (2011) also showed that older females are better leaders, with more appropriate decision-making in response to potential threats (in this case, in the form of hearing lion roars). Younger matriarchs were less skilled at pinpointing roars from male lions, the most dangerous predators because they can subdue a young elephant even when hunting alone. Sensitivity to picking out the roars of male lions increased with increasing matriarch age, with the oldest, most experienced females showing the strongest response to this danger. These experimental studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they grow older.

50. Further demonstration of elephants' long-term memory comes from data on their movement patterns. African elephants are known to move over very large distances in their search for food and water. Leggett (2006) used GPS collars to track the movements of elephants living in the Namib Desert. He recorded one group traveling

over 600 km in five months, and Viljoen (1989) showed that elephants in the same region visited water holes approximately every four days, even though some of them were more than 60km apart. Elephants inhabiting the deserts of both Namibia and Mali have been described traveling hundreds of kilometers to arrive at remote water sources shortly after the onset of a period of rainfall (Blake et al. 2003; Viljoen 1989), sometimes along routes that researchers believe have not been used for many years. These remarkable feats suggest exceptional cognitive mapping skills, reliant on the long-term memories of older individuals who traveled that path sometimes decades earlier. Indeed it has been confirmed that family groups with older matriarchs are better able to survive periods of drought. The older matriarchs lead their families over larger areas during droughts than those with younger matriarchs, again apparently drawing on their accrued knowledge (this time about the locations of permanent, drought-resistant sources of food and water) to better lead and protect their families (Foley, Pettorelli, and Foley 2008).

51. Very importantly, it has recently been shown that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to ‘management’ practices initiated by humans. Shannon et al (2013) demonstrated that elephants in South Africa who had experienced trauma decades earlier showed significantly reduced social knowledge. During archaic culling practices, these elephants were forcibly separated from family members and subsequently translocation to new locations (practices which have also accompanied taking elephants into captivity). Two decades later, they still showed impoverished social knowledge and skills and impaired decision-making abilities, compared with an undisturbed population in Kenya. Disrupting elephants’ natural way of life can very negatively impact their knowledge and decision-making abilities.

52. Elephants demonstrate advanced “working memory” skills. Working memory is the ability to temporarily store, recall, manipulate and coordinate items from memory. Working memory directs attention to relevant information, and results in reasoning, planning, and coordination and execution of cognitive processes through use of a “central executive” (Baddeley 2000). Adult human working memory is generally thought to have a capacity of around seven items. In other words, we can keep about seven different items or pieces of information in mind at the same time (Miller 1956).

Bates and colleagues conducted experiments with wild elephants in Amboseli National Park, Kenya, manipulating the location of fresh urine samples from related or unrelated elephants. The elephants' responses to detecting urine from known individuals in surprising locations showed that they are able to continually track the locations of at least 17 family members in relation to themselves, as either absent, present in front of self, or present behind self (Bates et al. 2008a). This remarkable ability to hold in mind and regularly update information about the locations and movements of a large number of family members is best explained by predicting that elephants possess an unusually large working memory capacity, apparently much larger than that of humans.

53. Elephants show sophisticated categorisation of their environment, with skills on a par with those of humans. Bates and co-authors experimentally presented the elephants of Amboseli National Park, Kenya, with garments that gave olfactory or visual information about their human wearers — either Maasai moran (male warriors who traditionally attack and spear elephants on occasion as part of their rite of passage), or Kamba men (who are agriculturalists and traditionally pose little threat to elephants). In the first experiment, the only thing that differed between the cloths was the smell, derived from the ethnicity and/or lifestyle of the wearers. The elephants were significantly more likely to run away when they sniffed cloths worn by Maasai than those worn by Kamba men or no one at all (See video [here](#)). In a second experiment, the researchers presented the elephants with two cloths that had not been worn by anyone, but here one was white (a neutral stimulus) and the other was red — the color that is ritually worn by Maasai moran. With access only to these visual cues, the elephants showed significantly greater reaction to red garments than white, often including signs of aggression. Bates et al. concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e. “dangerous” or “low risk”) based on either olfactory or visual cues alone (Bates et al. 2007). McComb et al. went on to show that the same elephants can also distinguish between human groups based on just their voices. The elephants reacted differently (and appropriately) depending on whether they heard Maasai or Kamba men speaking, and also whether they heard male or female Maasai (where female Maasai pose no threat as they are not involved in spearing events), and adult Maasai men or young Maasai boys (McComb et al. 2014). Scent, sounds, and visual signs associated specifically with Maasai men are categorized as “dangerous,” while neutral signals are attended to but categorized as “low risk.”

These sophisticated, multi-modal categorization skills may be exceptional among non-human animals. The above experiments also demonstrate the acute sensitivity that elephants have to the human world, monitoring our behavior and learning to recognize situations where humans might cause them harm.

***Summary***

54. As will be evident from this Declaration, both African and Asian elephants have been shown to demonstrate highly advanced cognitive abilities and levels of emotional awareness, sharing many key traits with humans. Based on the evidence presented, it seems clear that they should be treated as autonomous beings who direct their behaviour based on complex internal cognitive processes, rather than simply responding reflexively.

55. Scientific knowledge about elephant intelligence has been increasing rapidly in recent decades: what we currently know is only a tiny fraction of what elephant brains are likely to be capable of, with recent advances underlining just how sophisticated elephant behavior and cognition is likely to be.

I, Karen McComb, Ph.D., declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated:   2  /  6  /2023

\_\_\_\_\_  
(signature)

A handwritten signature in black ink, appearing to read 'K. McComb', is written on a light gray rectangular background.

# **Exhibit A**

## **Prof. Karen McComb: Curriculum Vitae**

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+ 44 (0)1273 678610



***Job title: Professor of  
Animal Behaviour & Cognition***

### **SCIENTIFIC CAREER & QUALIFICATIONS**

**B.Sc., University of Edinburgh (1980-1984)**

- 1st Class Honours in Zoology

**Ph.D., University of Cambridge (1984-1988)**

- Thesis title: Roaring and reproduction in red deer (*Cervus elaphus*).  
Supervised by Prof. T.H. Clutton-Brock

**Research Fellow, University of Minnesota (1989 - 90)**

**Research Fellow, Newnham College, University of Cambridge (1990 - 93)**

**Lecturer / Senior Lecturer, University of Sussex (1993 - 2004)**

**Reader, University of Sussex (2004 - 2013)**

**Professor, University of Sussex (2013 - present)**

### **PRIZES & AWARDS**

#### *University & early career*

- University of Edinburgh Class Medal & Ashworth Prize in Zoology (1984), Class Medal & William Turner Award in Zoology (1983), Moira Lyndsay Stewart Award in Zoology & Jack Roberts Memorial Prize in Botany (1982).
- Prize for best talk by a research student at the Association for the Study of Animal Behaviour Spring Conference (1987) during PhD at Cambridge.

#### *Recent career*

- *PNAS* Cozzarelli Prize (2008) for outstanding originality and scientific excellence for article “Cross-modal individual recognition in domestic horses (*Equus caballus*)” with L. Proops and D. Reby. I led this study, taking a major role in conceiving and designing the experiment and writing the paper.  
<http://www.pnas.org/site/misc/cozzarelliprize.shtml>



## CURRENT RESEARCH FOCUS

My current research is focused on investigating emotional awareness as a basis for social success in a non-human - the domestic horse. Despite the key role that emotional intelligence is believed to play in human social behaviour - we still know little of how individual differences in abilities to identify and respond appropriately to the emotional signals of others determine social integration and success in animal groups. With the strong research team that I have built in this area, I am developing a novel battery of naturalistic tests to quantitatively assess individual differences in emotional abilities and directly relating performance to measures of social success. As well as its scientific importance, our work has considerable significance for animal welfare and will allow us to better understand the emotional capacities and requirements of individual horses within the domestic environment.

## SUMMARY OF RESEARCH CAREER

My research career has focused on using naturalistic experiments to provide important new insights into vocal communication and cognitive abilities in a wide range of mammals including African elephants, horses, lions, red deer and domestic cats and dogs. By devising novel experimental designs that tap into abilities animals use in decision-making in their natural environments, I have made significant breakthroughs in a number of key areas including:

### *Advances in our understanding of social cognition and conceptual knowledge*

I previously led major new work on social cognition in domestic horses, including developing novel paradigms to examine cross-modal individual recognition in this species. Our study in *PNAS* (Proops et al., 2009), which was awarded the Cozzarelli Prize, provided the first systematic demonstration of cross-modal individual recognition of conspecifics in a nonhuman. This constituted a major advance, suggesting that rich multi-sensory representations could underlie animals' knowledge of each other. I am now initiating experimental studies on horses that will extend our understanding of animal social cognition to encompass decision-making about one of the most pertinent available indices of another's response - their emotional state (see current research above).

### *Advances in our understanding of social intelligence in wild mammals*

My original work on social cognition in African lions (McComb et al., 2004) was important in showing that the costs of fighting with larger groups could have selected for numerical assessment skills in social species - suggesting a possible biological basis for the evolution of mathematical abilities and stimulating new research on other species based on my experimental paradigm. In a highly cited cover article in *Science* (McComb et al., 2001), I subsequently used playback experiments on African elephants to demonstrate that the possession of enhanced discriminatory abilities by the oldest individual in a group could influence the social knowledge of the group as a whole, providing the first insights into how cognitively advanced social mammals acquire and store information in the wild. I also provided the first empirical evidence that groups benefit from older leaders because of their enhanced ability to make crucial decisions about predatory threat, throwing new light on selection for longevity (McComb et al., 2011). Our most recent *PNAS* paper

(McComb et al., 2014) demonstrated that elephants' knowledge of human predators was extremely precise - revealing unusual abilities to determine ethnicity, gender and age from acoustic cues in human voices.

*Advances in our understanding of sexual signals and the origins of language*

My original papers on the functions of roaring in red deer provided the basis for a new systematic experimental approach to studying the role of vocal signals in sexual selection in mammals (e.g. McComb, 1987, which was a cover story in *Nature*). I realised early on the importance of applying source-filter theory to the study of mammal vocal communication and subsequently developed this approach with David Reby (originally my postdoc) and Ben Charlton (our PhD student) in a series of influential papers showing that formants, key parameters in human speech, also play a crucial role in the communication of non-human mammals (e.g. Reby & McComb, 2003; Reby et al., 2005). This work is given detailed coverage in the new edition of the flagship behavioural ecology text (Davies, Krebs & West, 2012 *An Introduction to Behavioural Ecology*). I have also used a comparative approach to show that evolutionary increases in the size of non-human primate vocal repertoires have been associated with increases in group size and extent of social bonding, results that have added new perspectives to ongoing debates about language evolution (McComb & Semple, 2005).

As well as its scientific significance, my work has also had important practical consequences for animal conservation and welfare. In particular, by revealing the key role that the oldest individuals play in elephant social groups, we demonstrated how whole populations of cognitively advanced social mammals could be dramatically affected by the removal of just a few key individuals (McComb et al. 2001 & 2011). In addition, our recent work illustrating that social disruption can have very significant long-term effects on elephant cognitive abilities had implications for the conservation and welfare of both wild and captive animals. As a result of the above findings, which are relevant to the conservation and welfare not just of elephants but also of other long lived, large-brained social mammals such as whales and dolphins, I was invited to contribute to the recommendations of the recent Convention on the Conservation of Migratory Species of Wild Animals (CMS).

## **SUMMARY OF TEACHING**

I have always aimed to deliver excellence in Teaching and Learning at both undergraduate and postgraduate (MSc & PhD) levels. At undergraduate level, I currently organise and teach a successful final year module in Animal Vocal Communication and contribute to modules on Psychobiology and Contemporary Issues in Psychology. I also teach on post-graduate modules on Social Neuroscience and Voice Analysis and Re-synthesis.

Student feedback comments on Animal Vocal Communication illustrate the key elements that the students appreciate: "Most interesting course I have taken while at Sussex doing Psychology, very up to date research, great teaching, got to go into lab and discover how real research is conducted", "This was the best course of my degree", "The practical sessions reinforced what was learnt in the lectures, but in a fun way. Karen is very enthusiastic about this course and about the subject area

which makes it a much more interesting and enjoyable class”, “The workshops encourage critical thinking about experimental design and enable us to apply what we have learned in lectures”, “Karen is clearly passionate about her subject and is very willing to discuss topic areas further when asked. It’s also really nice to have someone lecturing who contributes so much to the scientific literature covered in the course”.

Undergraduates and MSc students have benefitted from conducting their research projects as part of my lab, where they become integrated members of the research group. Several of these projects have contributed to significant publications on which students have been co-authors) and inspired students to go on to further MSc and PhD degrees themselves. My PhD students and postdocs have also performed outstandingly and many have gone on to very successful academic careers.

### **ADDITIONAL SCHOOL & UNIVERSITY CONTRIBUTION**

I have held a number of significant administrative responsibilities within the university, notably:

- Chair of Postgraduate Exam Board 2014 - present
- Deputy Chair of Postgraduate Exam Board 2013
- Co-ordinator of undergraduate research projects for School of Psychology (2005 onwards) and previously for Experimental Psychology (1998/99 onwards)
- Exam Board secretary (2001-2003)
- Member of Academic Appeals Board (2002)
- Internal assessor for Periodic Review of Teaching in Biology (1997)

### **Mammal Vocal Communication and Cognition Research Group**

In addition to fulfilling the specific internal roles above, I have served the university through developing, alongside my colleague David Reby, a highly successful research group in Mammal Vocal Communication and Cognition <http://www.lifesci.sussex.ac.uk/cmvcr/Home.html>

This has attracted and supported talented postgraduates and independent research fellows. At present, I have 3 PhD students, a postdoc and a full-time research assistant, working on projects ranging from social communication in African lions to emotional awareness in horses; an additional postdoc on culture in elephants is expected next year. Along with David Reby’s students and collaborators, this makes for a vibrant research community.

I have also significantly enhanced the University’s profile through the success of my external academic and public activities as documented below.

### **MEMBERSHIPS & NETWORKS**

#### **(i) Journals & academic affiliations**

- UFAW link representative for University of Sussex 2014 onwards.

- Academic editor for *PLoS ONE* 2007 onwards.
- Editorial board of *Bioacoustics* 1997 onwards.
- Consulting editor for *Animal Behaviour* 1996-1998
- Council member for the Association for the Study of Animal Behaviour 1993-1996. ASAB liaison representative for the Institute of Biology 1995-1997
- Reviewer for *Science*, *Nature*, *Current Biology*, *Proceedings of the Royal Society B*, *Proceedings for the National Academy of Sciences*, *PLoS ONE*, *Animal Behaviour* and other journals
- Appointed reviewer for European Research Council grants 2012

**(ii) Conference organisation**

- Organised symposium on “Mammal vocal communication: insights into cognitive abilities and the origins of language” at the International Ethological Congress in Budapest, August 2005 (with David Reby)
- Organiser of the Association for the Study of Animal Behaviour Conference on “Evolution of Mind” held in London in December 1999 (with Stuart Semple), attended by more than 200 people

**(iii) Recent invited academic lectures**

- Invited speaker, Cetacean Culture Workshop, organised jointly by the Convention on the Conservation of Migratory Species of Wild Animals (CMS), and Whale and Dolphin Conservation (WDC) (April 2014)
- Plenary talk at the Association for the Study of Animal Behaviour meeting on “Cognition in the Wild” (December 2012)
- Invited speaker, International workshop on communication and social cognition, Institute of Evolutionary Biology and Environmental Studies, University of Zurich (March 2011)
- Invited speaker, International workshop on referential communication, Wissenschaftskolleg zu Berlin, Institute for Advanced Study, Berlin, (June 2010)
- Plenary speaker, International Society for Applied Ethology, Nordic meeting, Kuopio, Finland (January 2010)
- Invited speaker, International Ethological Congress, Rennes (August 2009)
- Invited speaker, Ecology and Evolutionary Biology, University of Princeton (April 2009)
- Invited speaker, Novartis day at the Royal Society Discussion meeting on Social Intelligence in London (May 2006)
- Invited speaker (and organiser), International Ethological Congress Symposium on “Mammal vocal communication: insights into cognitive abilities and the origins of language”, Budapest (August, 2005)
- Keynote speaker, British Association for the Advancement of Science, Symposium on “Where do numbers come from”, Salford (September 2003)
- Plenary speaker, Association for the Study of Animal Behaviour conference on Information Gathering (December 2002)
- Invited speaker, symposium on Alternative Approaches to Studying Social Cognition, International Ethological Congress, Tubingen (August 2001)

- Invited participant, International workshop on animal signalling, TalkBank, University of Philadelphia (May 2000)
- Plenary speaker, Association for the Study of Animal Behaviour Conference on Communication and Social Behaviour, Lisbon (July 1999)

## **BUSINESS, ENTERPRISE & THE COMMUNITY**

### **(i) Lectures to the general public / industry**

- Invited panel member/speaker Festival of Sound, organised by Magdalene College, University of Cambridge (December 2014)
- Invited panel member/speaker in Gulbenkian Foundation Supersonix Festival, organised on behalf of the Exhibition Road Cultural Group to focus on the art and science of sound & music-making (June 2012)
- Public lecture on 'Animal Communication' in Learning About Animals series in London (May 2007)
- Lecture to the Pet Care Trust Conference in Edinburgh (November 2006)
- Press conference at London Zoo in April 2001 for launch of my *Science* paper, organised by the American Academy for the Advancement of Science
- Lecture at the British Library National Sound Archive (December 2000)
- Royal Geographical Society lecture (jointly with Cynthia Moss) attended by more than 600 members of the public (November 1996)

### **(ii) Media involvement & TV documentaries**

- There has been considerable media coverage of my work over the years, with appearances on British, American, Australian, Canadian and German TV and radio stations (including BBC TV news, Discovery Channel, Radio 4 Today programme and BBC Science in Action) and articles in major British, European and American newspapers (eg, The Guardian, Times, Liberation, National Geographic magazine, New Scientist). *Science* organised a press conference in London in April 2001 for the launch of my paper, which was their cover story - and later cover stories in *Biology Letters* (2006), *PNAS* (2009) and *Proceedings of the Royal Society B* (2011) also generated widespread media attention, as did my *Current Biology* paper in 2009 which featured as the most popular story on the BBC web site, as well as the top science and environment story. Two of my most recent papers - in *PNAS* (2014) and *Frontiers in Zoology* (2013) - received unusually extensive world-wide coverage, as did a recent *Current Biology* (2014) paper with my PhD student. This included interviews on the Radio 4 Today Programme, ITV News at Ten, BBC World TV News, Newsround, BBC World Service, and Science in Action, as well as being covered in BBC Breakfast, BBC Radio 2, 3 & 4 news reports, Time Magazine, The Economist, *Nature*, *Science*, National Geographic and by more than 200 other news outlets here and abroad.
- I have done regular consultancies for the BBC and other companies making wildlife documentaries on animal communication. Most recently, I was scientific consultant for the popular two-part BBC documentary "Talk to the Animals" (2014). I have also provided sound recordings for wildlife documentaries by the BBC and Windfall films and have a sound recording

credit (with Martyn Colbeck) on the BBC's "Echo of the elephants: the next generation" (1995).

