

Legal Alert

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Michael R. King
mking@gblaw.com
602-256-4405

QUESTION: WHY WERE TWO NEW YORKERS UNABLE TO GET TO SOUTH FLORIDA WITH WRITS OF HABEAS CORPUS?

ANSWER: PARTLY BECAUSE THE JUDGES WEREN'T IN SOUTH FLORIDA AND THEY REFUSED TO SEND THE NEW YORK CHIMPANZEES THERE, IF THEY COULDN'T GO AS WELL!

Even King Kong should have left New York!

Tommy is owned by Circle L Trailer Sales, Inc. and is kept in a cage in a warehouse in Gloversville, New York. Kiko is owned by the Primate Sanctuary, Inc. and is in a cage in a cement storefront in a crowded residential area in Niagara Falls, New York. Like many other New Yorkers living in cold, cramped, crowded conditions, the two adult male chimpanzees wanted to be released to live in South Florida. The apes were not monkeying around. One of their lawyers was noted constitutional scholar and author Laurence Tribe. *Nonhuman Rights Project, Inc. ex rel. Tommy v. Lavery*, N.Y.S. 3d (2017).

Not to go out on a limb, but this sounds like monkey business.

Writs of habeas corpus are used to bring people before courts to challenge the legality of detentions. The Latin phrase "habeas corpus" means "you have the body."

Counsel for the chimpanzees argued that chimpanzees have human-like characteristics that render them "persons" for purposes of habeas corpus relief. They submitted expert affidavits, including one from Dr. Jane Goodall, the famous primatologist, showing that chimps act like human beings by sneaking food from others, deceiving others, making complex tools, communicating, and socializing. But the court said that just aping human behavior did not make the chimpanzees human persons, at least not in New York.

"The common law writ of habeas corpus...provides a summary procedure by which a 'person' who has been legally imprisoned or otherwise restrained in his or her liberty can challenge the legality of the detention." The court said that in New York the word "person" does not include nonhumans, such as chimpanzees.

Chimpanzees don't have the capacity to bear legal duties or to be held legally accountable like humans for their actions. Nonhumans are not responsible enough

to have legal standing. Even chimpanzees that have killed or injured human beings are not prosecuted.

Simian semantics or simian sophistry?

The apes' attorneys argued that the word "person" is a legal term of art. They said that if corporations are persons, then why not chimpanzees? But a corporation can't be illegally imprisoned and is not eligible for habeas corpus relief. How would you bring its body before a court?

With uncaged creativity, the chimp counsel argued that "person" doesn't mean "human." As evidence, they said that there is "a river in New Zealand designated as a legal person owning its own riverbed pursuant to a public agreement with indigenous peoples of New Zealand and [there are] pre-independence Indian court decisions recognizing various sacred entities as legal persons...." The court said that had nothing to do with "the entitlement of habeas relief by nonhumans in New York."

The court thought the ape attorneys were bananas for seeking habeas relief!

"Petitioner does not seek the immediate production of Kiko and Tommy to the court or their placement in a temporary home, since petitioner contends that 'there are no adequate facilities to house [them] in proximity to the [c]ourt.'" (Apparently, the court was also in a cold, cramped, crowded part of New York.)

Nor were the petitioners seeking immediate release from illegal imprisonment. The petitioning chimpanzees only sought to be transferred "to an appropriate primate sanctuary." Like other New Yorkers, the chimpanzees sought to relocate to South Florida because the warm climate there is "ideal for chimpanzees," as well as other New Yorkers.

The court sympathized and said that petitioners' "mission is certainly laudable...." Still granting "any fundamental legal rights to animals, ...is an issue better suited to the legislative process...." Chimpanzees probably would be more at home among members of Congress after all.