

# His day in Court—A Chimpanzee Makes Legal History

And The New York Times  
Magazine makes history, too,  
by devoting a lead article to  
exploring whether nonhumans  
have rights

Should a Chimp Be Able  
to Sue Its Owner?

By CHARLES SIEBERT

The New York Times Magazine APRIL 23, 2014



Credit: Alex Prager for The New York Times. Animatronic chimpanzee: AnimatedFX. Location: Diane Markoff's DC Stages, Los Angeles. Props: Colin Roddick. Stylist: Callan Stokes.

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Just before 4 p.m. on Oct. 10, Steven Wise pulled his rental car in front of a multiacre compound on State Highway 30 near the tiny Adirondack hamlet of Gloversville, N.Y., and considered his next move. For the past 15 minutes, Wise had been slowly driving the perimeter of the property, trying to get a better read on the place. An assortment of transport trailers – for horses and livestock, cars, boats and snowmobiles – cluttered a front lot beside a single-story business office with the sign “Circle L Trailer Sales” set above the door. At the rear of the grounds was a barn-size, aluminum-sided shed, all its doors closed, the few small windows covered in thick plastic.

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## FEATURED COMMENT

# Fingersfly

Eureka

Bravo, Mr. Wise. You are a man ahead of your times, but someday people will be as disgusted by such mistreatment of our 'brothers from other mothers,' as we are today disgusted by the slavery in our past.

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With each pass, he looked to see if anybody was on the grounds but could find no one. A number of times Wise pulled off the road and called his office to check whether he had the right place. It wasn't until he finally spotted a distant filigree of deer antlers that he knew for certain. The owner of Circle L Trailer, Wise had read, runs a side enterprise known as Santa's Hitching Post, which rents out a herd of reindeer for holiday events and TV spots, including commercials for Macy's and Mercedes-Benz.

After spotting a man tightening bolts on one of the trailer hitches, Wise paused to explain his strategy to me and the documentary filmmaker Chris Hegedus, who had a video camera. "I'm just going to say that I heard their reindeer were on TV," Wise said. "I happened to be driving by and thought I might be able to see them in person."

The repairman told Wise that the owner wasn't on the premises that day. Wise mustered as many reindeer questions as he could, then got to his real agenda.

"So," he finally asked, doing his best excited-tourist voice. "Do you keep any other animals around here?"

"Yeah," the man answered, nodding toward the aluminum-sided

shed. "In there. Name's Tommy."

Inside the shed, the repairman inched open a small door as though to first test the mood within. A rancid milk-musk odor wafted forth and with it the sight of an adult chimpanzee, crouched inside a small steel-mesh cell. Some plastic toys and bits of soiled bedding were strewn behind him. The only visible light emanated from a small portable TV on a stand outside his bars, tuned to what appeared to be a nature show.

"It's too bad you can't see him when he's out in the jungle," the repairman said, pointing to a passageway nearby, which opened onto an enclosure that housed a playground jungle gym. "At least he gets fresh air out there."



Tommy the chimpanzee inside his cage in Gloversville, N.Y., in October. CreditPennebaker Hegedus Films, from "Unlocking The Cage"

Tommy's original owner, we learned, was named Dave Sabo, the one-time proprietor of a troupe of performing circus chimps. The repairman said that Sabo raised Tommy, who appears to be in his 20s, from infancy. Sabo, who had been living for a number of years in a trailer on the grounds of Circle L Trailer, recently died.

"He's back in there now somewhere," the repairman said,

quickly tracing with his hands what seemed to be the outline of an urn of ashes. "In a room next to Tommy's."

On the way back out to the car, Wise paused.

"I'm not going to be able get that image out of my mind," he said, his voice quavering. "How would you describe that cage? He's in a dungeon, right? That's a dungeon."

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**Seven weeks later**, on Dec. 2, Wise, a 63-year-old legal scholar in the field of animal law, strode with his fellow lawyers, Natalie Prosin, the executive director of the Nonhuman Rights Project (Nh.R.P.), and Elizabeth Stein, a New York-based animal-law expert, into the clerk's office of the Fulton County Courthouse in Johnstown, N.Y., 10 miles from Circle L Trailer Sales, wielding multiple copies of a legal document the likes of which had never been seen in any of the world's courts, no less conservative Fulton County's.

*'I thought to myself, Well, if I'm interested in social justice, I can't imagine beings who are being more brutalized than nonhuman animals.'*

Under the partial heading "The Nonhuman Rights Project Inc. on behalf of Tommy," the legal memo and petition included among their 106 pages a detailed account of the "petitioner's" solitary confinement "in a small, dank, cement cage in a cavernous dark shed"; and a series of nine affidavits gathered from leading primatologists around the world, each one detailing the cognitive capabilities of a being like Tommy, thereby underscoring the physical and psychological ravages he suffers in confinement.