- My elephant research was covered in BBC's "Inside the Animal Mind" in February 2014 and my horse research was filmed for the BBC series "Talk to the Animals" which aired in July 2014. Both programmes were given prime-time slots and were very well received by the public.

### (iii) Educational Displays for Museums

- I provided photographic material to The Field Museum, Chicago for an exhibition on Mammoths and Mastodons, Titans of the Ice Age. This exhibition is currently on tour round the world.

### (iv) Contribution to Primary Education

- I was invited to write an autobiographical outline for "STEM stories" an NSF project designed to encourage girls in the U.S.A. to pursue careers in Science by introducing them to the senior scientists in particular fields (<http://www.stemstories.org/>).

### (v) Contribution to major textbooks and popular books

- My work has featured in John Alcock's and Lee Dugatkin's major textbooks on Animal Behaviour and currently receives detailed coverage in the new editions of the Krebs & Davies *An Introduction to Behavioural Ecology*, Bradbury & Vehrencamp's *Principles of Animal Communication* and Shettleworth's *Cognition, Evolution and Behavior*. It has also been reported in popular books including Brian Butterworth's *The Mathematical Brain* and there is a chapter on my research in the best-selling book: *Animal Wise* by Virginia Morell.

## RESEARCH GRANTS

I have received consistent funding for my research over the years, most notably from The Leverhulme Trust and BBSRC:

Leverhulme Trust Research Grant (PI): £285,389 (Jan 2014) *Emotional awareness as a basis for social success in a non-human: the domestic horse*. This project is currently in progress and employs 2 full-time research staff – Dr Leanne Proops (PDRF) and Ms Kate Grounds (RA).

Leverhulme Trust Research Grant (PI): £174,892 (Mar 2009) *Age and experience as determinants of acquired knowledge in a non-human mammal*.

National Geographic grant (PI): \$27,000 plus PDRA salaried by Durban (Jan 2006) *Elephant matriarchs and conservation*.

Waltham Foundation grant (PI): £9,632 (July 2002) *The Function of Purring in Cats: Seismic and Airborne Communication*.

EU Marie Curie grant (Co-PI/Supervisor of PDRF): 114,072 Euro (Oct 2000) *Origin, Structure & Function of Sender-related Acoustical Features in Sexually Selected Mammal Vocalisations*.

BBSRC research grant (PI): £166,092 (Mar 1996)  
*Communication Networks, Social Organisation and Reproductive Success.*

Tusk Trust grants (PI): 3 x £1,500 (awarded 1994, 1995 & 1998)  
*Acoustic Communications in Elephants.*

Nuffield Foundation grant (PI): £3,960 (Nov 1994)  
*Acoustic Communication in Social Mammals.*

Royal Society Research grant (PI): £9,253 (Mar 1994)  
*Infrasonic Signalling in Elephants.*

NERC small project grant (PI): £14, 832 (Oct 1993)  
*Acoustic Communication & the Evolution of Mammal Social Systems.*

In addition I have had a number of Royal Society Conference grants, most recently in 2005 & 2009.

## SCIENTIFIC PUBLICATIONS

### JOURNAL ARTICLES

\* McComb, K. Shannon, G., Sayialel, K. & Moss, C. (2014) Elephants can determine ethnicity, gender, and age from acoustic cues in human voices *PNAS* 111(14), 5433-5438.

\* cover article and subject of a *PNAS* commentary

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## **Exhibit B**

## Exhibit B

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## **Exhibit V**

## **Declaration of Cynthia J. Moss**

I, Cynthia J. Moss, declare as follows:

### **Introduction and Qualifications**

1. My name is Cynthia J. Moss.
2. I am over the age of 18 and understand the obligations of an oath.
3. I graduated with a Bachelor of Arts in Philosophy from Smith College in 1962 and received an honorary Doctorate of Science from Smith College in 2002 and an honorary Doctorate of Social Science from Yale University in 2019. I reside and work in Amboseli National Park, Kenya.
4. I submit this Declaration in support of the Nonhuman Rights Project, Inc.'s petition for a writ of habeas corpus regarding the captive elephants at the Honolulu Zoo. I am a nonparty to this proceeding.
5. I have studied and worked with elephants in Africa for the past 50 years. I am currently the Director of the Amboseli Elephant Research Project and have been since 1972, and I am currently the Director of the Amboseli Trust for Elephants and have been since 2001. Prior to founding the Amboseli Elephant Research Project, I worked: (1) as the editor for the African Wildlife Foundation's Wildlife News from 1971 to 1985; (2) part-time as a freelance journalist, mainly for Time and Life magazines, from 1970 to 1971; (3) as a research assistant on various projects with Drs. A.M. and S. Harthoorn, Dr. V. Finch, and Dr. J.B. Sale, consecutively from 1969-1970; (4) a research assistant to Dr. I. Douglas-Hamilton full time in 1968 and part-time in 1969, 1970, and 1971; (5) a reporter/researcher for Newsweek Magazine in New York from 1964 to 1968.
6. As Director of the Amboseli Elephant Research Project, and also as the director of the Amboseli Trust for Elephants, I have set up the world's longest-running research project on wild elephants in the Amboseli National Park, Kenya. My research focus incorporates the distribution, demography, population dynamics, social organization and behavior of the Amboseli elephants. My current work includes directing and supervising research and monitoring in the Amboseli National Park; training elephant researchers from African elephant range states; outreach to the local Maasai community; carrying out surveys and training courses

at other elephant study sites in Africa; disseminating scientific results; advocating for elephant welfare; promoting public awareness by writing popular articles and books and by making films about elephants; and fund raising for and administering the Amboseli Elephant Research Project.

7. Over the course of my career, I have received awards from international nongovernmental, media, academic, research, zoological, and professional organizations, including: (1) the Outstanding Achievement Award from the Jackson Hole Wildlife Film Festival in 2015; (2) the John D. & Catherine T. MacArthur Foundation Fellowship (2002-2007); (3) the Conservation Award from the Cincinnati Zoo in 2005; (4) the Guardian Award from In Defense of Animals in 2004; (5) the Distinguished Conservation Fellow Award from the Los Angeles Zoo in 2002; (6) my Honorary Doctorate Degree from Smith College in 2002; (7) an Award from Performing Animal Welfare Society in 2002; (8) elected Fellow of the Society of Women Geographers in 2001; (9) Advisor to the International Fund for Animal Welfare, ongoing since 2001; (10) sabbatical Fellowships at the National Center for Ecological Analysis & Synthesis, University of California, Santa Barbara (1999, 2000, 2001); (11) the Centennial Conservation Award from the Woodland Park Zoo in 1999; (12) the Conservation Excellence Award from the Oakland Zoo in 1999; (13) my book *Little Big Ears* received an award from the John Burroughs Foundation and the American Museum of Natural History in 1998; (14) elected Fellow of the Royal Geographical Society in 1997; (15) my film "Echo of the Elephants" received awards at Jackson Hole Wildlife Film Festival and the Italian Film Festival in 1993; (16) the Smith College Medal for alumnae achievement in 1985; (and 17) nomination of my book "Portraits in the Wild: Behavior Studies of East African Mammals" (1975, Houghton Mifflin, Boston) for the American Book Award for best science paperback of the year in 1982.

8. I am affiliated with a number of professional organizations, including: (1) the Author's Guild; (2) the Royal Geographic Society (elected Fellow); (3) the Society of Women Geographers (elected Fellow); (4) the Explorer's Club (Fellow); (5) the East African Natural History Society; (6) the East African Wild Life Society; (7) the Kenya Society for the Protection & Care of Animals; and (8) PEN America. I was a member of the IUCN/SSC

African Specialist Group from 1988-1996. Throughout my career, I have continued to lecture on elephant social organization and behavior to university students, wildlife club members, and specialist groups in Kenya, India, the US, and the United Kingdom. I have also served as a Consultant to conservation groups, animal welfare organizations, zoos, and others on elephant-related issues throughout my career.

9. During the course of my research career, I have been awarded extramural research grants from a number of institutions and groups including: (1) the African Wildlife Foundation in 1975; (2) the Midgard Foundation from 1978-1979; (3) the New York Zoological Society as a Research Fellow from 1979-1984; (4) the Disney Conservation Foundation from 1996-2006; (5) the Delano Foundation from 1996-1999; (6) the International Fund for Animal Welfare (IFAW), ongoing; (7) Born Free Foundation, ongoing; (8) Detroit Zoological Society, ongoing; (9) East Bay Zoological Society, ongoing; (10) Detroit Zoological Society, ongoing; (11) Rettet die Elefanen, ongoing; (12) Fairplay Foundation, ongoing; (13) Rogers Family Foundation, ongoing; (14) Charles Engelhard Foundation, ongoing; and (15) Maue Kay Foundation, ongoing.

10. I have written six books concerning my work with elephants, including: (1) *Portraits in the Wild: Behavior Studies of East African Mammals*. (1975, Houghton Mifflin, Boston); (2) *Portraits in the Wild: Behavior Studies of East African Mammals (Second Edition – Revised, 1982, University of Chicago Press, Chicago)*; (3) *Elephant Memories: Thirteen Years in the Life of an Elephant Family*. (1988, William Morrow, New York, also in Swedish, Finnish, Dutch, Italian, French & Spanish editions); (4) *Die Elefanten Vom Kilmandscharo*. (1990, Rasch und Rohring, Hamburg, German edition of *Elephant Memories*, with an additional chapter covering 1987-90); (5) *Echo of the Elephants*. (1992, BBC Books, London, also in U.S., German and Japanese editions); (6) *Little Big Ears: The Story of Ely*. (1997, Simon & Schuster, New York).

11. I have served as co-editor for two books regarding my work with elephants: (1) *Elephant Woman* (with Laurence Pringle, 1997, Atheneum, New York), and (2) *The Amboseli Elephants: A Long-Term Perspective on a Long-Lived Mammal* (co-edited with H.J. Croze & P.C. Lee), 2011, University of Chicago Press, Chicago.)

12. Over the course of my career, I have also contributed chapters concerning elephant cognition and welfare to five additional books: (1) *The World Book Encyclopedia* (1991, Chicago: World Book); (2) *Elephants: Majestic creatures of the wild* (1992, editor - J. Shoshani, Weldon Owen, Sydney); (3) *The Smile of a Dolphin: Remarkable Accounts of Animal Emotions* (2000, editor - M. Bekoff, Discovery Books, New York); (4) *Never Forgetting: Elephants and Ethics* (2008, editors - C. Wemmer and K. Christen, Johns Hopkins University Press); and (5) *An Elephant in the Room: the Science and Well-being of Elephants in Captivity* (2009, editor - D. Forthman, Tufts University Press).

13. I have published 65 peer-reviewed scientific articles on the social structure, vocalization and communication (both short and long-range), cognition, mating behavior, maternal behavior, techniques for aging, determining diet and habitat use, mourning behavior, and elephant identification via sight and odor of human tribal groups. These articles have been published in many of the world's premier scientific journals and books, including: *Nature*, *Science*, *PLoS One*, *Animal Behaviour*, *Behaviour*, *Journal of Wildlife Management*, *Behavioral Ecology and Sociobiology*, *Pachyderm*, *Journal of Zoology*, *Mammalian Social Learning*, *Molecular Ecology Notes*, *Biology Letters*, *Molecular Ecology*, *Current Biology*, *Journal of Consciousness Studies*, *Animal Welfare*, and the *Journal of Wildlife Diseases*. My scientific work has also been published in: *Symposium of the Zoological Society of London*, *Proceedings 2nd International NCCR Conference*, *A Research Update on Elephants and Rhinos: Proceedings of the International Elephant and Rhino Research Symposium*, and *Proceedings of the Royal Society B*. Specific topics of these publications include: musth in the African elephant, oestrus behavior and female choice in the African elephant, age estimation and population age structure of elephants from footprint dimensions, early maternal investment in male and female African elephant calves, social context of some very low frequency calls of African elephants, isotopic tracking of change in diet and habitat use in African elephants, statural growth in known-age African elephants, social context for learning and behavioural development among wild African elephants, matriarchs as repositories of social knowledge in African elephants, characterization of tetranucleotide microsatellite loci in the African Savannah Elephant, long-distance communication of cues to social identity in African

elephants, locus size predicts the rate of allelic dropout in two large-scale noninvasive genotyping projects, early disruption of attachment can affect the physiology, behavior, and culture of animals and humans over generations, genetic relatedness predicts fission and fusion of social groups in wild African elephants, elephants show high levels of interest in the skulls and ivory of their own species, elephants classify human ethnic groups by odour and garment colour, can elephants show empathy, and fecundity and population viability in female zoo elephants.

14. In addition to my scientific publications, I have also published 30 articles in more general audience publications, including: Smithsonian, New York Times Book Review, BBC Wildlife, New Scientist, the Sunday Times Magazine, Australian Women's Weekly, Wildlife News, Ms., Swara, International Wildlife, Wildlife, Animal Kingdom, Nature's Best, ASPCA's Animal Watch, Disney's Animal Kingdom, and Geospatial Solutions.

15. In addition to my academic and general audience articles, I have also written film scripts and provided scientific consulting for several films, including: (1) "Echo of the Elephants" (1990-1992, BBC Natural History Unit, received awards at Jackson Hole Wildlife Film Festival and Italian Film Festival); (2) "Echo of the Elephants: The Next Generation" (1992-1995, BBC Natural History Unit); (3) "Africa's Forgotten Elephants" (1996-1997, Scorer Associates for BBC); (4) "Echo of the Elephants: The Last Chapter?" (2002-2005, BBC Natural History Unit); (5) "Echo and the Elephants of Amboseli (2007-2008, Animal Planet, 13-part series); (6) "Echo: An Elephant to Remember" (2009-2010, BBC Natural History Unit); and (7) "An Apology to Elephants" (2013, HBO).

16. My Curriculum Vitae fully sets forth my educational background and experience and is attached as **Exhibit A**.

### **Basis for opinions**

17. The opinions I state in this Declaration are based on my professional knowledge, education, training, and years of experience observing and studying elephants, as well as my knowledge of peer-reviewed literature about elephant behaviour and intelligence published in the world's most respected journals, periodicals and books that are generally accepted as

authoritative in the field, and many of which were written by myself or colleagues whom I have known for several years and with whose research and field work I am personally familiar. A full reference list of peer-reviewed literature cited herein is attached as **Exhibit B**.

## **Opinions**

### ***Premise***

18. Autonomy in humans is defined as self-determined behaviour that is based on freedom of choice. As a psychological concept it implies that the individual is directing their behaviour based on some non-observable, internal cognitive process, rather than simply responding reflexively. Although we cannot directly observe these internal processes in other people, we can explore and investigate them by observing, recording and analysing behaviour. For non-human animals, observing similar behaviour and recording evidence of shared cognitive capacities should, parsimoniously, lead to similar conclusions about autonomy.

19. I shall indicate which species, African (*Loxodonta Africana*) or Asian (*Elephas maximus*), specific observations relate to. If the general term ‘elephants’ is used with no specific delineation, it can be assumed the comment relates to both species.

### ***Brain And Development***

20. Elephants are large-brained, with the biggest absolute brain size of any land animal (Cozzi et al 2001; Shoshani et al 2006). Even relative to their body sizes, elephant brains are large. Encephalization quotients (EQ) are a standardised measure of brain size relative to body size, and illustrate by how much a species’ brain size deviates from that expected for its body size. An EQ of one means the brain is exactly the size expected for that body, and values greater than one indicate a larger brain than expected (Jerison 1973). Elephants have an EQ of between 1.3 and 2.3 (varying between sex and African and Asian species). This means an elephant’s brain can be up to two and a half times larger than is expected for an animal of its size; this EQ is similar to that of the great apes, with whom elephants have not shared a common ancestor for almost 100 million years (Eisenberg 1981, Jerison 1973). Given how metabolically costly brain tissue is, the large brains of elephants must confer significant advantages; otherwise their



size would be reduced. Presumably this advantage is allowing greater intelligence and behavioural flexibility (Bates et al 2008a).

21. Generally, mammals are born with brains weighing up to 90% of the adult weight. This figure drops to about 50% for chimpanzees. Human baby brains weigh only about 27% of the adult brain weight (Dekaban & Sadowsky 1978). This long period of brain development over many years (termed 'developmental delay') is a key feature of human brain evolution and is thought to play a role in the emergence of our complex cognitive abilities, such as self-awareness, creativity, forward planning, decision making and social interaction (Bjorkland 1997). Delayed development provides a longer period in which the brain may be shaped by experience and learning (Fuster 2002). Elephant brains at birth weigh only about 35% of their adult weight (Eltringham 1982), and elephants show a similarly protracted period of growth, development and learning (Lee 1986). This similar developmental delay in the elephant brain is therefore likely associated with the emergence of similarly complex cognitive abilities.

22. Despite nearly 100 million years of separate evolution (Hedges 2001), elephants share certain characteristics of our large brains, namely deep and complex folding of the cerebral cortex, large parietal and temporal lobes, and a large cerebellum (Cozzi et al 2001). The temporal and parietal lobes of the cerebral cortex manage communication, perception, and recognition and comprehension of physical actions (Kolb and Whishaw 2008), while the cerebellum is involved in planning, empathy, and predicting and understanding the actions of others (Barton 2012). Thus, the physical similarities between human and elephant brains occur in areas that are relevant to capacities necessary for autonomy and self-awareness.

23. Elephant brains hold nearly as many cortical neurons as do human brains, and a much greater number than chimpanzees or bottlenose dolphins (humans:  $1.15 \times 10^{10}$ ; elephants:  $1.1 \times 10^{10}$ , chimpanzees:  $6.2 \times 10^9$ ; dolphins:  $5.8 \times 10^9$ , Roth & Dicke 2005). Elephants' pyramidal neurons (a class of neuron that is found in the cerebral cortex, particularly the pre-frontal cortex - the brain area that controls executive functions) are larger than in humans and most other species (Cozzi et al 2001). The degree of complexity of pyramidal neurons is linked to cognitive ability, with more (and more complex) connections between pyramidal neurons being associated with increased cognitive capabilities (Elston 2003). Elephant pyramidal

neurons have a large dendritic tree, i.e. a large number of connections with other neurons for receiving and sending signals (Cozzi et al 2001).

24. Elephants, like humans, great apes and some cetaceans, possess *von Economo neurons*, or spindle cells – the so-called ‘air-traffic controllers for emotions’ – in the anterior cingulate, fronto-insular, and dorsolateral prefrontal cortex areas of the brain (Hakeem et al 2009). In humans, these cortical areas are involved - among other things - in the processing of complex social information, emotional learning and empathy, planning and decision-making, and self-awareness and self-control (Allman et al 2001; Allman et al 2002; Allman et al 2011). The shared presence of spindle cells in the same brain locations in elephants and humans strongly implies these higher-order brain functions – the building blocks of autonomous, self-determined behaviour – are common between these species (Butti et al 2009; Hakeem et al 2009).

25. As described below, evidence demonstrates that along with these common brain and life-history characteristics, elephants share many behavioural and intellectual capacities with humans, including: self-awareness, empathy, awareness of death, intentional communication, learning, memory, and categorisation abilities. Many of these capacities have previously been considered – erroneously – to be uniquely human, and each is fundamental to and characteristic of autonomy and self-determination.

### ***Awareness Of Self And Others***

26. Asian elephants have been shown to exhibit Mirror Self Recognition (MSR) using Gallup’s classic ‘mark test’ (Gallup 1970; Plotnik et al 2006). MSR is the ability to recognise a reflection in the mirror as oneself, and the mark test involves surreptitiously placing a coloured mark on an individual’s forehead that it could not see or be aware of without the aid of a mirror. If the individual uses the mirror to investigate the mark, it is logical to assume that the individual recognises the reflection as itself. Almost all animals tested on this task fail: they do not recognise the image in the mirror as being a reflection of themselves. Indeed, the only other mammals beyond humans who have successfully passed the mark test and exhibit MSR are the great apes (chimpanzees, bonobos, gorillas and orangutans) and bottlenose dolphins

(Parker and Mitchell 1994, Reiss and Marino 2001). MSR is significant because it is considered to be the key identifier of self-awareness. Self-awareness is intimately related to autobiographical memory in humans (Prebble et al 2013), and is central to autonomy and being able to direct one's own behaviour to achieve personal goals and desires. By demonstrating that they can recognize themselves in a mirror, elephants must be holding a mental representation of themselves from another perspective, and thus be aware that they are a separate entity from others (Bates and Byrne 2014).

27. Related to possessing a sense of self is an understanding of death. Observing reactions to dead family or group members suggests an awareness of death in only two animal genera beyond humans; chimpanzees and elephants (Anderson et al 2010, Douglas-Hamilton et al 2006). Having a mental representation of the self – a pre-requisite for mirror-self recognition – probably also confers an ability to comprehend death. Wild African elephants have been shown experimentally to be more interested in the bones of dead elephants than the bones of other animals (McComb et al 2006), and they have frequently been observed using their tusks, trunk or feet to attempt to lift sick, dying or dead individuals (Poole & Granli 2011). Although they do not give up trying to lift or elicit movement from the body immediately, elephants appear to realise that once dead, the carcass cannot be helped anymore, and instead they engage in more 'mournful' behaviour, such as standing guard over the bodies, and apparently protecting it from the approaches of predators (Poole & Granli 2011). They also have been observed to cover the bodies of dead elephants with dirt and vegetation (Moss 1992; Poole 1996). In the particular case of mothers who lose a calf, although they may remain with the calf's body for an extended period, they do not behave towards the body as they would a live calf. Indeed, the general demeanour of elephants who are attending to a dead elephant is one of grief and compassion, with slow movements and few vocalisations (Poole, pers. comm.). These behaviours are akin to human responses to the death of a close relative or friend, and illustrate that elephants possess some understanding of life and the permanence of death.

28. The capacity for mentally representing the self as an individual entity has been linked to general empathic abilities (Gallup 1982), where empathy can be defined as identifying

with and understanding another's experiences or feelings by imagining what it would be like to be in their situation. Empathy is an important component of human consciousness and autonomy, and is a cornerstone of normal social interaction. It goes beyond merely reading the emotional expressions of others. It requires modelling of the emotional states and desired goals that influence others' behaviour both in the past and future, and using this information to plan one's own actions; empathy is only possible if one can adopt or imagine another's perspective, and attribute emotions to that other individual (Bates et al 2008b). Empathy is, therefore, a component of and reliant on 'Theory of Mind' – the ability to mentally represent and think about the knowledge, beliefs and emotional states of others, whilst recognising that these can be distinct from your own knowledge, beliefs and emotions (Premack and Woodruff (1978)/ Frith and Frith 2005).

29. Elephants clearly and frequently display empathy in the form of protection, comfort and consolation, as well as by actively helping those who are in difficulty, such as assisting injured individuals to stand and walk, or helping calves out of rivers or ditches with steep banks (Bates et al 2008b, Lee 1987). Elephants have even been observed feeding those who are not able to use their own trunks to eat (Poole and Granli 2011).

30. In an analysis of behavioural data collected from wild African elephants over a 43-year continuous field study, we concluded that as well as possessing their own intentions, elephants can diagnose animacy and goal directedness in others, understand the physical competence and emotional state of others, and attribute goals and mental states (intentions) to others (Bates et al 2008b), as evidenced in the examples below:

*'IB family is crossing river. Infant struggles to climb out of bank after its mother. An adult female [not the mother] is standing next to calf and moves closer as the infant struggles. Female does not push calf out with its trunk, but digs her tusks into the mud behind the calf's front right leg which acts to provide some anchorage for the calf, who then scrambles up and out and rejoins mother.'*

*'At 11.10ish Ella gives a 'lets go' rumble as she moves further down the swamp . . . At 11.19 Ella goes into the swamp. The entire group is in the swamp*

*except Elspeth and her calf [<1 year] and Eudora [Elspeth's mother]. At 11.25 Eudora appears to 'lead' Elspeth and the calf to a good place to enter the swamp — the only place where there is no mud.'*

Examples such as these demonstrate that the acting elephant (the adult female in the first example, and Eudora in the second) was able to understand the intentions of the other (the calf in the first case, and Elspeth in the second) – i.e. to either climb out of or into the water – and they could adjust their own behaviour in order to counteract the problem being faced by the other. Whilst humans may act in this helpful manner on a daily basis, such interactions have been recorded for very few non-human animals (Bates et al 2008b).

31. Experimental evidence from captive African elephants further demonstrates that elephants attribute intentions to others, as they follow and understand human pointing gestures - the only animal so far shown to do so spontaneously. The elephants understood that the human experimenter was pointing in order to communicate information to them about the location of a hidden object (Smet and Byrne 2013). Attributing intentions and understanding another's reference point is central to empathy and theory of mind.

32. Evidence of 'natural pedagogy' is rare among non-human animals, with only a few potential examples of true teaching (whereby the teacher takes into account the knowledge states of the learner as they pass on relevant information) recorded anecdotally in chimpanzees (Boesch 1991) and killer whales (Guinet and Bouvier 1995)<sup>1</sup>. Teaching is therefore still widely considered to be unique to humans (Csibra and Gergely 2009). Our analysis of simulated oestrus behaviours in African elephants – whereby a non-cycling, sexually experienced older female will simulate the visual signals of being sexually receptive, even though she is not ready to mate or breed again – shows that these knowledgeable females adopt false oestrus behaviours in order to demonstrate to naïve young females how to attract and respond appropriately to suitable males. The experienced females may be taking the youngsters lack of knowledge into account and actively showing them what to do; a possible example of true

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<sup>1</sup> Functional teaching has been experimentally demonstrated in various animal species including ants, babblers, meerkats, cheetahs and some primates, but this is not the same as deliberate pedagogy, as it does not rely on representing the knowledge states of the learners.

teaching as it is defined in humans. Whilst this possibility requires further investigation, this evidence, coupled with the data showing that they understand the ostensive cues in human pointing, suggests that elephants do share some executive skills with humans, namely understanding the intentions and knowledge states (minds) of others.

33. Further related to empathy, coalitions and cooperation have been documented in wild African elephants, particularly to defend family members or close allies from (potential) attacks by outsiders, such as when a family group tries to ‘kidnap’ a calf from an unrelated family (Lee 1987, Moss and Poole 1983). These behaviours are based on one elephant understanding the emotions and goals of the coalition partner (Bates et al 2008b).

34. Cooperation is also evident in experimental tests with captive Asian elephants, whereby elephants demonstrated they can work together in pairs to obtain a reward, and understood that it was pointless to attempt the task if their partner was not present or could not access the equipment (Plotnik et al 2011). Problem-solving and working together to achieve a collectively desired outcome involve mentally representing both a goal and the sequence of behaviours that is required to achieve that goal; it is based on (at the very least) short-term action planning.

35. Wild elephants have frequently been observed engaging in cooperative problem solving, for example when retrieving calves that have been kidnapped by other groups, or when helping calves out of steep, muddy river banks (Bates et al 2008b, Moss 1992) These behaviours demonstrate the purposeful and well-coordinated social system of elephants, and show that elephants can hold particular aims in mind and work together to achieve those goals. Such intentional, goal-directed action forms the foundation of independent agency, self-determination, and autonomy.

36. Elephants also show innovative problem solving in experimental tests of insight (Foerder et al 2011), where insight can be defined as the ‘a-ha’ moment when a solution to a problem ‘suddenly’ becomes clear. (In cognitive psychology terms, insight is the ability to inspect and manipulate a mental representation of something, even when you can’t physically perceive or touch the something at the time. Or more simply, insight is thinking and using only thoughts to solve problems (Byrne 2016). A juvenile male Asian elephant demonstrated just

such a spontaneous action by moving a plastic cube and standing on it to obtain previously out-of-reach food. After solving this problem once, he showed flexibility and generalization of the technique to other, similar problems by using the same cube in different situations, or different objects in place of the cube when it was not available. This experiment again demonstrates that elephants can choose the appropriate action and incorporate it into a sequence of behaviour in order to achieve a goal, which they kept in mind throughout the process.

37. Further experiments also demonstrate Asian elephants ability to understand goal-directed behaviour. When presented with food that was out of reach, but with some bits resting on a tray that could be pulled within reach, the elephants learned to pull only those trays that were baited with food (Irie-Sugimoto et al 2008). Success in this kind of ‘means-end’ task is a demonstration of causal knowledge, which requires understanding not just that two events are associated with each other but also that there is some mediating force that connects and affects the two which may be used to predict and control events. Moreover, understanding causation and inferring object relations may be related to understanding psychological causation, i.e., the appreciation that others are animate beings that generate their own behaviour and have mental states (e.g., intentions).

### ***Communication and social learning***

38. Speech is a voluntary behaviour in humans, whereby a person can choose whether to utter words and thus communicate with another. Therefore speech and language are reflections of autonomous thinking and intentional behaviour. Elephants also use their vocalisations to share knowledge and information with others, apparently intentionally (Poole 2011). Male elephants primarily communicate about their sexual status, rank and identity, whereas females and dependents call to emphasise and reinforce their social units. Call types can generally be separated into laryngeal calls (such as rumbles) or trunk calls (such as trumpets), with different calls in each category being used in different contexts (Poole 2011; Poole and Granli 2004; Soltis et al 2005; Wood et al 2005). Field experiments have shown that African elephants distinguish between different call types (for example, contact calls – rumbles that travel long distances to maintain associations between elephants that could be several

kilometres apart, or oestrus rumbles – that occur after a female has copulated) and these different call types elicit different responses in the listeners. Elephant vocalisations are not simply reflexive, they have distinct meanings to listeners and they are truly communicative, similar to the volitional use of language in humans (Leighty et al 2008; Poole 1999; Poole 2011).

39. Furthermore, elephants have been shown to vocally imitate the sounds they hear around them, from the engines of passing trucks to the commands of human zookeepers (Poole et al 2005, Stoeger et al 2012). Imitating another's behaviour is demonstrative of a sense of self, as it is necessary to understand how one's own behaviour relates to the behaviour of others.

40. Elephants display a wide variety of gestures, signals and postures, used to communicate information to the audience (Poole and Granli gestures chapter 2011). Such signals are adopted in many different contexts, such as aggressive, sexual or socially integrative situations, and each signal is well defined and results in predictable responses from the audience. That is, each signal or gesture has a specific meaning both to the actor and recipient. Elephants' use of gestures demonstrates that they communicate intentionally and purposefully to share information with others and/or alter the others' behaviour to fit their own will.

41. Experimental evidence demonstrates that African elephants recognize the importance of visual attentiveness of the intended recipient (in this case, human experimenters) of gestural communication (Smet & Byrne 2014), further supporting the suggestion that elephants' gestural communication is intentional and purposeful. Furthermore, the ability to understand the visual attentiveness and perspective of others is crucial for empathy and mental-state understanding.

### ***Memory And Categorisation***

42. Elephants have both extensive and long-lasting memories, just as the folk stories and adages encourage us to believe. McComb et al. (2000), using experimental playback of long-distance contact calls in Amboseli National Park, Kenya, showed that African elephants remember and recognize the voices of at least 100 other elephants. Each adult female elephant tested was familiar with the contact-call vocalizations of individuals from an average of 14



families in the population. When the calls were from a familiar family— that is, one that had previously been shown to have a high association index with the test group—the test elephants contact-called in response and approached the location of the loudspeaker. When a test group heard unfamiliar contact calls (from groups with a low association index with the test group), they bunched together and retreated from the area.

43. McComb et al (2001) went on to show that this social knowledge accrues with age, with older females having the best knowledge of the contact calls of other family groups. McComb et al (2011) also showed that older females are better leaders, with more appropriate decision-making in response to potential threats (in this case, in the form of hearing lion roars). Younger matriarchs under-reacted to hearing roars from male lions, potential predators of elephant calves. Sensitivity to hearing this sound increased with increasing matriarch age, with the oldest, most experienced females showing the strongest response to this danger. These experimental studies show that elephants continue to learn and remember information about their environments throughout their lives, and this accrual of knowledge allows them to make better decisions and better lead their families as they grow older.

44. Further demonstration of elephants' long-term memory comes from data on their movement patterns. African elephants are known to move over very large distances in their search for food and water. Leggett (2006) used GPS collars to track the movements of elephants living in the Namib Desert. He recorded one group traveling over 600 km in five months, and Viljoen (1989) showed that elephants in the same region visited water holes approximately every four days, even though some of them were more than 60km apart. Elephants inhabiting the deserts of both Namibia and Mali have been described traveling hundreds of kilometers to arrive at remote water sources shortly after the onset of a period of rainfall (Blake et al. 2003; Viljoen 1989), sometimes along routes that researchers believe have not been used for many years. These remarkable feats suggest exceptional cognitive mapping skills, reliant on the long-term memories of older individuals who traveled that path sometimes decades earlier. Indeed it has been confirmed that family groups with older matriarchs are better able to survive periods of drought. The older matriarchs lead their families over larger areas during droughts than those with younger matriarchs, again apparently drawing on their accrued knowledge (this time about

the locations of permanent, drought-resistant sources of food and water) to better lead and protect their families (Foley, Pettorelli, and Foley 2008).

45. It has recently been shown that long-term memories, and the decision-making mechanisms that rely on this knowledge, are severely disrupted in elephants who have experienced trauma or extreme disruption due to ‘management’ practices initiated by humans. Shannon et al (2013) demonstrated that elephants in South Africa who had experienced trauma decades earlier showed significantly reduced social knowledge. During archaic culling practices, these elephants were forcibly separated from family members and subsequently translocated to new locations. Two decades later, they still showed impoverished social knowledge and skills and impaired decision-making abilities, compared with an undisturbed population in Kenya. Disrupting elephants’ natural way of life can negatively impact their knowledge and decision-making abilities.

46. Elephants demonstrate advanced ‘working memory’ skills. Working memory is the ability to temporarily store, recall, manipulate and coordinate items from memory. Working memory directs attention to relevant information, and results in reasoning, planning, and coordination and execution of cognitive processes through use of a ‘central executive’ (Baddeley 2000). Adult human working memory is generally thought to have a capacity of around seven items. In other words, we can keep about seven different items or pieces of information in mind at the same time (Miller 1956). We conducted experiments with wild elephants in Amboseli National Park, Kenya, manipulating the location of fresh urine samples from related or unrelated elephants. The elephants’ responses to detecting urine from known individuals in surprising locations showed that they are able to continually track the locations of at least 17 family members in relation to themselves, as either absent, present in front of self, or present behind self (Bates et al. 2008a). This remarkable ability to hold in mind and regularly update information about the locations and movements of a large number of family members is best explained by predicting that elephants possess an unusually large working memory capacity, apparently much larger than that of humans.

47. Elephants show sophisticated categorisation of their environment, with skills on a par with those of humans. We experimentally presented the elephants of Amboseli National

Park, Kenya, with garments that gave olfactory or visual information about their human wearers – either Maasai moran (male warriors who traditionally attack and spear elephants on occasion as part of their rite of passage), or Kamba men (who are agriculturalists and traditionally pose little threat to elephants). In the first experiment, the only thing that differed between the cloths was the smell, derived from the ethnicity and/or lifestyle of the wearers. The elephants were significantly more likely to run away when they sniffed cloths worn by Maasai than those worn by Kamba men or no one at all. In a second experiment, we presented the elephants with two cloths that had not been worn by anyone, but here one was white (a neutral stimulus) and the other was red—the color that is ritually worn by Maasai moran. With access only to these visual cues, the elephants showed significantly greater reaction to red garments than white, often including signs of aggression. We concluded that elephants are able to categorize a single species (humans) into sub-classes (i.e. ‘dangerous’ or ‘low risk’) based on either olfactory or visual cues alone (Bates et al. 2007). McComb et al went on to show that the same elephants can also distinguish between human groups based on our voices. The elephants reacted differently (and appropriately) depending on whether they heard Maasai or Kamba men speaking, and also when they heard male or female Maasai (where female Maasai pose no threat as they are not involved in spearing events), and adult Maasai men or young Maasai boys (McComb et al 2014). Scent, sounds and visual signs associated specifically with Maasai men are categorized as ‘dangerous’, while neutral signals are attended to but categorized as ‘low risk’. These sophisticated, multi-modal categorization skills may be exceptional among non-human animals.

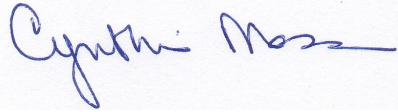
### ***Summary***

48. Both African and Asian elephants evidently share many key traits of autonomy with humans, and so parsimoniously it must be concluded that elephants are also autonomous beings.

49. Scientific knowledge about elephant intelligence has been increasing rapidly in the past decade: what we currently know is only a tiny fraction of what elephant brains are likely capable of, and yet more amazing abilities are still likely to be discovered.

I, Cynthia Moss, D.Sc., declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated: \_\_5/12/2023\_\_

A handwritten signature in blue ink that reads "Cynthia Moss". The signature is written in a cursive style and is contained within a light gray rectangular box.

(Signature)

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# **Exhibit A**

## CURRICULUM VITAE

**NAME:** Cynthia J. Moss

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Tel: +254 722 208 762  
E-mail: [cmoss@elephanttrust.org](mailto:cmoss@elephanttrust.org)

**DATE OF BIRTH:** July 24, 1940

**PLACE OF BIRTH:** Ossining, New York

**NATIONALITY:** U.S.A. (resident of Kenya)

**EDUCATION:** BA, Smith College, 1962; D.Sc., Smith College, 2002

**PRESENT POSITION:** Director, Amboseli Elephant Research Project  
Amboseli Trust for Elephants

### PROFESSIONAL HISTORY:

**1972-present: Director Amboseli Elephant Research Project and since 2001 Director of the Amboseli Trust for Elephants.** Set up long-term research project on the elephant population in the Amboseli ecosystem in southern Kenya. Conducted research on the distribution, demography, population dynamics, social organization and behavior of the Amboseli elephants. Present activities include: directing and supervising research and monitoring; training elephant researchers from African elephant range states; outreach to Maasai community; carrying out surveys and training courses at other elephant study sites in Africa; disseminating scientific results; advocating for elephant welfare; promoting public awareness by writing popular articles and books and by making films about elephants; fund raising for and administering Project.

**1971-1985:** Editor of African Wildlife Foundation's *Wildlife News*.

**1970-1971:** Part-time work as freelance journalist, mainly for *Time* and *Life* magazines.

**1969-1970:** Research assistant to Drs. A.M. and S. Harthoorn, veterinary research, Nairobi, 6 months; compiled and wrote a 75-page report on elephants for Cinema Center Films' "The African Elephant", 6 months; research assistant to Dr. V. Finch, environmental physiology project on eland, hartebeest, zebra, wildebeest, ostrich, and Boran cattle, Athi Plains, Kenya, 2 months; research assistant to Dr. J.B. Sale, U. of Nairobi, feeding ecology of elephants in Tsavo National Park, Kenya, 2 months.

**1968:** Research Assistant to Dr. I. Douglas-Hamilton, elephant behaviour and ecology, Lake Manyara National Park, Tanzania, 8 months. (Subsequently worked on the project for shorter periods in 1969, 1970, and 1971.)

**1964-1968:** Reporter/Researcher, *Newsweek* Magazine, New York.

## **GRANTS, FELLOWSHIPS, AWARDS:**

<b>1975</b>	African Wildlife Foundation grant
<b>1978 - 1979</b>	Midgard Foundation grant
<b>1979 - 1984</b>	Research Fellow, grants, New York Zoological Society
<b>1982</b>	<i>Portraits in the Wild</i> nominated for American Book Award for best science paperback of the year
<b>1985</b>	Smith College Medal for alumnae achievement
<b>1993</b>	"Echo of the Elephants" received awards at Jackson Hole Wildlife Film Festival and Italian Film Festival.
<b>1996-2006</b>	Disney Conservation Foundation grants
<b>1996-1999</b>	Delano Foundation grants
<b>1997</b>	Elected Fellow of the Royal Geographic Society
<b>1998</b>	<i>Little Big Ears</i> received an award from the John Burroughs Foundation and the American Museum of Natural History
<b>1999</b>	Conservation Excellence Award from the Oakland Zoo
<b>1999</b>	Centennial Conservation Award from Woodland Park Zoo
<b>1999, 2000, 2001</b>	Sabbatical fellowships at National Center for Ecological Analysis & Synthesis, University of California, Santa Barbara
<b>2000</b>	Howard Gilman Foundation grant
<b>2001-ongoing</b>	Advisor to the International Fund for Animal Welfare
<b>2001</b>	Elected Fellow of the Society of Women Geographers
<b>2002-2007</b>	John D. & Catherine T. MacArthur Foundation Fellowship
<b>2002</b>	Award from Performing Animal Welfare Society (PAWS)
<b>2002</b>	Smith College Honorary Doctorate Degree
<b>2002</b>	Distinguished Conservation Fellow Award, LA Zoo
<b>2004</b>	Guardian Award from In Defense of Animals
<b>2005</b>	Conservation Award, Cincinnati Zoo

## **PROFESSIONAL ACTIVITIES:**

<b>1988-1996</b>	IUCN/SSC African Elephant Specialist Group member
<b>Ongoing:</b>	Lectures on elephant social organization and behaviour to university students, wildlife club members, and specialist groups in Kenya, India, U.S., and U.K.
<b>Ongoing:</b>	Consultant to conservation groups, animal welfare organizations, zoos and others on elephant-related issues

## **MEMBERSHIPS:**

American Museum of Natural History  
Authors Guild  
East African Natural History Society  
East African Wild Life Society  
Flying Doctors Society of Kenya  
Kenya Society for the Protection & Care of Animals  
PEN America  
Royal Geographic Society (Fellow)  
Society of Women Geographers (Fellow)  
Explorers Club (Fellow)

## PUBLICATIONS

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- Pringle, Laurence & **Moss, Cynthia** (1997) *Elephant Woman*. Atheneum, New York.
- Moss, C.J.** & Croze, H.J. (eds) (2011) *The Amboseli Elephants: A Long-Term Perspective on a Long-Lived Mammal*. University of Chicago Press, Chicago.

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- (1992) Elephant calves: the story of two sexes. In: Shoshani, J. (ed) *Elephants: Majestic creatures of the wild*. Weldon Owen, Sydney, 106-113.
- (2000) A passionate devotion. In: Bekoff, M. (ed) *The Smile of a Dolphin: Remarkable Accounts of Animal Emotions*. Discovery Books, New York, 134-137.
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### SCIENTIFIC PUBLICATIONS IN JOURNALS AND BOOKS:

1. Poole, J.H. & **Moss, C.J.** (1981) Musth in the African elephant, *Loxodonta africana*. *Nature*, 292, 830-831.
2. Douglas-Hamilton, I., Hillman, A.K.K. & **Moss, C.J.** (1981) Notes on vertical photography of elephants for age determination. *ILCA Monographs*, 4, 131-142.
3. **Moss, C.J.** & Poole, J.H. (1983) Relationships and social structure of African elephants. In *Primate Social Relationships: An Integrated Approach* (ed R.A. Hinde), pp. 315-325. Blackwell Scientific Publications, Oxford
4. Poole, J.H. & **Moss, C.J.** (1983) Musth discovered in the African elephant. *African Elephant and Rhino Newsletter*, 1:8.
5. **Moss, C.J.** (1983) Oestrous behaviour and female choice in the African elephant. *Behaviour*, 86, 167-196.
6. Western, D., **Moss, C.J.** & Georgiadis, N. (1983) Age estimation and population age structure of elephants from footprint dimensions. *JWildlManage*, 47, 1192-1197.



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46. Enduring consequences of early experiences: 40 year effects on survival and success among African elephants (*Loxodonta africana*). Lee PC, Bussière LF, Webber CE, Poole JH, **Moss CJ**. Biol Lett. 2013 Feb 13;9(2):20130011. doi: 10.1098/rsbl.2013.0011. Print 2013 Apr 23. PMID: 23407501 [PubMed - indexed for MEDLINE]
47. The influence of social structure, habitat, and host traits on the transmission of *Escherichia coli* in wild elephants. Chiyo PI, Grieneisen LE, Wittemyer G, **Moss CJ**, Lee PC, Douglas-Hamilton I, Archie EA. PLoS One. 2014 Apr 4;9(4):e93408. doi: 10.1371/journal.pone.0093408. eCollection 2014. PMID: 24705319 [PubMed - in process] Free PMC Article

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FILM SCRIPTS AND SCIENTIFIC CONSULTING FOR FILMS:

1990-1992	"Echo of the Elephants", BBC Natural History Unit
1992-1995	"Echo of the Elephants: The Next Generation", BBC Natural History Unit
1996-1997	"Africa's Forgotten Elephants", Scorer Associates for BBC
2002-2005	"Echo of the Elephants: The Last Chapter?", BBC Natural History Unit
2007-2008	"Echo and the Elephants of Amboseli, Animal Planet 13-part series
2009-2010	"Echo: An Elephant to Remember", BBC Natural History Unit
2013	"An Apology to Elephants", HBO.

## **Exhibit B**

## Exhibit B

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## **Exhibit VI**

## **Declaration of Bob Jacobs**

I, Bob Jacobs, declare as follows:

### **Introduction and Qualifications**

1. My name is Bob Jacobs. I graduated with a Bachelor of Arts, *Magna Cum Laude*, in German from Whitman College in 1980. I received an M.A. in Germanics, with a minor in Teaching English as a Second Language, from the University of Washington in 1982. I received my Ph.D. from the University of California, Los Angeles (UCLA) in Applied Linguistics in 1991, completing a neuroanatomy dissertation under the supervision of Drs. Arnold B. Scheibel and John Schumann. The dissertation was entitled: "A Quantitative Dendritic Analysis of Wernicke's Area". During this time, I also worked with Dr. Marian Diamond of the University of California, Berkeley. Post-doctoral research in neuroimaging was also completed from 1991-1993 under the supervision of Dr. Harry Chugani at UCLA. I began my tenure track professorship in the Department of Psychology at Colorado College in 1993, started the school's Neuroscience major in 1996, and have been at Colorado College since that time, becoming a full professor in 2006. I reside in Colorado Springs, CO.
2. I submit this affidavit in support of Petitioner The Nonhuman Rights Project, Inc. (NhRP) in its habeas corpus case on behalf of the captive elephant named above. I have professional knowledge of the facts to which I attest and am not a party to this proceeding.
3. I have been conducting research on the mammalian brain since 1984 when I began my dissertation research in the Laboratory of Dr. Arnold B. Scheibel at the UCLA Brain Research Institute. I have 44 peer-reviewed publications to my name, all in well-respected scientific journals. I also have two chapters in edited volumes, and 63 professional talks/posters presented at academic conferences, and over 60 invited lectures about the brain. From 1984 to 2010, my main research focus on the human cerebral cortex, specifically on the quantitative neuromorphology in the cerebral cortex, that is, the shape and size of nerve cells (neurons) in

the outmost layers of the brain involved in higher cognitive functions—18 publications have focused on human tissue.

4. From 2010 onward, I focused on comparative neuroanatomy, examining the brains of a variety of species—for many of these species, our studies constitute the first time anyone had explored the neurons in the brains of these animals. Species examined included: African elephant, giraffe, minke whale, humpback whale, bottlenose dolphin, Siberian tiger, clouded leopard, Florida manatee, cheetah, African leopard, chimpanzee, African wild dog, domestic dog, banded mongoose, caracal, zebra, wildebeest, pygmy hippopotamus, greater kudu, ring-tailed lemur, golden lion tamarin, chacma baboon, macaque monkey, Flemish giant rabbit, Bennett’s wallaby, and Long-Even’s rat. A total of 18 publications have focused on these non-human animals.
5. With regards to the African elephant, we documented the types of neurons in both the cerebral cortex and in the cerebellum, a part of the brain involved in balance, body control, and coordination. This research was conducted on adult and newborn elephants—resulting in a total of 4 publications focused exclusively on the elephant brain, which had not been explored previously. In addition to academic publications, I have presented these results at several scientific conferences (e.g., Society for Neuroscience, Performing Animal Welfare Society), and have written summaries of this research for the online publication known as “The Conversation” (<https://theconversation.com/what-elephants-unique-brain-structures-suggest-about-their-mental-abilities-100421>; <https://theconversation.com/the-neural-cruelty-of-captivity-keeping-large-mammals-in-zoos-and-aquariums-damages-their-brains-142240>).
6. My Curriculum Vitae fully sets forth my educational background and experience and is attached as “Exhibit A.”

### **Basis for opinions**

7. My early interest in brain research involved using the research techniques of Dr. Scheibel to extend both his and Dr. Diamond’s interest into the effects of the environment on the brain. Dr. Diamond was a pioneer in documenting the effects of an impoverished and enriched

environment on neuroanatomy in non-human animals; my dissertation extended that to the human brain, where we found education related differences in the neurons of the cerebral cortex. Specifically, individuals with a university education had more complex neurons than individuals with a high school or less than high school education.

8. I have followed this area of research my entire career, including when we examined the brains of both free and captive animals. As such, several decades of neuroscientific research has led me to several conclusions about the state of the brain in captive non-human animals, particularly with regard to long-lived, large-brained mammals such as elephants.
9. One of the main findings of our elephant cortex paper (Jacobs et al., 2011) was that pyramidal neurons in the elephant are just as complex as similar neurons in the human cortex. As is the case in humans, these neurons are also more complex in the frontal lobe, involved with higher cognitive function, than in the occipital lobe, involved in the early processing of incoming visual information. There are remarkable parallels in terms of overall complexity of neurons and the functional involvement of these neurons. One difference was noted between the cortical neurons in the African elephant and in humans—those in the African elephant appear to extend their branches more broadly than neurons in the human, which tend to be more compact. As such, elephant neurons sample a very wide array of information because of the length of their dendrites. This broad synthesis of information in the African elephant may contribute to their contemplative nature—elephants often appear to be examining their surroundings and thinking very deeply about what is going on around them. They have the leisure of their great size and few natural predators, which allows them to consider their decisions very carefully. Primate cortical neurons, by contrast, seem more designed for quick responses to the environment. This contemplative aspect of the elephant further supports the findings expressed below with regards to how their brain responds to captivity.
10. I co-authored a recently published comprehensive review article on the neural consequences of impoverished environments for elephants and cetaceans (Jacobs et al., 2021;

<https://www.degruyter.com/document/doi/10.1515/revneuro-2021-0100/html?lang=en>). This review article forms the basis of the opinions expressed in this affidavit.

11. My colleagues and I (Doyle et al., in press) currently have a paper pending publication in the peer-reviewed journal *Animals* entitled: The challenges and ethics of elephant captivity (with a focus on Western facilities). In this review, we provide an overview of the current state of elephant confinement, focusing on the inherent limitations of captive facilities and the clinical/behavioral/neural outcomes associated with such conditions. Specifically, we examine quantitative and qualitative aspects of the enclosed space, sociocognitive issues, dietary constraints, and a variety of health/welfare concerns (e.g., stereotypies, physical health, nutrition, reproduction, life expectancy). The shortcomings of the captive environment are especially salient when juxtaposed next to the complex, multifaceted characteristics of the elephant's natural environment. Despite the efforts of some facilities to improve the captive environment, serious welfare problems remain. Such confinement issues thus raise significant ethical concerns with regards to whether elephant captivity can be justified.
12. Free elephant are autonomous beings in their natural habitat, travelling many kilometers a day as they forage on a very wide variety of food. They live in large, complex fission-fusion social environments (composed of families, bond groups, and clans) with defined roles for each member of the society (<https://www.elephantvoices.org/elephant-sense-a-sociality-4/elephants-are-socially-complex.html>). Each elephant has his/her unique personality, which affects how they interact with each other. Communication among conspecifics is complex as they have very refined acoustic abilities (both vocal and seismic). Cognitively, they have sophisticated brains that are well-adapted to their complex social world and to an ever-changing environment. They clearly are sentient, self-aware, contemplative beings who think carefully about the decisions they make. They exhibit the hallmarks of culture, with shared knowledge being passed down across generations. In their natural habitat, elephants are dignified creatures with few natural predators—the result of millions of years of evolution within their native ecosystems. Keeping them in captivity—especially in solitary

confinement—is at best unethical, and inhumane. More accurately, it is simply barbaric as it robs them of any autonomy and reduces a naturally noble creature to an empty shell, a tortured, artificial artifact.

### **General Observations**

13. In addition to a rather large list of well-documented physical ailments (Riddle & Stremme, 2011) and behavioral abnormalities (Greco et al., 2017) that afflict elephants in captivity, extensive neural consequences to an impoverished environment have been demonstrated in many species to date: mice, rats, rabbits, cats, and primates, including humans (Jacobs et al., 1993, 2021). No research of this nature has been completed on elephants as these are post-mortem studies and would therefore require killing of the animal; as such, we extrapolated from controlled scientific studies with all evidence suggesting that the brains of animals such as elephants would not “behave” any differently than the brain of any other mammal, including humans. There is a great deal of evolutionary continuity across the brains of the species that have been examined, which makes this a very logical extension of the existing research. Indeed, much of what we know about the neuropsychiatric consequences of chronic stress in humans derives from nonhuman animal models (Lecorps et al., 2021).
14. Over 60 years of neuroscience research indicates that an impoverished environment negatively affects the cerebral cortex (Diamond et al., 1964; Diamond, 2001). These effects include a thinner cerebral cortex, decreased blood supply), smaller neuronal cells bodies with few glial (“helper”) cells for metabolic support, decreased dendritic branching for synthesizing information, fewer dendritic spines (indicating fewer connections with other neurons), and smaller, less efficient synapses. Additional studies reveal similar epigenetic-related deficiencies at the molecular (van Praag et al., 2000) and neurochemical (Kozorovitskiy et al., 2005) level throughout the brain. These changes at the cortical level are associated with deficits in an animal’s emotional and cognitive functioning (Neidl et al., 2016).
15. A crucial component to an enriched environment is exercise (Basso & Suzuki, 2017), which not only increases the supply of oxygenated blood to a metabolically expensive brain, but also



contributes to potential neurogenesis and enhanced cognitive abilities through a series of complex biochemical cascades (Horowitz et al., 2020). Large, captive mammals are severely deprived of the exercise component of enrichment, particularly when one realizes that elephants naturally travel tens of kilometers a day (sometimes more than 100 kilometers) across diverse terrain with numerous plants and various substrates, something they cannot do in the small, monotonous enclosures that typify zoo exhibits (Holdgate et al., 2016). Not only do elephants in larger enclosures exhibit lower glucocorticoid metabolite concentrations than their cohorts in smaller enclosures, but they also exhibit lower cortisol (stress hormones) levels when they can access diverse enrichment options and are allowed to be in compatible social groups (Brown et al., 2019). In Asian elephants, cortisol levels negatively correlate with locomotion and positively correlate with stereotypies (Schmid et al., 2001). Overall, these findings imply that cortical neurons in impoverished/captive animals are less complex, receive less metabolic support, and process information less efficiently than cortical neurons from animals in an enriched, more natural environment (Rosenzweig & Bennett, 1969).

16. Two other brain areas are affected negatively by a captive/impoverished environment because such an environment severely constrains or even prevents the natural behavior of animals, resulting in chronic frustration, boredom, and stress. Two subcortical (beneath the cortex) brain structures negatively affected by such stress are the hippocampus, involved primarily in declarative (i.e., facts and events) and spatial memory formation, and the amygdala, involved in emotional processing. Decades of neuroscientific research in the laboratory and in the field (Sapolsky, 2005) have demonstrated that prolonged stress results in chronically elevated levels of glucocorticoids (stress hormones) (Sapolsky, 1996). Chronic exposure to these stress hormones contributes to wide-ranging neurodegeneration (Vyas et al., 2016), including neuronal damage/death in the hippocampus (Sapolsky et al., 1990), resulting in memory deficits, and in the amygdala (McEwen et al., 2015), resulting in emotional processing deficits. In natural environments, the body's stress-response system is designed for quick activation to escape from danger; in captivity, there is no escape. In captivity, animals have an almost

complete lack of control (Sapolsky, 2012) over their environment. The resulting, chronic stress tends to inhibit the immune system (Schedlowski & Schmidt, 1996), with negative health and neural consequences (McEwen et al., 2015). Under chronic psychological or physical stress, pro-inflammatory cytokines are released by activated immune cells and can interact with multiple corticolimbic brain structures, dysregulating different growth factors and neurogenesis, several neurotransmitter systems, and neuroendocrine communication (Capuron & Miller, 2011). Moreover, animals kept in social isolation exhibit increased aggression and depression like symptoms (Miura et al., 2002).

17. Stress from captivity often fosters learned helplessness and conditioned defeat (Maier & Seligman, 2016), which involves the amygdala (Hammack et al., 2012) and broad dysregulation of the neurotransmitter serotonin (Maier & Watkins, 2005). Under similar conditions (Chugani et al., 2001), stress is associated with a variety of neuropsychiatric diseases in humans, such as anxiety/mood disorders (Zhang et al., 2018), including major depression, and post-traumatic stress disorder (PTSD) (Koenigs & Grafman, 2009). Current human research, in fact, suggests that childhood trauma may subsequently make the adult brain more vulnerable to maladaptive stress responses (Banihashemi et al., 2020), an issue particularly relevant for long-lived, highly social animals such as elephants and cetaceans born into captivity. One neural consequence under such conditions is microglia activation and a sustained release of inflammatory mediators (Leszek et al., 2016). Subsequent neuroinflammation contributes to physiological, behavioral, affective, and cognitive disorders (de Pablos et al., 2014; McLeod et al., 2001). To the extent that captivity induces stress-related immuno-suppression, captive animals are thus more susceptible not only to neuroinflammation but also to opportunistic infections and possible disruptions of fertility (Edwards et al., 2019). Given the highly conserved (Nikolova et al., 2018) nature of neural structures (i.e., brains have a lot in common across species), there is no logical reason to believe that the large, complex brains of animals such as elephants (Jacobs et al., 2011) would react any differently to a severely stressful environment than does the human brain.

18. Captivity and the psychosocial stress it engenders, has negative effects on complex circuitry between a subcortical collection of nuclei (groups of neurons) known as the basal ganglia and the cerebral cortex. Through a series of reciprocal connections, the basal ganglia select and orchestrate appropriate cortical activity for a given situation, including the two pathways involved in movement: the direct pathway and the indirect pathway. The direct pathway tends to be involved in generating movement/behavior whereas the indirect pathway is more crucial for inhibition of movement/behavior. Normal movement depends on a delicate balance between these two pathways. Stereotypic behavior resulting from stress has been documented in a large number of species (e.g., poultry, rodents, pigs, voles, cows, sheep, dogs, horses, and primates, including humans) and is invariably associated with an imbalance in the direct/indirect pathways (McBride & Parker, 2015). More specifically, the indirect pathway is suppressed as a result of dysregulation of two neurotransmitter systems, dopamine and serotonin (Langen et al., 2011). Such behavioral stereotypies may represent a coping strategy as the animal attempts to mitigate the overwhelming effects of psychosocial stress (Poirier & Bateson, 2017). It is worth noting that elephants, in their natural habitat, have never been noted to have exhibit such stereotypies, which reflect underlying (abnormal) disruption of neural mechanisms.
19. Stereotypies are common human and non-human responses to chronic stress. Children with a history of early institutional care are more likely to exhibit stereotypies, underscoring the influential role of the environment during early development (Bos et al., 2010). In nonhuman animals, such behavioral stereotypies are seldom if ever observed in nature (Boorer, 1972), but have been consistently documented in many captive animals beyond murid rodents. Chronic stress also creates heightened dopamine sensitivity in the nucleus accumbens, which is part of the mesolimbic pathway associated with motivation (Cabib, 2006). Environmental deprivation and social isolation have repeatedly been shown to dysregulate these motor control pathways in several species, resulting in stereotypies (Martin et al., 1991; McBride & Hemmings, 2005). By extension, comprehensive environmental enrichment appears to

rebalance activity in these pathways, thus at least partially ameliorating or even preventing the emergence of stereotypies. Comprehensive environmental enrichment appears to prevent stereotyped behaviors by increasing metabolic activity in the motor cortex, the striatum, and the nucleus accumbens (Turner et al., 2002).

### **General Summary**

20. Long-lived individuals with large, complex brains integral to their intricate sociobehavioral existence cannot function normally in captivity. The neural point of view underscores the sociobehavioral assessment of elephant needs. Physical and behavioral abnormalities are easy to observe, but one must look deeper to see the neural consequences. Evolution has constructed the brain—of all organisms—to be extremely and exquisitely responsive to the environment (for better and worse). This responsivity extends to the level of gene expression, meaning that the environment can turn on or turn off different genes (Sapolsky, 2017). As such, the captive environment we place animals in significantly and sometimes permanently alters their brains in a negative manner. From a neural perspective, imprisoning large mammals and putting them on display is undeniably cruel.
21. Elephants exhibit behavioral patterns and physical abnormalities similar to those of other mammals in impoverished environments. Moreover, they possess very similar, highly conserved, neurobiological systems as do other mammals for responding to impoverishment and chronic stress. Therefore, elephants sustain neurobiological insults from living in confined, artificial environments. Insofar as most captive elephants cannot be “rewilded” for scientific and ethical reasons, the case can be made for transferring them to authentic sanctuaries, where they may live in a more natural environment. Authentic sanctuaries report improved physical and psychological health in elephants after their arrival, including decreased frequency or extinction of stereotypies, reduced aggression toward keepers, muscle tone gain, and formation of social bonds between elephants with different social histories, including elephants who were abused, traumatized, or solitary for decades (Buckley, 2009; Derby, 2009). Thus, elephants should either remain free (and protected) or, if already in

captivity, they should be released into well-designed sanctuaries—several already exist for elephants; for example in Tennessee (<https://www.elephants.com/>), in Georgia, (<https://bit.ly/42Rp8wU>), in Northern California (<https://bit.ly/438D8m7>), and in Brazil (<https://bit.ly/3NZYopH>).

### **Observations specific to the elephants in the Honolulu, Hawaii Zoo**

22. My observations here are based on available videos, live webcams, and reports about the Honolulu Zoo, which was recently reaccredited by the Aquarium and Zoo Association (AZA) after having lost its accreditation from 2016-2020. The zoo currently houses two Asian elephants (e.g., Mari, a 48-year-old female, and Vaigai, a ~38-year-old female, confined therein).

- a) **Social groups:** Mari and Vaigai, who were both imported from India, have been the only elephants at the Honolulu Zoo since 1987 when Jothi, a female Asian elephant died at the age of 5 years (note that captive elephants have a greatly reduced lifespan compared to their free-roaming counterparts, Clubb et al., 2008, 2009)—note that one zookeeper blatantly and incorrectly proclaims that elephants live longer in captivity ([https://www.youtube.com/watch?v=z4aL\\_ydhbxE&t=2848s](https://www.youtube.com/watch?v=z4aL_ydhbxE&t=2848s)). Removing animals from their native habitats is extremely harmful because free-roaming elephants tend to live in matriarchal, multi-generational family groups of two to 10 adult females and juveniles (Vance et al., 2009). Elephant family groups share a fission-fusion structure, separating and merging with larger groups of up to several hundred elephants (Poole & Moss, 2008; de Silva et al., 2011). In the Honolulu Zoo, the social “group” consists only of Mari and Vaigai—and from observing the Honolulu Zoo elephant webcam, it appears that they also spend considerable time apart from each other and, thus, in virtual isolation. It is, in fact, now recommended that zoos should aim to simulate free-

ranging elephants' natural social structure (Finch et al., 2020), which the Honolulu Zoo clearly is not doing. Because of the complex social world of elephants, socioemotional deprivations and disruptions profoundly affect their corticolimbic structures (Mumtaz et al. 2018). Humans subjected to early socioemotional deprivation in Romanian orphanages exhibit several neural deficits, including glucose hypometabolism and white matter abnormalities in limbic and paralimbic structures (including the prefrontal cortex, amygdala, and hippocampus; Chugani et al., 2001; Eluvathingal et al., 2006). Such neural disruptions undoubtedly contribute to an elephant's emotional distress.

- b) **Space quantity and substrate:** The Honolulu Zoo elephant enclosure, although it was remodeled in 2011, remains extremely small, with a usable space of ~1.4 acres (9 times larger than the previous exhibit). Insofar as elephants in their natural habitat have expansive home ranges, extending from 10s to 10,000 km<sup>2</sup> (Fernando et al., 2008; Bahar et al., 2018), the enclosure space provided here is simply insufficient—especially year after year, decade after decade. Along with the size of the enclosure, it is also obvious that, within a few minutes, the elephants could explore every square meter of their surroundings (<https://www.youtube.com/watch?v=IPjN3CYgpho>). Elephants, in their natural habitat travel across a large variety of terrains as they forage—note that natural foraging itself is composed of over 20 different socio-cognitive activities. The Honolulu elephants do not have that option. Moreover, the terrain on which they walk appears to be densely packed with soil and concrete. Limited space, which restricts movements, coupled with hard surfaces (e.g., concrete, packed soil; Miller et al., 2016), leads to osteoarthritis, which regularly occurs prematurely in captive elephants. Such ailments are associated with pain and joint stiffness, inability to stand, and sometimes lead to euthanasia (Issa and Griffin, 2012; Buckwalter et al., 2013). Although Atkinson and Lindsay (2022) conclude that range countries are the only places where elephants

can truly flourish, they suggest that an enclosure size of 100 hectares or more of diverse, natural habitat could provide elephants the chance for more fulfilling lives. It is thus no surprise that In Defense of Animals has repeatedly ([2009](#), [2010](#), [2011](#), [2016](#)) ranked the Honolulu Zoo as one of the worst for elephants. In their 2016 report, they noted the following: “Violations at Honolulu Zoo included too little shade provided for the elephants from the direct sun, inadequately tested and brackish water, a notable absence of habitat enrichment, and unsafe rocks that posed a danger to elephants’ feet. A primary key reason cited for the loss of accreditation was the Zoo’s long history of lacking funds and support from the City and County of Honolulu, the Zoo’s legally bound administrators. Hawaii voters recently approved an amendment to prop up the failing zoo through tax revenues.”

- c) **Space quality and diversity:** Although the amount of space is a critical element of an elephant’s enclosure, that space's quality (e.g., the cognitive stimulation it provides) is equally important. The sensory environment should be composed of a variety of sounds, smells, sights, and tactile and taste sensations. In nature, elephants exist in different types of large, dynamic ecosystems (e.g., forests, open savanna, wet marsh, and desert, Clubb & Mason, 2002), where they interact with diverse ecological features. Such sensory experience are severely lacking for the Honolulu Zoo elephants insofar as their environment is the unchanging and thus devoid of natural stimulating, dynamic ecosystems (including a variety of natural sounds, smells, and sights, along with tactile and taste sensations), which precludes any meaningful exploration and foraging. It is, in fact, rather shocking to see land in Hawaii that is (virtually) devoid of vegetation, but that is the case for the elephant enclosure. As such, these elephants are clearly existing in an impoverished environment which, as explained above, has comprehensively negative effects on the brain (Jacobs et al., 2022).
- d) **Exercise:** Such a small enclosure clearly precludes the Honolulu elephants from having adequate exercise. Given that elephants in their native habitat normally travel many

kilometers a day, it is clearly not possible for the Honolulu elephant to exercise properly, potentially resulting in obesity and foot problems (Morfeld et al., 2014). Both Mari and Vaigai are obese; in one video (<https://bit.ly/3VYA0qo>), the zookeeper informs the public that Mari weighs over 10,000 lbs.—the normal weight for a female Asian elephant is ~7,700 lbs. From observing the live webcams of the Honolulu Zoo, it is also clear that the elephants spend extended periods (i.e., hours) of time motionless, something very uncommon in free-roaming elephants. Even when active, they can cover every inch of their enclosure in a matter of minutes. As such, their exercise is lacking in both quantity and quality. In one video (<https://bit.ly/3pvzzHT>), the Honolulu zookeeper even admits that they are less active and don't walk around as much as free-ranging elephants.

- e) **Food:** As is typical in zoo settings, the Honolulu zoo elephants' diet is entirely dependent on the caregivers, and thus rather limited (e.g., mostly hay); the hay is supplemented with occasional vegetables and browse, as noted by the zookeeper in this video, <https://bit.ly/42wMXtV>. As noted above, there is no accessible natural vegetation in the elephant enclosure. They can see trees, but these are out of reach to prevent the elephants from foraging—a rather frustrating situation, one can easily imagine. In their natural habitat, elephants are highly diverse feeders, consuming more than 100 seasonally and geographically varying food species (e.g., grasses, trees, bark, roots, fruits, and aquatic plants; Dierenfeld, 2006), and spending 60-80% of their waking hours foraging over long distances (Poole & Granli, 2009). A more varied feeding regime would certainly enhance their well-being (Holdgate et al., 2016).
- f) **Human interactions and anthropogenic noise:** In addition to being put on display to entertain visitors on a daily basis (<https://bit.ly/3pyojL4>), the elephants have occasionally been treated in a demeaning and inappropriate manner. For example, in 2011, Mari and Vaigai's faces and bodies were painted in celebration of the opening of the new exhibit (<https://bit.ly/3nWJcis>). All zoo elephants are continually exposed to



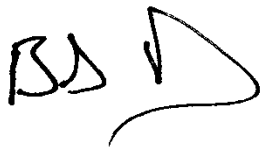
the noise of human visitors and to the noises of the surrounding city, much of it at very low frequencies caused by the trains and traffic. Elephants depend a great deal on sound for communication, both vocally and seismically. Their feet have a very high number of Pacinian corpuscles (skin receptors sensitive to vibration), which makes them very sensitive to low-frequency (subsonic to human hearing) sounds/vibrations (Bouley et al., 2007). Such an abundance of anthropogenic (human-generated) noise is greatly disturbing to elephants, who may perceive it to be a potential risk/threat (Mortimer et al., 2021). Such noise cannot help but be a relentless source of psychological stress if not acoustic trauma.

- g) **Enrichment:** There is little indication that the Honolulu elephants are exposed to any kind of broad environmental enrichment. In most zoos, environmental enrichment, when employed, only represents a very limited type of directed enrichment (e.g., hiding food that elephants must find, Markowitz, 1982) and is employed in an attempt to alleviate the specific psychological/behavioral/neural problems arising from the captive, inarguably impoverished environment. They are band-aids, not cures. For the Honolulu Zoo, there appear to be very few options for any enrichment. Moreover, targeted, ad hoc zoo enrichment remains insufficient for the overall neural health of mammals such as elephants as long as they remain constrained by traditional captive conditions (Latham & Mason, 2010). Here, it is worth noting a couple of additional points: natural environments appear to be better for the emotional health of rats than artificially enriched environments (Lambert et al., 2016), with similar findings in humans (Lambert et al., 2015). A sanctuary would provide the Honolulu elephants with a much more natural, and thus enriching, environment.
- h) **Stereotypies:** Social deprivation/disruption dysregulates motor pathways, with the concomitant chronic stress contributing to stereotypies. In watching the live webcams in the Honolulu Zoo, it appears that these elephants exhibit typical stereotypies (e.g., rocking and swaying behavior) when not involved in any particular activity. Between

~47% and ~ 85% of elephants in zoos exhibit stereotypies, which can consume up to ~20% of the animal's daily activity (Mason & Latham, 2004; Mason & Veasey, 2010). All elephants in circuses, where chain tethering is common, exhibit stereotypies (Schmid, 1995). Moreover, as noted above, the existence of stereotypies is a direct reflection of the dysregulation of motor control circuitry in the brain, that is, a form of brain damage. In other words, although stereotypies are an observable behavior, they also represent a direct window into a dysfunctional brain.

I, Bob Jacobs, Ph.D., declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 5 / 13 / 2023

A handwritten signature in black ink, appearing to read 'BJ' followed by a stylized flourish.

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(Signature)

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# Exhibit A

## CURRICULUM VITAE

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Birth date: Feb. 14, 1958  
Birthplace: Mojave, CA.

### Educational Background

1991-1993	UCLA	Post-doc	UCLA DANA Scholar, Pharmacology
1984-1991	UCLA	Ph.D.	Applied Linguistics Specialization: Cognitive Neuroscience
1980-1982	University of Washington	M.A.	Germanics TESL (minor)
1976-1980	Whitman College	B.A.	German

### Grant Support

2001: Consultant on Center for the Study of Culture, Brain, and Development program grant; funded by Foundation for Psychocultural Research (\$1,000,000)  
2000: Hughes Foundation grant for laboratory equipment (\$9,155)  
1996: Hughes Foundation grant for laboratory equipment (\$10,999.95)  
1995: National Science Foundation: Instrumentation and Laboratory Improvement Grant (\$24,430)

### Selected Honors/Credentials

2016-17; 2020-22: Herman-Winkler Professorship  
2005: Mentor Recognition Award—University of California, San Diego  
1999: Faculty Spirit Award--Colorado College Center for Community Service  
1996-98: John D. and Catherine T. MacArthur Assistant Professor in Psychology  
1995: Nominated for National Science Foundation Presidential Faculty Fellows Award  
1988-91: Ursula Mandal Scholarship (annual \$10,000 award; University of California, Los Angeles)  
1988: California State Teaching Credential  
1982: Delta Phi Alpha (University of Washington)  
1980: Phi Beta Kappa (Whitman College)

### Language Experience

German	M.A. degree, relative fluency (two years abroad inclusive)
Japanese	Spoken and written: two years in Japan and formal study at UCLA
French	Two years, university level
Chinese (Mandarin)	One quarter, university level
Korean	One quarter, university level
Latin	Two quarters, university level

## Teaching Experience

2006-present	Professor, Psychology	Colorado College
1999-2006	Associate Professor, Psychology	Colorado College
1993-1999	Assistant Professor, Psychology	Colorado College
1990-91	Guest Lecturer	University of California, Los Angeles
1984-91	Teaching Associate/Fellow	University of California, Los Angeles
1986-90	Instructor	UCLA American Language Center
1988	Instructor	Santa Monica College, CA.
1982-84	Chief language instructor, coordinator	Asahikawa Cultural Center, Japan
1980-82	German teaching assistant	University of Washington

## Refereed publications

Doyle, C., Rally, H., O'Brien, L., Tennison, M., Marino, L. & **Jacobs, B.** (under review). The challenges of elephant captivity (with a focus on Western facilities). *Animal Welfare*.

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- Jacobs, B.**, Borst, J., Hannan, M., Anderson, K., Townshend, C., Butti, C., Sherwood, C.C., Hof, P.R., & Manger, P.R. (2010). African elephant (*Loxodonta africana*) neocortex. II. Supragranular pyramidal neurons. [Abstract/Poster] Society for Neuroscience, San Diego, CA.
- Sherwood, C.C., **Jacobs, B.**, Hannan, M., Borst, J., Anderson, K., Janeway, C., Butti, C., Hof, P.R., & Manger, P.R. (2010). African elephant (*Loxodonta africana*) neocortex. I. Neuromorphological characteristics of cortical neurons. [Abstract/Poster] Society for Neuroscience, San Diego, CA.
- Tetreault, N.A., Hakeem, A.Y., Stimpson, C.D., **Jacobs, B.**, Sherwood, C.C., Allman, J.M. (2010). Immune regulation and the role of Von Economo neurons and fork cells in human fronto-insular and anterior cingulate cortex. [Abstract/Poster] Society for Neuroscience, San Diego, CA.
- Jacobs, B.** Sherwood, C.C., Hannan, M., Borst, J., Anderson, K., Butti, C., Hof, P.R., & Manger, P.R. (2010). African elephant (*Loxodonta africana*) cerebral cortex: Neuronal morphology. [Abstract/Poster] New Studies of Neurobehavioral Evolution. June 25-28. Washington, DC.
- Bianchi, S., Bauernfeind, A.L., Stimpson, C.D., Bopnar, C.J., **Jacobs, B.**, Sherwood, C.C. (2010). Evolution of neuronal morphological diversity: A Golgi study of the rock hyrax neocortex. Neuronal morphology. [Poster] New Studies of Neurobehavioral Evolution. June 25-28. Washington, DC.
- Sherwood, C.C., & **Jacobs, B.** (2010). Neuronal morphology and chemoarchitecture of the neocortex in Afrotheria and Xenarthra. [Abstract/Presentation] New Studies of Neurobehavioral Evolution. June 25-28. Washington, DC.
- Stimpson, C.D., Allman, J. M., **Jacobs, B.**, Tetreault, N.A., Butti, C., Hof, P.R., Sherwood, C.C. (2010). Variation in ATF3, IL4R and NMB protein expression in von Economo neurons of hominoids. American Association for Physical Anthropology, Albuquerque, NM.

- Anderson, K., Yamamoto, E., & **Jacobs, B.** (2009). Quantitative neuromorphology: Comparison of the neurolucida lucivid and neurolucida camera tracing systems. [Abstract/Poster] Society for Neuroscience, Chicago, IL, #389.22.
- Casserly, R., Roberts, T-A., & **Jacobs, B.** (2009). Contributions of proprioceptive and motor systems in embodied grounding. [Abstract/Poster] Society for Neuroscience, Chicago, IL, #674.4.
- Anderson, K., Bones, B., Robinson, B., Hass, C. Lee, H., Casserly, R., Ford, K., Roberts T-A., **Jacobs, B.** (2008). The morphology of supragranular pyramidal neurons in the human insular cortex: A quantitative Golgi study. [Abstract/Poster] Society for Neuroscience, Washington DC, #162.13.
- Bones, B., Robinson, B., & **Jacobs, B.** (2007). A research genealogy for Dr. Arnold B. Scheibel. [Abstract/Poster] Society for Neuroscience, San Diego, CA, #24.7.
- Hass, C., Lee, H.W., Travis, K., Dufault, C.A., **Jacobs, B.** (2005). Dendritic morphometries of human insular pyramidal neurons. [Abstract/Poster] Society for Neuroscience, Washington DC, #410.11.
- Lee, H.W., Travis, K.E, Dufault, C.A., Hass, C.A., **Jacobs, B.** (2004). Regional dendritic variation in human insular cortex: A quantitative Golgi study. [Abstract/Poster] Society for Neuroscience, San Diego, California, #381.4.
- Travis, K., Lee, H.W., Dufault, C.A., & **Jacobs, B.** (2003). Regional dendritic variation in neonatal human cortex: A quantitative Golgi analysis. [Abstract/Poster] Society for Neuroscience, New Orleans, LA, #144.9.
- Creswell, J., Hrubes, M., & **Jacobs, B.** (2001). Putative dendritic changes following corpus callosotomy in human cortex: A quantitative and qualitative case study. [Abstract/Poster] Society for Neuroscience, San Diego, California, November, #251.15.
- Sann, S.B, Hrubes, M., & **Jacobs, B.** (2000). Regional dendritic variation in spine-free nonpyramidal neurons: A quantitative Golgi study in humans. [Abstract/Poster] Society for Neuroscience, New Orleans, LA, November, 461.16.
- Kapler, E., Scheibel, A.B., & **Jacobs, B.** (2000). Cell packing density in Brodmann's areas 10 and 18 of the human cerebral cortex. [Abstract/Poster] Society for Neuroscience, New Orleans, LA, November, #461.17.
- Shen, T., Davenport, P., E. Kapler, E., Jacobs, J., Sann, S., Ford, K., Prather, M., Tyson, W., & **Jacobs, B.** (1999). A quantitative Golgi analysis of infant human Betz cells: Preliminary findings. [Abstract/Poster] Society for Neuroscience, Miami, Florida, October, #905.8.
- Prather, M., Treml, M., Driscoll, L., Schall, M., & **Jacobs, B.** (1997). Regional variation in dendritic and spine complexity: A quantitative Golgi analysis of human cerebral cortex. [Abstract/Poster] Society for Neuroscience, New Orleans, LA, October, #87.13.
- Kamm, G., Hovey, S., Treml, M., Prather, M., & **Jacobs, B.** (1997). The Colorado College elementary school outreach program for neuroscience education: What the children say. [Abstract/Poster] Society for Neuroscience, New Orleans, LA, October, #111.9.
- Jacobs, B.**, & Larsen, L. (1997). Pluripotentiality, epigenesis, and language acquisition. Commentary on R-A. Müller, Innateness, autonomy, universality? Neurobiological approaches to language. *Behavioral and Brain Sciences*, 19:4, 639.

- Courns, K., Ferguson, J., Larsen, L., Schall, M. & **Jacobs, B.** (1996). Age-related dendritic and spine changes in human occipital and prefrontal cortices: A quantitative Golgi study. [Abstract/Poster] Society for Neuroscience, Washington, D.C., November, #307.2.
- Ferguson, J., Driscoll, J., Courns, K., Rattenbury, K., Baca, S., Larsen, L. & **Jacobs, B.** (1995). An overview of the Colorado College elementary school outreach program for neuroscience education. [Abstract/Poster] Society for Neuroscience, San Diego, California, November, #101.21
- Baca, S., Larsen, L., Fisher, B., Kernan, R., Schall, M., & **Jacobs, B.** (1995). Dendritic and spine analyses across hierarchically arranged areas of human neocortex: A quantitative Golgi study. [Abstract/Poster] Society for Neuroscience, San Diego, California, November, #182.9.
- Jacobs, B.**, & Horner, J. (1995). Language as a multimodal sensory enhancement system. Commentary on W. K. Wilkins & J. Wakefield, Brain evolution and neurolinguistic preconditions. *Behavioral and Brain Sciences*. 18:1, 194-95.
- Larsen, L., Swanson, R.L., Wainwright, M.L., & **Jacobs, B.** (1994). Quantitative dendritic and spine analyses of human prefrontal and occipital cortices. [Abstract/Poster] Society for Neuroscience, Miami, Florida, November, #584.13.
- Sato, E., & **Jacobs, B.** (1994). Selective attention and education: A neurobiological perspective. American Educational Research Association, New Orleans, LA, April 5.
- Sato, E., & **Jacobs, B.** (1994). Neural mechanisms of selective attention essential to language development. American Association of Applied Linguists, Baltimore, Maryland, March 5.
- Jacobs, B.**, & Raleigh, M. J. (1993). Sizing up social groups. Commentary on Dunbar, Coevolution of neocortical size, group size and language in humans. *Behavioral and Brain Sciences*. 16:4, 710-11.
- Jacobs, B.**, Chugani, H. T., Allada, V., Chen, S., Colgan, M., Phelps, M. E., Pollack, D. B. & Raleigh, M. J. (1993). Metabolic brain development in rhesus macaques and vervet monkeys: A PET study. [Abstract] Sixteenth Meeting of the American Society of Primatologists, Sturbridge, Massachusetts, August 18-22.
- Sato, E., & **Jacobs, B.** (1993). From input to intake: Towards a brain-based perspective of selective attention. American Association for Applied Linguistics, Atlanta, Georgia, April 19.
- Allada, V., Schelbert, H. R., **Jacobs, B.**, Chugani, H. T., Raleigh, M. J., Brunken, R. C., Williams, R. G., & Phelps, M. E. (1993). Cardiac metabolism in developing non-human primates with positron emission tomography. [Abstract #2354] 66th Scientific Session of the American Heart Association. Atlanta, Georgia. November 8-11.
- Jacobs, B.**, Chugani, H. T., Allada, V., Chen, S., Phelps, M. E., Pollack, D. B. & Raleigh, M. J. (1993). Metabolic brain development in non-human primates: A quantitative PET study. [Abstract/Poster] XVth International Symposium on Cerebral Blood Flow and Metabolism, Sendai, Japan, May 22-28.
- Jacobs, B.**, & Schall, M. (1992). Exploring the changing human brain: The relationship between gender, hemisphere, education and dendritic measures. *Perspective*, 16:3, 37-45.
- Jacobs, B.**, Chugani, H. T., Allada, V., Harris, G. C., Chen, S., Phelps, M. E., Pollack, D. B. & Raleigh, M. J. (1992). Brain development in vervet monkeys: A preliminary PET study. [Abstract/Poster] Society for Neuroscience, Anaheim, California, October 25-30.

**Jacobs, B.**, Chugani, H.T., Allada, V., Chen, S., Colgan, M., Harris, G.C., Phelps, M.E., Pollack, D.B., & Raleigh, M.J. (1992). Brain development in rhesus monkeys: A preliminary quantitative PET study. [Abstract/Poster] Fifth Conference on the Neurobiology of Learning and Memory University of California, Irvine, October 22-24.

**Jacobs, B.**, & Raleigh, M. J. (1992). Attachment: How early, how far? Commentary on G. W. Kraemer, A psychobiological theory of attachment. *Behavioral and Brain Sciences*, 15:3, 517. <https://doi.org/10.1017/S0140525X0006982X>

**Jacobs, B.** (1991). Neurobiology and language acquisition: Continuity and identity. Commentary on P. Greenfield, Language, tools, and brain: The ontogeny and phylogeny of hierarchically organized sequential behavior. *Behavioral and Brain Sciences*. 14:4, 565.

\_\_\_\_\_ (1991). Contribution to "Defining our field: Unity in diversity." *Issues in Applied Linguistics*. 1, 156.

**Jacobs, B.**, & Scheibel, A. B. (1991). Education related changes and individual variability in Wernicke's area: A quantitative dendritic analysis. [Abstract/Poster] Society for Neuroscience, New Orleans, LA, November 10-15.

Scheibel, A. B., & **Jacobs, B.** (1991). Age-related changes in Wernicke's area: A quantitative dendritic analysis. [Abstract/Poster] Society for Neuroscience, New Orleans, LA, November 10-15.

**Jacobs, B.**, (1989). A neurobiological perspective of individual differences in language acquisition. Workshop paper presented at the Stanford Child Language Research Forum. April 8.

\_\_\_\_\_ (1989). Environmental diversity and the brain: Implications for language acquisition. Paper presented at the Ninth Second Language Research Forum at the University of California, Los Angeles, February 24.

\_\_\_\_\_ (1988). The developing brain and SLA. Paper presented at the Eighth Second Language Research Forum at the University of Hawaii, Manoa, March 3-6.

**Jacobs, B.**, & Hilles, S. (1987). Establishing a neurobiological perspective of primary and secondary language acquisition. Paper presented at the Seventh Second Language Research Forum at the University of Southern California, Los Angeles, February 22.

#### **Invited lectures**

**Jacobs, B.**, Rally, H., Doyle, C., O'Brien, L., & Marino, L (2022). Putative neural consequences of captivity for elephants and cetaceans. International Captive Wildlife Conference. Sacramento, CA, November 12.

\_\_\_\_\_ (2019). Parent, children, brains...challenges and responsibilities. Colorado College, Gifted and Talented program, Colorado Springs, CO, June 10.

\_\_\_\_\_ (2018). Big cats, big neurons: What makes the felid brain special. International Captive Wildlife Conference. Los Angeles, CA, November 11.

\_\_\_\_\_ (2018). The neuroscience of captivity. International Captive Wildlife Conference. Los Angeles, CA, November 10.

\_\_\_\_\_ (2016). Insights from the elephant brain. International Captive Wildlife Conference. San Andreas, CA, November 12.

- \_\_\_\_\_ (2016). Cortical neuromorphology: Beyond primates and rodents. International Conference on Brain Informatics and Health. Featured Speaker. Nebraska, Omaha, October 15.
- \_\_\_\_\_ (2015). The ever-changing brain: Education and enrichment. Colorado College, Gifted and Talented program, Colorado Springs, CO, June 8.
- \_\_\_\_\_ (2015). The ever-changing brain: education and enrichment. Colorado Springs School District 11, Colorado Springs, CO, April 22.
- \_\_\_\_\_ (2003). Your brain, your life. Reach for Tomorrow. Colorado Springs, CO, August 7.
- \_\_\_\_\_ (2002). A brain's view of language: Looking back and from within. Colloquium: Cognitive neuroscience and second language acquisition research: Defining the interface. American Association of Applied Linguistics. Salt Lake City, Utah, April 6-9.
- \_\_\_\_\_ (2000). Educating the brain: Development, plasticity, and responsibility. Colorado Science Convention Beyond 2000: Sound Science & Sustainability. Denver, CO. Sept. 29.
- \_\_\_\_\_ (1997). What teachers should know about the brain. National Science Teachers Association Western Area Convention. Denver, CO. Nov. 21.
- Jacobs, B.,** Prather, M., & Kamm, G. (1997). The Colorado College Neuroscience Outreach Program. National Science Teachers Association Western Area Convention. Denver, CO. Nov. 20.
- Jacobs, B.** (1997). Four talks: (1) Positron emission tomography and the developing primate brain; (2) Lifespan changes in the human brain; (3) Education and the brain; and (4) Regional dendritic variation in the human cerebral cortex. Capital University of Medical Sciences, Anding Hospital, and Xuan Wu Hospital. Beijing, China, June 4-June 25.
- Jacobs, B.,** & Chugani, H. T. (1994). Glucose metabolism in the developing brain: Correlations with synaptogenesis, plasticity and epilepsy. XIXth CINP Congress, Washington, D.C., July 1.
- Jacobs, B.** (1994). Metabolic brain development in rhesus macaques and vervet monkeys: A PET study. Social cognition affinity group. University of California, Los Angeles. March 14.
- \_\_\_\_\_ (1994). Quantitative dendritic analysis of Wernicke's area. Neuroscience colloquium. Colorado State University, Fort Collins. Feb. 1.
- \_\_\_\_\_ (1993). Dendritic and PET studies of the developing brain: Implications for language acquisition. English colloquium. University of Washington, Seattle, May 12.
- \_\_\_\_\_ (1993). A PET study of metabolic brain maturation in vervet and rhesus monkeys. Psychology colloquium. The Colorado College, Feb. 5.
- \_\_\_\_\_ (1993). Lifespan development and epigenetic influences on the dendritic systems in Wernicke's area. Psychology colloquium. The Colorado College, Feb. 5.
- \_\_\_\_\_ (1993). Lifespan development and epigenetic influences on the dendritic systems in Wernicke's area. Psychology colloquium. Southern Connecticut State University, Feb. 1.
- \_\_\_\_\_ (1993). Lifespan development and epigenetic influences on the dendritic systems in Wernicke's area. Center colloquium. Center for Molecular and Behavioral Neuroscience, Rutgers University, Jan. 29.

\_\_\_\_\_ (1992). Lifespan development and epigenetic influences on the dendritic systems in Wernicke's area. Psychology colloquium. Macalaster College, Dec. 8.

\_\_\_\_\_ (1991). Wernicke's area and the environment. Colloquium presentation at California State University. Fullerton, California, April 30.

\_\_\_\_\_ (1991). A quantitative dendritic analysis of Wernicke's area. Colloquium presentation at the University of North Carolina. Greensboro, North Carolina, February 8.

\_\_\_\_\_ (1991). A quantitative dendritic analysis of Wernicke's area. Colloquium presentation at Boys Town National Research Hospital. Omaha, Nebraska, January 10.

\_\_\_\_\_ (1990). Toward a neurobiological understanding of interaction in language acquisition. Paper presented to graduate second language acquisition course at the University of Washington, Seattle, May 16.

\_\_\_\_\_ (1989). The brain-environment interface: Implications for language acquisition. Colloquium paper presented at the University of Washington, Seattle, April 28.

\_\_\_\_\_ (1987). What the brain can tell us about language acquisition. Colloquium paper presented at the University of Washington, Seattle, March 11.

### **Community Presentations**

**Jacobs, B.** (2019). Exploring the elephant brain: What their unique brain structure suggests about their mental abilities. Cheyenne Mountain Zoo, Colorado Springs, CO. May, 5.

**Jacobs, B.** & Lee, Laura (2014). Exploring the elephant brain and beyond. Talk to CC trustees. Colorado Springs, CO. Feb. 21.

**Jacobs, B.** (2013). Elephant and beyond: Brain research with exotic animals. BSCS: Peak Area Leadership in Science. Colorado Springs, CO. Feb. 12.

\_\_\_\_\_ (2013). What parents and teachers should know about the brain. BSCS: Peak Area Leadership in Science. Colorado Springs, CO. Feb. 12.

\_\_\_\_\_ (2011). What parents and teachers should know about the brain. Colorado College Summer Education Program. Colorado Springs, CO. June 11.

\_\_\_\_\_ (2010). The changing brain: Development, aging, and environmental influences. Dana Alliance Brain Awareness Week Lecture. Colorado Springs, CO. March 18.

\_\_\_\_\_ (2009). What teachers should know about the brain. Colorado College Education Seminar Series, CO, Nov. 3.

\_\_\_\_\_ (2008). Brain development, education, plasticity and enrichment. Colorado College Children's Center Seminar. Colorado Springs, CO. June 11.

\_\_\_\_\_ (2007). What parents and teachers should know about the brain. Colorado College Summer Education Program. Colorado Springs, CO. March 13.

**Jacobs, B.** & Erdal, K. (2006). The brain: A work in progress. Colorado College Student Life Staff Meeting. Colorado Springs, CO. Nov. 14.

**Jacobs, B.** (2005). The making of a liberal arts brain. Board of Trustees Meeting. Colorado Springs, CO. July 28.

\_\_\_\_\_ (2004). Neuroscience at Colorado College. Board of Trustees Meeting. Colorado Springs, CO. Feb. 20.

\_\_\_\_\_ & Travis, K. (2003). Neuroscience at Colorado College. The Colorado Forum. Colorado Springs, CO. Oct. 2.

\_\_\_\_\_ (2002). What teachers should know about the brain. Jenkins Middle School. Colorado Springs, CO. Dec. 4.

\_\_\_\_\_ (2002) The ever-changing brain. Widows or widowers group. Colorado Springs, CO. Aug. 5.

\_\_\_\_\_ (2001). What teachers should know about the brain. HUB presentation. Colorado Springs, CO. Oct. 17.

\_\_\_\_\_ (2001). What parents should know about the brain. Address at Colorado College Summer Education Program. Colorado Springs, CO. June 18.

Erdal, K., & **Jacobs, B.** (1996). Careers in Psychology. Palmer High School. Dec. 17.

**Jacobs, B.** (1996). Age-related changes in the human brain. Sigma Xi of Colorado Springs Seminar. Dec. 12.

\_\_\_\_\_ (1996). The aging brain. Mira Mesa Retirement Community. Colorado Springs, CO. June 10.

\_\_\_\_\_ (1996). Introduction to the brain. Palmer High School. Colorado Springs, CO. May 1.

\_\_\_\_\_ (1995). This is your brain at Colorado College. Homecoming Alumni Reunion. Colorado Springs, CO. Oct. 14.

\_\_\_\_\_ (1995). The human brain: The heart of humanity. Colorado College Business and Community Alliance. Colorado Springs, CO. Feb. 8.

\_\_\_\_\_ (1994). Introduction to the brain. Palmer High School. Colorado Springs, CO. Nov. 7.

\_\_\_\_\_ (1993). Educating the brain. Fountain Valley School of Colorado. Colorado Springs, Colorado. October 7.

\_\_\_\_\_ (1992). Brain development and education. Inter-sorority mother's club. University of California, Los Angeles. April 14.

### **Current professional organizations/activities**

2006-present	<i>Cerebral Cortex</i> , Reviewer
2005-present	<i>Advances in Complex Systems</i> , Reviewer
2004-present	<i>Brain, Behavior and Evolution</i> , Reviewer
2003-present	<i>Neurobiology of Aging</i> , Reviewer
2000-present	<i>Language Learning</i> , Reviewer
1998-present	<i>Psi Chi</i> (undergraduate journal), Reviewer
1996-present	<i>Brain Research</i> , Reviewer
1993-present	Faculty for Undergraduate Neuroscience, Member
1993-present	Rocky Mountain Region Neuroscience Group, Member

1991-present	<i>Behavioral and Brain Sciences</i> , Associate member
1991-present	<i>Issues in Applied Linguistics</i> , Reviewer
1991-present	<i>American Journal of Primatology</i> , Reviewer
1989-present	Society for Neuroscience, Member
1987-present	<i>Studies in Second Language Acquisition</i> , Reviewer

### Colorado College Support obtained for Faculty Research

#### Research funds from the Natural Science Executive Committee

1993-1994	Quantitative dendritic analysis of human frontal and occipital cortices [\$2,079]
1994-1995	Quantitative dendritic analysis of human frontal and occipital cortices [\$2,280]
1995--sup.	Quantitative dendritic analysis of human frontal and occipital cortices [\$1,000]
1995-1996	Quantitative dendritic analysis of human frontal and occipital cortices [\$2,979]
1996-1997	Quantitative dendritic analysis of human cerebral cortices [\$2,500]
1997-1998	Quantitative neuromorphology [\$2,900]
1998-1999	Quantitative neuromorphology [\$2,900]
1999-2000	Quantitative neuromorphology [\$2,900]
2000-2001	Quantitative neuromorphology [\$3,000]
2001-2002	Quantitative neuromorphology [\$3,500]
2002-2003	Quantitative neuromorphology [\$2,500]
2003-2004	Quantitative neuromorphology [\$3,875]
2004-2005	Quantitative neuromorphology [\$2,930]
2005-2006	Quantitative neuromorphology [\$3,487.50]
2006-2007	Quantitative neuromorphology [\$3,745]
2007-2008	Quantitative neuromorphology [\$3,600]
2008-2009	Quantitative neuromorphology—comparative: elephant [\$4,400]
2009-2010	Quantitative neuromorphology—comparative: cetacea [\$4,820]
2010-2011	Quantitative neuromorphology—comparative: giraffe, manatee [\$4,320]
2011-2012	Quantitative neuromorphology—comparative: tiger [\$4,049]
2012-2013	Quantitative neuromorphology [\$4,510]
2013-2014	Quantitative neuromorphology [\$5,000]
2014-2015	Quantitative neuromorphology [\$5,000]
2015-2016	Quantitative neuromorphology [\$5,000]
2016-2017	Quantitative neuromorphology [\$5,000]
2017-2018	Quantitative neuromorphology [\$5,000]
2018-2019	Quantitative neuromorphology [\$5,000]

### Colorado College Elementary School Outreach Program for Neuroscience Education

**Summary:** I developed the Colorado College Elementary School Outreach Program for Neuroscience Education in 1993. The program is designed to introduce local elementary school children to basic neuroscience by providing them with hands-on experience with brain tissue at the gross and microscopic level. To date, my Neuroscience students have accomplished the following:

**Number of classrooms visited:** 1,100

**Grades visited:** generally, 1st through 6th; and some middle school children

**Number of elementary school students involved:** approximately 25,254



We have also visited several local high schools and talked to over 1,000 students, and had students from several local schools of all levels visit the Laboratory of Quantitative Neuromorphology.

**Undergraduate publications with students**

Travis, K. & **Jacobs, B.** (2003). Regional dendritic variation in human neonatal cortex: A quantitative Golgi analysis. *Journal of Behavioral and Neuroscience Research, 1*, 8-16. [Online, peer-reviewed Journal]

Creswell, J., Britt, J., Hrubes, M., **Jacobs, B.** (2001). Putative dendritic changes following corpus callosotomy in human cortex: A quantitative and qualitative case study. *Journal of Psychology and the Behavioral Sciences, 15*, 1-21.

Gaddis, B. (1999). Behavioral dysfunctions resulting from frontal lobe damage: A case study. *Journal of Psychology and the Behavioral Sciences, 13*, 72-83.

Prather, M., Schall, M., & **Jacobs, B.** (1998). Regional differences in dendritic and spine complexity: A quantitative Golgi analysis of human cerebral cortex. *Psi Chi Journal, 3:1*, 151-162.

Fisher, B. M., & **Jacobs, B.** (1998). A quantitative dendritic analysis of a bulimic brain: A case study. *Psi Chi Journal, 3:1*, 3-17.

Courns, K., & **Jacobs, B.** (1996). Age-related dendritic changes in human occipital and prefrontal cortices: A quantitative Golgi study. *Modern Psychological Studies, 4:1*, 10-20.

Baca, S. M., & **Jacobs, B.** (1995). A quantitative dendritic analysis of four functionally distinct areas of human cerebral cortex. *Modern Psychological Studies, 3:2*, 52-63.

Walter, L. (1995). Recovery from stroke involving the left middle cerebral artery. *Modern Psychological Studies, 3:2*, 21-28.

Larsen, L. L. & **Jacobs, B.** (1995). Quantitative dendritic and spine analyses of human prefrontal and occipital cortices. *The Drexel University Journal of Undergraduate Research. 1*, 14-20.

**Undergraduate research grants/awards received by students (total awards = \$100,775)**

Vivian Nguyen	2019	Colorado College Conference Grant (\$910)
Lili Uchida	2019	Colorado College Conference Grant (\$1,000)
Vivian Nguyen	2019	Tabor Award in the Natural Sciences (\$500)
Coby Dodelson	2019	Colorado College Faculty-Student Collaborative Research Grant (\$4,500)
Vivian Nguyen	2018	Colorado College Conference Grant (\$950)
Allysa Warling	2018	Colorado College Conference Grant (\$920)
Lili Uchida	2018	Colorado College Conference Grant (\$900)
Vivian Nguyen	2018	Tashjian Crecelius Family Prize for Women in Science (\$500)
Allysa Warling	2018	Tabor Award in the Natural Sciences (\$500)

Vivian Nguyen	2018	Colorado College Faculty-Student Collaborative Research Grant (\$4,500)
Allysa Warling	2017	Colorado College Faculty-Student Collaborative Research Grant (\$4,500)
Beck Shea-Shumsky	2017	Colorado College Venture Grant for 2017 Society for Neuroscience conference (\$1,000)
Allysa Warling	2017	Colorado College Venture Grant for 2017 Society for Neuroscience conference (\$1,000)
Lucy Sloan	2017	Colorado College Venture Grant for 2017 Society for Neuroscience conference (\$1,000)
Beck Shea-Shumsky	2016	Colorado College Venture Grant for 2016 Society for Neuroscience conference (\$924)
Madeleine Garcia	2015	Colorado College Faculty-Student Collaborative Research Grant (\$4,500)
Madeleine Garcia	2015	Tashjian Crecelius Family Prize for Women in Science (\$500)
Karen Chui	2015	Colorado College Faculty-Student Collaborative Research Grant (\$4,500)
Brian Kopec	2014	Colorado College Venture Grant for 2014 Society for Neuroscience conference (\$761)
Cameron Johnson	2014	Colorado College Venture Grant for 2014 Society for Neuroscience conference (\$1,000)
Cameron Johnson	2014	Colorado College Faculty-Student Collaborative Research Grant (\$3,500)
Laura Lee	2013	Colorado College Venture Grant for 2013 Society for Neuroscience conference (\$1,000)
Tessa Harland	2012	Colorado College Venture Grant for 2012 Society for Neuroscience conference (\$865)
Deb Kennedy	2012	Colorado College Venture Grant for 2012 Society for Neuroscience conference (\$865)
Nicholas Johnson	2012	Colorado College Venture Grant for 2012 Society for Neuroscience conference (\$850)
Leona Waller	2011	Colorado College Faculty-Student Collaborative Research Grant (\$3000)
Tessa Harland	2011	Colorado College Faculty-Student Collaborative Research Grant (\$3000)
Caroline Janeway	2010	Colorado College Venture Grant for 2010 Society for Neuroscience conference (\$850)

Courtney Townshend	2010	Colorado College Venture Grant for 2010 Society for Neuroscience conference h (\$850)
Jessica Borst	2009	Colorado College Venture Grant for summer research (\$1000)
Kaeley Anderson	2008	Colorado College Venture Grant for 2008 Society for Neuroscience conference (\$1000)
Ryan Casserly	2008	Colorado College Venture Grant for 2008 Society for Neuroscience conference (\$1000)
Brooks Robinson	2007	Colorado College Venture Grant for 2007 Society for Neuroscience conference (\$850)
Brian Bones	2007	Colorado College Venture Grant for 2007 Society for Neuroscience conference (\$850)
Brian Bones	2007	Colorado College Faculty-Student Collaborative Research Grant (\$3000)
Charles Hass	2004	Colorado College Venture Grant for 2004 Society for Neuroscience conference (\$700)
Caitlin Dufault	2004	Colorado College Venture Grant for 2004 Society for Neuroscience conference (\$700)
Hyo Lee	2004	Faculty for Undergraduate Neuroscience travel grant for 2004 Society for Neuroscience conference (\$250)
Emilie Steffen	2004	Colorado College Venture Grant for senior thesis (\$801)
Caitlin Dufault	2003	Colorado College Venture Grant for 2003 Society for Neuroscience conference (\$850)
Hyo Lee	2003	Colorado College Venture Grant for 2003 Society for Neuroscience conference (\$850)
Katie Travis	2003	Faculty for Undergraduate Neuroscience travel grant for 2003 Society for Neuroscience conference (\$300)
Hyo Lee	2003-summer	Howard Hughes Undergraduate Research Program (\$3,000)
Katie Travis	2003	Best paper/presentation at Colorado-Wyoming Academy of Science, April 26.
Jon Britt	2001	Colorado College Venture Grant for 2001 Society for Neuroscience conference (\$591.50)
Johanna Creswell	2001	Colorado College Venture Grant for 2001 Society for Neuroscience conference (\$591.50)
Jon Britt	2001-summer	Howard Hughes Undergraduate Research Program (\$3,000)
Johanna Creswell Melody Hrubes	2001	Outstanding poster presentation at the 26 <sup>th</sup> Annual West Coast Biological Sciences Undergraduate Research Conference, April 28, Santa Clara University. [\$50]

Sharon Sann	2000	Colorado College Venture Grant for 2000 Society for Neuroscience conference (\$850)
Melody Hrubes	2000	Colorado College Venture Grant for 2000 Society for Neuroscience conference (\$850)
Jesse Jacobs	1999	Colorado College Venture Grant for 1999 Society for Neuroscience conference (\$550)
Elisa Kapler	1999	Colorado College Venture Grant for 1999 Society for Neuroscience conference (\$550)
Ting Shen	1999	Colorado College Venture Grant for 1999 Society for Neuroscience conference (\$550)
Jesse Jacobs	1999-summer	Howard Hughes Undergraduate Research Program (\$3,000)
Elisa Kapler	1999-summer	Howard Hughes Undergraduate Research Program (\$3,000)
Clarissa Parker	1999-summer	Colorado College Faculty-Student Collaborative Research Grant (\$2,500)
Melissa Prather	1998	Psi-Chi/Allyn & Bacon Publishers Psychology National Award for outstanding undergraduate psychology paper (1 <sup>st</sup> place; \$500)
Ting Shen	1998-summer	Associated Colleges of the Midwest Program for Minority Students and Academic Careers (\$3,000)
Bethany Gaddis	1998-summer	Colorado College Faculty-Student Collaborative Research Grant (\$2,500)
Melissa Prather	1997	Colorado College Venture Grant for 1997 Society for Neuroscience conference (\$700)
Melinda Tremml	1997	Colorado College Venture Grant for 1997 Society for Neuroscience conference (\$700)
Melissa Prather	1997-summer	Colorado College Faculty-Student Collaborative Research Grant (\$2,500)
Melinda Tremml	1997-summer	Howard Hughes Undergraduate Research Program (\$2,500)
Sonja Hovey	1997	Colorado College Venture Grant for 1997 conference on Multiple Intelligences (\$450)
Dan Haas	1996-summer	Howard Hughes Undergraduate Research Program (\$2,500)
Birgit Fisher	1996	National Honor Society in Psychology (Psi Chi): Award for research excellence (\$150)
Jennifer Ferguson	1995	Colorado College Venture Grant for 1995 Society for Neuroscience conference (\$771)
Renee Moorehouse	1995	Howard Hughes Undergraduate Research Program (\$1,250)

Jennifer Ferguson	1995	Howard Hughes Undergraduate Research Program (\$1,250)
Lori Larsen	1995	Psi-Chi/Allyn & Bacon Publishers Psychology National Award for outstanding undergraduate psychology paper (1 <sup>st</sup> place; \$500)
Kelly Cours	1995-summer	Associated Colleges of the Midwest Program for Minority Students and Academic Careers (\$3,000)
Sherry Bekhit	1995	National Conference on Undergraduate Research travel grant (\$446)
Lori Larsen	1994	Faculty for Undergraduate Neuroscience travel grant for 1994 Society for Neuroscience conference (\$500)
Serapio Baca	1994	Colorado College Venture Grant for 1994 Society for Neuroscience conference (\$681)
Serapio Baca	1994-summer	Associated Colleges of the Midwest Program for Minority Students and Academic Careers (\$3,000)
Sherry Bekhit	1994-summer	Howard Hughes Undergraduate Research Program (\$2,500)
Serapio Baca	1994-95	Howard Hughes Undergraduate Research Program (\$2,500)
Rebecca Kernan	1994	Howard Hughes Undergraduate Research Program (\$1,250)

#### **Selected student presentations**

- Garcia, M., & Shea-Shumsky, B. (2016). Comparative neuronal morphology of gigantopyramidal neurons in mammals. Colorado Springs Undergraduate Research Forum, United States Air Force Academy, Colorado Springs. April 15.
- Garcia, M., Shea-Shumsky, B., Tennison, M., Chui, K., & **Jacobs, B.** (2016). Neuromorphology of gigantopyramidal cells across artiodactyls, perissodactyls, feliformia, caniformia, primates, a rodent, a lagomorph, and a diprotodont. Front Range Neuroscience Meeting, Colorado State University, Fort Collins, December 7.
- Lee, L., Raghanti, M. A., Lewandowski, A., Roberts, J. F., Sherwood, C. C., & **Jacobs, B.** (2013). Neocortical neuronal morphology in the infant giraffe (*Giraffa camelopardalis tippelskirchi*) and infant elephant (*Loxodonta Africana*). Colorado Springs Undergraduate Research Forum, University of Colorado, Colorado Springs. April 13.
- Johnson, N., Sherwood, C.C., Manger, P.R., & **Jacobs, B.** (2013). Comparative morphology of cerebellar cortex neurons in clouded leopard, Siberian tiger, humpback whale, and chimpanzee. Colorado Springs Undergraduate Research Forum, University of Colorado at Colorado Springs, Colorado Springs. April 13.
- Wahl, D., Hof, P.R., Sherwood, C.C., Maseko, B.C. Manger, P.R., & **Jacobs, B.** (2012). Comparative neuromorphology of Florida manatee, giraffe, human, and African Elephant cerebellar cortex. Rocky Mountain Regional Neuroscience Group, Aurora Colorado. May 10.
- Kennedy, D. & Harland, T. (2012). Neuronal morphology in the giraffe (*Giraffa camelopardalis*) neocortex. Colorado Springs Undergraduate Research Forum, Colorado College, Colorado Springs. April 28.

- Wahl, D. (2012). Comparative neuromorphology of Florida manatee, giraffe, human, and African Elephant cerebellar cortex. Colorado Springs Undergraduate Research Forum, Colorado College, Colorado Springs. April 28.
- Janeway, C. & Townshend, C. (2011). Quantitative neuromorphology in cetacea: Bottlenose dolphin (*Turisops truncatus*), north Atlantic minke whale (*Balaenoptera acutostrata acutostrata*), and humpback whale (*Megaptera novaeangliae*). Colorado Springs Undergraduate Research Forum, United States Air Force Academy, Colorado Springs. April 30.
- Anderson, K. (2009). The morphology of supragranular pyramidal neurons in the human insular cortex: A quantitative Golgi study. Colorado Springs Undergraduate Research Forum, Colorado College, Colorado Springs. April 11.
- Anderson, K. (2008). The morphology of supragranular pyramidal neurons in the human insular cortex: A quantitative Golgi study. Undergraduate Research Symposia in the Biological Sciences and Psychology. University of Chicago, Oct. 31-Nov. 2.
- Bones, B. & **Jacobs, B.** (2008). Regional variation of basilar dendrites from supragranular pyramidal neurons of the insula cortex: A quantitative Golgi study. Colorado Springs Undergraduate Research Forum, University of Colorado, Colorado Springs. April 12.
- Mendoza, J. (2008). Does musical training enhance language abilities? Colorado Springs Undergraduate Research Forum, University of Colorado, Colorado Springs. April 12.
- Hass, C. & **Jacobs, B.** (2005). Dendritic morphometrics of human insular pyramidal neurons. Colorado Springs Undergraduate Research Forum. April 30.
- Lee, H.W. & **Jacobs, B.** (2004) Regional dendritic variation in human insular cortex: A quantitative Golgi analysis. [Oral Presentation] Annual West Coast Biological Sciences Undergraduate Research Conference, April 24.
- Lee, H.W., Travis, K., Dufault, C. & **Jacobs, B.** (2004). Regional dendritic variation in human insular cortex: A quantitative Golgi Analysis. Southwestern and Rocky Mountain Division of the American Association for the Advancement of Science, April 10.
- Travis, K., & **Jacobs, B.** (2003). Regional dendritic variation in neonatal cortex: A quantitative Golgi Analysis. Colorado-Wyoming Academy of Science, April 26.
- Watt, H., & **Jacobs, B.** (2003). Quantitative dendritic properties of human insular cortex. Colorado-Wyoming Academy of Science, April 26.
- Travis, K., & **Jacobs, B.** (2003). Regional dendritic variation in neonatal human cortex: A quantitative Golgi Analysis. Preparing Future Faculty Conference. Boulder, CO, Feb. 1.
- Creswell, J., Britt, J., Hrubes, M., & **Jacobs, B.** (2002). Putative dendritic changes following corpus callosotomy in human cortex: A quantitative and qualitative case study. Loyola Marymount College, CA, April 27. [note: more comprehensive than the 2001 presentation]
- Creswell, J., Hrubes, M., & **Jacobs, B.** (2001). Putative dendritic changes following corpus callosotomy in human cortex: A quantitative and qualitative case study. West Coast Biological Sciences Undergraduate Research Conference. Santa Clara, CA, April 28.
- Faust, J. (2001). The effects of formalin fixation on the Golgi-Kopsch and rapid Golgi methods. West Coast Biological Sciences Undergraduate Research Conference. Santa Clara, CA, April 28.

- Sann, S. (2000). Regional dendritic variation in spine-free nonpyramidal cells: A quantitative Golgi study in humans. Colorado College Third Annual Psychology/Neuroscience Poster Day. Colorado Springs, Colorado, May 5.
- Kapler, E. (2000). Cell packing density in Brodmann's areas 10 and 18 in the human cerebral cortex. Colorado College Twelfth Annual Biology Day. Colorado Springs, Colorado, April 15.
- Jacobs, J. (2000). A quantitative Golgi analysis of laminae III and V neurons in four regions of human cerebral cortex: A case study. Colorado College Twelfth Annual Biology Day. Colorado Springs, Colorado, April 15.
- Davenport, P. (1999). Quantitative Golgi analysis of dendritic and spine systems in the prefrontal and occipital cortices over the life-span of the vervet monkey. Colorado College Second Annual Psychology/Neuroscience Poster Day. Colorado Springs, Colorado, May 7.
- Shen, T., & **Jacobs, B.** (1999). A quantitative Golgi analysis of developing dendritic systems in four regions of human cerebral cortex. 24<sup>th</sup> West Coast Biological Sciences Undergraduate Research Conference. University of California, Irvine, May 1.
- Shen, T., & **Jacobs, B.** (1998). A quantitative Golgi analysis of developing dendritic systems in four regions of human cerebral cortex. PEW Midstates Science and Mathematics Consortium: Undergraduate Research Symposium in the Biological Sciences and Psychology. University of Chicago, Nov. 20-22.
- Shen, T., & **Jacobs, B.** (1998). A quantitative Golgi analysis of developing dendritic systems in four regions of human cerebral cortex. Associated Colleges of the Midwest Minority Students and Academic Careers Workshop. Ripon College, Oct. 2-3.
- Prather, M., Schall, M., & **Jacobs, B.** (1998). Regional differences in dendritic and spine complexity: A quantitative Golgi analysis of human cerebral cortex. Colorado College Tenth Annual Biology Day. Colorado Springs, Colorado, April 25.
- Prather, M., Schall, M., & **Jacobs, B.** (1998). Regional differences in dendritic and spine complexity: A quantitative Golgi analysis of human cerebral cortex. Colorado College First Annual Psychology/Neuroscience Poster Day. Colorado Springs, Colorado, May 1.
- Jacobson, A., & **Jacobs, B.** (1998). Quantitative Golgi analysis of dendritic and spine systems in the prefrontal and visual cortices of the neonatal vervet monkey. Colorado College Tenth Annual Biology Day. Colorado Springs, Colorado, April 25.
- Hovey, S., & **Jacobs, B.** (1998). Educators' perspectives on teaching with the multiple intelligences. Colorado College First Annual Psychology/Neuroscience Poster Day. Colorado Springs, Colorado, May 1.
- Treml, M., & **Jacobs, B.** (1998). Quantitative dendritic and spine analyses of primary and heteromodal areas of human cerebral cortex. Colorado College First Annual Psychology/Neuroscience Poster Day. Colorado Springs, Colorado, May 1.
- Treml, M., & **Jacobs, B.** (1998). Quantitative dendritic and spine analyses of primary and heteromodal areas of human cerebral cortex. Colorado College Tenth Annual Biology Day. Colorado Springs, Colorado, April 25.
- Prather, M., Treml, M., & **Jacobs, B.** (1997). Regional variation in dendritic and spine complexity: A quantitative Golgi analysis of human cerebral cortex. [Abstract/Poster] PEW Midstates Science and Mathematics Consortium, Nov. 7-9.

- Rattenbury, K., & **Jacobs, B.** (1997). The rehabilitation and acute recovery of aphasic traumatic brain injury and brainstem infarct: Two case studies. Annual Rocky Mountain Region Neuroscience Group Symposium. University of Colorado, Boulder, May 20.
- Rattenbury, K., & **Jacobs, B.** (1997). The rehabilitation and recovery of aphasic traumatic brain injury and brainstem infarct: Two case studies. Southern Colorado Undergraduate Research and Creative Work Conference. University of Colorado, Colorado Springs, April 26.
- Haas, S.D., & **Jacobs, B.** (1996). Quantitative dendritic and spine analyses of fifteen distinct cortical areas: A case study. Colorado College Tenth Annual Biology Day. Colorado Springs, Colorado, April 5.
- Courns, K., & **Jacobs, B.** (1996). Age-related dendritic changes in human occipital and prefrontal cortices: A quantitative Golgi study. [Abstract/Poster] 21st Annual West Coast Biological Sciences Undergraduate Research Conference, San Diego, April 27.
- Ferguson, J., & **Jacobs, B.** (1996). Quantitative dendritic and spine analyses of eight functionally distinct areas of human cerebral cortex. Colorado College Ninth Annual Biology Day. Colorado Springs, Colorado, April 12.
- Ginardi, R., & **Jacobs, B.** (1996). Quantitative dendritic analysis of area 18 of human cerebral cortex: Age-related changes. Colorado College Ninth Annual Biology Day. Colorado Springs, Colorado, April 12.
- Fisher, B., & **Jacobs, B.** (1996). Quantitative analysis of a bulimic brain: A case study. Rocky Mountain Psychological Association. Park City, Utah, April 11-14.
- Courns, K., & **Jacobs, B.** (1995). Age-related dendritic changes in human occipital and prefrontal cortices: A quantitative Golgi study. [Abstract/Poster] PEW Midstates Science and Mathematics Consortium: Undergraduate Research Symposium in the Biological Sciences and Psychology. Washington University, Nov. 10-12.
- Courns, K., & **Jacobs, B.** (1995). Age-related dendritic changes in human occipital and prefrontal cortices: A quantitative Golgi study. [Abstract/Poster] Associated Colleges of the Midwest Minority Students and Academic Careers Workshop. Beloit College, Oct. 7.
- Baca, S. M., & **Jacobs, B.** (1995). A quantitative dendritic analysis of four functionally distinct areas of human cerebral cortex. [Abstract/Talk] Rocky Mountain Region Neuroscience Group. Denver, Colorado, May 23.
- Bekhit, S., & **Jacobs, B.** (1995). Quantitative dendritic and spine analysis of speech cortices. [Abstract/Poster] National Conference on Undergraduate Research. Union College, New York. April, 20-22, 1995.
- Baca, S. M., & **Jacobs, B.** (1995). A quantitative dendritic analysis of four functionally distinct areas of human cerebral cortex. [Abstract/Talk] Colorado-Wyoming Academy of Science. Colorado Springs, Colorado, April 21.
- Larsen, L., Swanson, R. L., Wainwright, M. L., & **Jacobs, B.** (1995). Quantitative dendritic and spine analyses of human prefrontal and occipital cortices. [Abstract/Talk] Colorado-Wyoming Academy of Science. Colorado Springs, Colorado, April 21.
- Walter, L. & **Jacobs, B.** (1995). Recovery from stroke involving the left middle cerebral artery. [Abstract/Talk] Colorado-Wyoming Academy of Science. Colorado Springs, Colorado, April 21.



- Baca, S. M., & **Jacobs, B.** (1995). A quantitative dendritic analysis of four functionally distinct areas of human cerebral cortex. [Abstract/Poster] Colorado College Eighth Annual Biology Day. Colorado Springs, Colorado, April 15.
- Bekhit, S., & **Jacobs, B.** (1995). Quantitative dendritic and spine analysis of speech cortices. [Abstract/Poster] Colorado College Eighth Annual Biology Day. Colorado Springs, Colorado, April 15.
- Kernan, R., & **Jacobs, B.** (1995). Hierarchical cognitive function and neuronal complexity: A quantitative dendritic and spine analysis. [Abstract/Poster] Colorado College Eighth Annual Biology Day. Colorado Springs, Colorado, April 15.
- Baca, S. M. (1995). A quantitative dendritic analysis of four functionally distinct areas of human cerebral cortex. [Abstract/Talk] Fourth Annual Undergraduate Psychology Seminar. Colorado Springs, Colorado, Feb. 25.
- Walter, L. (1995). Recovery from stroke involving the left middle cerebral artery. [Abstract/Talk] Fourth Annual Undergraduate Psychology Seminar. Colorado Springs, Colorado, Feb. 25.
- Baca, S. M., & **Jacobs, B.** (1994). A quantitative dendritic analysis of four functionally distinct areas of human cerebral cortex. [Abstract/Poster] Associated Colleges of the Midwest Minority Students and Academic Careers Workshop. Mount Vernon, Iowa, Oct. 1.

<b>Selected senior theses</b>
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Beck Shea-Shumsky	2017	Comparative neuronal morphology of gigantopyramidal neurons in mammals
Madeleine Garcia	2017	Comparative neuronal morphology of gigantopyramidal neurons in mammals
Korbyn Ukasick	1017	The potential for flow within the structure of closed-skill individual sports and open-skill team sports
Mackenzie Tennison	2016	Comparative neuronal morphology of gigantopyramidal neurons in felines, primates, ungulates, the wallaby, and the rat
Molly Winston	2016	Pupillometry in healthy controls: Age as a predictor of the pupillary light response
Dylan Mohr	2015	Apical dendrites across species
Brian Kopex	2015	Apical dendrites across species
Cameron Johnson	2015	Quantitative neuromorphology in the neocortex of the Siberian tiger and clouded leopard
Laura Lee	2014	Neocortical neuronal morphology in the infant giraffe ( <i>Giraffa camelopardalis tippelskirchi</i> ) and infant African elephant ( <i>Loxodonta africana</i> )
Nicholas Johnson	2013	Comparative morphology of cerebellar cortex neurons in Cclouded leopard, Siberian tiger, humpback whale, and chimpanzee
Deb Kennedy	2012	Neuronal morphology in the giraffe ( <i>Giraffa camelopardalis</i> )

		neocortex
Tessa Harland	2012	Neuronal morphology in the giraffe ( <i>Giraffa camelopardalis</i> ) neocortex
Devin Wahl	2012	Comparative neuromorphology of Florida manatee, giraffe, human, and African elephant cerebellar cortex
Sam McCune	2012	The Localization, morphology, and function of Betz cells
Jennifer Morishita	2012	Obsessive-compulsive disorder and the female reproductive cycle
Caroline Janeway	2011	Investigation of cortical neuromorphology in three cetacean species: Bottlenose dolphin ( <i>Tursiops truncates</i> ), north Atlantic minke whale ( <i>Balaenoptera acutorostrata acutorostrata</i> ), and humbback whale ( <i>Megaptera novaeangliae</i> )
Courtney Townshend	2011	Neuromorphology of cetacean neocortex: Bottlenose dolphin ( <i>Tursiops truncates</i> ), north Atlantic minke whale ( <i>Balaenoptera acutorostrata acutorostrata</i> ), and humback whale ( <i>Megaptera novaeangliae</i> )
Erika Pirotte	2011	Effects of multiple concussions in the National Football League: Chronic traumatic encephalopathy
Jessica Borst	2010	Quantitative morphology of supragranular pyramidal neurons in elephant cerebral cortex
Markus Hannan	2010	Quantitative morphology of elephant neurons
Brittney Moore	2010	Recovery and rehabilitation: The effects of stroke on language
Samara Haver	2010	The neuronal basis of theory of mind in the autistic brain
Kaeley Anderson	2009	The Morphology of Supragranular Pyramidal Neurons in the Human Insular Cortex: A Quantitative Golgi Study
Ryan Casserly	2009	Like a Rock: Contributions of Proprioceptive and Motor Systems in Embodied Grounding [with Tomi-Ann Roberts]
Hanna Gleason	2009	Neurophysiology of Meditation and Well-Being
Jessica Rice	2009	Comparison of Three-Dimension Neuronal Reconstructions: Neurolucida Lucivid vs Neurolucida Camera
Jaime Webster	2008	The effects of neglect on children's brain growth, attachment patterns, and emotional development
Matthew Shepherd	2008	Mirror neurons
Brooks Robinson	2008	Variation in dendritic morphology in human insular cortex
Brian Bones	2008	Quantitative study of dendritic extent in human insula
Jenny Mendoza	2007	Does musical training enhance language abilities?

Rosemary Tracy	2007	Positive psychology as a treatment for mental illness
Molly Long	2007	The neurobiology of meditation
Brittany Bishop	2007	Qi and Its Mechanisms in the Body and Brain: Scientific Support
Yi, Crystal	2006	The native language neural commitment hypothesis and language acquisition
Neophytou, Andreas	2006	Allelic frequencies of seven STR loci in the Greek-Cypriot Population [with Ralph Bertrand, Distinction—Neuroscience]
Michel, Courtney	2006	Morphological gender differences in human insula: A quantitative Golgi study
Tearse, Phill	2006	Gender differences in the left human insula: A quantitative Golgi study
Hass, Charlie	2005	Dendritic morphometrics of human insular pyramidal neurons [Distinction—Neuroscience]
Dionne, Kalen	2005	The morphological effects of polybrominated diphenyl ether (PBDE) exposure on cortical pyramidal neurons in the postnatal rat: A quantitative dendritic analysis [with Lori Driscoll, Distinction—Neuroscience]
Steffen, Emilie	2004	“Oh! Thanks goodness! You you have:” An examination of aphasia diagnosis and classification [with Kristi Erdal]
Lee, Hyo Won	2004	Regional dendritic variation in human insular cortex: A quantitative Golgi study [Distinction—Neuroscience]
Travis, Katie	2003	Regional dendritic variation in neonatal human cortex: A quantitative Golgi analysis. [Distinction—Neuroscience]
Watt, Hilary	2003	Quantitative dendritic properties of the human insular cortex.
Jennifer Godfrey	2002	Relationships between clicks, whistles and accuracy of task performance in bottlenose dolphins ( <i>Tursiops truncatus</i> ) [with Kristi Erdal]
John Rino	2002	Neuromorphological analysis of apical and basilar dendrites in BA10: A quantitative Golgi analysis
David Heister	2002	Apical and basilar dendrites of layer III pyramidal cells of Brodmann’s area 10 in the human cortex: A quantitative Golgi analysis
Jon Britt	2001	Elongated basilar dendrites on cortical pyramidal cells in adult callosotomy patients: A quantitative Golgi study [Distinction—Neuroscience]
Johanna Creswell	2001	Quantitative and qualitative analysis of dendritic systems following callosotomy in humans: A Golgi-Kopsch study

Melody Hrubes	2001	Effect of corpus callosotomy in BA4, BA10, and BA44 dendrites in human cortex
Jon Faust	2001	The effects of formalin fixation on the Golgi-Kopsch and rapid Golgi methods [Distinction—Neuroscience]
Sharon Sann	2001	Regional dendritic variation in spine-free nonpyramidal cells: A quantitative Golgi study in humans [Distinction—Neuroscience]
Elisa Kapler	2000	Cell packing density in Brodmann's areas 10 and 18 in the human cerebral cortex [Distinction—Neuroscience]
Jesse Jacobs	2000	A quantitative Golgi analysis of laminae III and V neurons in four regions of human cerebral cortex: A case study [Distinction—Neuroscience]
Clarissa Parker	2000	The effect of environmental enrichment on a mandrill's ( <i>Mandrillus sphinx</i> ) psychological well-being.
Clara Vondrich	2000	Teaching a zoo-reared orangutan an imitative concept: A pilot study [Distinction—Neuroscience]
Ting Shen	2000	A quantitative Golgi analysis of developing dendritic systems in four regions of human cerebral cortex
Bethany Gaddis	1999	Behavioral dysfunctions resulting from frontal lobe damage: A case study
Peter Davenport	1999	Quantitative Golgi analysis of dendritic and spine systems in the prefrontal and occipital cortices over the life-span of the vervet monkey
Melissa Prather	1998	Regional differences in dendritic and spine complexity: A quantitative Golgi analysis of human cerebral cortex [Distinction—Psychology]
Annelise Jacobson	1998	Quantitative Golgi analysis of dendritic and spine systems in the prefrontal and visual cortices of the neonatal vervet monkey
Sonja Hovey	1998	Educators' perspectives on teaching with the multiple intelligences
Melinda Trembl	1998	Quantitative dendritic and spine analyses of primary and heteromodal areas of human cerebral cortex [Poster only]
Kumi Rattenbury	1997	The rehabilitation and acute recovery of aphasic traumatic brain injury and brainstem infarct: Two case studies [Distinction—Neuroscience]
Kelly Courns	1997	Age-related dendritic changes in human occipital and prefrontal cortices: A quantitative Golgi study. [Distinction--Neuroscience]
Katharine Raker	1997	Dolphin consciousness: A social psychological perspective
S. Daniel Haas	1997	Quantitative dendritic and spine analysis of fifteen distinct cortical areas: A case study

Jennifer Ferguson	1996	Dendritic and spine analyses of eight functionally distinct areas of human cerebral cortex [Poster only]
Michael Allen	1996	Age-related dendritic changes in the human prefrontal cortex: A quantitative Golgi study [Distinction--Psychology]
Reneé Ginardi	1996	Quantitative dendritic analysis of area 18 of human cerebral cortex: Age-related changes
Haven Iverson	1996	The role of development in violent behavior
Rebecca Kernan	1996	Hierarchical cognitive function and neuronal complexity: A quantitative dendritic and spine analysis [Distinction--Psychology]
Eric Kuhn	1995	Isolation of epinephrine, norepinephrine and dopamine receptor sites in the medial medulla of the rat brain utilizing tyrosine hydroxylase immunocytochemistry. [with Carolyn Glaubenslee, Biology; Distinction--Biology]
Ashwin Budden	1995	The pineal hormone melatonin and circadian rhythms: Implications for neonatal care
Stacy Traylor	1995	"The best part of my body": Children's developing theories of brain
Lori Walter	1995	Recovery from stroke involving the left middle cerebral artery
Birgit Fisher	1995	A quantitative dendritic analysis of human primary motor and supplementary motor areas, the angular gyrus and prefrontal areas [Distinction--Psychology]
Serapio Baca	1995	A quantitative dendritic analysis of four functionally distinct areas of human cerebral cortex [Distinction--Psychology]
Becky Swanson	1994	Quantitative dendritic and spine analysis of human frontal and occipital cortices [Distinction--Psychology]
Lori Larsen	1994	Quantitative dendritic and spine analysis of human prefrontal and occipital cortices [Distinction--Psychology]