Along with chimps, the Nh.R.P. plans to file similar lawsuits on behalf of other members of the great ape family (bonobos, orangutans and gorillas) as well as dolphins, orcas, belugas, elephants and African gray parrots – all beings with higher-

order cognitive abilities. Chimps were chosen as the first clients because of the abundance of research on their cognitive sophistication, and the fact that, at present, there are sanctuaries lined up to take in the plaintiffs should they win their freedom. (There are no such facilities for dolphins or orcas in the United States, and the two preferred sanctuaries for elephants were full.)

“Like humans,” the legal memo reads, “chimpanzees have a concept of their personal past and future . . . they suffer the pain of not being able to fulfill their needs or move around as they wish; [and] they suffer the pain of anticipating never-ending confinement.” What Tommy could never have anticipated, of course, huddled just up the road that morning in his dark, dank cell, was that he was about to make legal history: The first nonhuman primate to ever sue a human captor in an attempt to gain his own freedom.

## **Animals Are Persons Too**

This short documentary follows the lawyer Steven Wise’s effort to break down the legal wall that separates animals from humans. Credit By Chris Hegedus and D.A. Pennebaker on Publish Date April 23, 2014

**Animals are hardly** strangers to our courts, only to the brand of justice meted out there. In the opening chapters of Wise’s first book, “Rattling the Cage: Toward Legal Rights for Animals,” published in 2000, he cites the curious and now largely forgotten history, dating at least back to the Middle Ages, of humans putting animals on trial for their perceived offenses, everything from murderous pigs, to grain-filching rats and insects, to flocks of sparrows disrupting church services with their chirping. Such proceedings – often elaborate, drawn-out courtroom dramas in which the defendants were ostensibly accorded the same legal rights as humans, right down to being appointed the best available lawyers – were essentially allegorical rituals, a means of expunging

evil and restoring some sense of order to a random and disorderly world.

Among the most common nonhuman defendants cited by the British historian E. P. Evans in his 1906 book, "The Criminal Prosecution and Capital Punishment of Animals," were pigs. Allowed to freely roam the narrow, winding streets of medieval villages, pigs and sows sometimes maimed and killed infants and young children. The "guilty" party would regularly be brought before a magistrate to be tried and sentenced and then publicly tortured and executed in the town square, often while being hung upside down, because, as Wise explains it in "Rattling the Cage," "a beast . . . who killed a human reversed the ordained hierarchy. . . . Inversion set the world right again."

The practice of enlisting animals as unwitting courtroom actors in order to reinforce our own sense of justice is not as outmoded as you might think. As recently as 1906, the year Evans's book appeared, a father-son criminal team and the attack dog they trained to be their accomplice were prosecuted in Switzerland for robbery and murder. In a trial reported in *L'Écho de Paris* and *The New York Herald*, the two men were found guilty and received life in prison. The dog – without whom, the court determined, the crime couldn't have been committed – was condemned to death.

It has been only in the last 30 years or so that a distinct field of animal law – that is laws and legal theory expressly for and about nonhuman animals – has emerged. When Wise taught his first animal-law class in 1990 at Vermont Law School, he knew of only two others of its kind in the country. Today there are well over a hundred. Yet while animal-welfare laws and endangered-species statutes now abound, the primary thrust of such legislation remains the regulation of our various uses and abuses of animals, including food production, medical research, entertainment and private ownership. The fundamental legal status of nonhumans, however, as things, as property,

with no rights of their own, has remained unchanged.



Credit Alex Prager for The New York Times. Animatronic chimpanzee: AnimatedFX. Location: Diane Markoff's DC Stages, Los Angeles. Props: Colin Roddick. Stylist: Callan Stokes.

Wise has devoted himself to subverting that hierarchy by moving the animal from the defendant's table to the plaintiff's. Not in order to cast cognitively advanced beings like Tommy in a human light, but rather to ask a judge to recognize them as individuals in and of themselves: Beings entitled to something that, without us, no wild animal would ever require – the fundamental right, at least, not to be wrongfully imprisoned.

**Tracking down captive** backyard chimps as clients is not the sort of career Wise imagined for himself. But then neither was law. A self-described apolitical lead singer in a rock band who thought he would have a career in music, Wise's increasing involvement in the anti-Vietnam War movement while at the College of William and Mary began to stoke a growing interest in social activism.

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**Essentially a wrong is a wrong is a wrong. –Eds**

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Over lunch in Manhattan one afternoon a few weeks after finding Tommy, Wise told me he thought that he was going to be a doctor, but he didn't get into medical school. He ended up working as a lab technician in Boston, all the while continuing his antiwar activities. "Then one day, I thought to myself, You know, I think I want to be a lawyer," he said. "I had become really interested in issues of social justice."

Several years after graduating from Boston University School of Law, he sat down with a copy of Peter Singer's seminal work, "Animal Liberation," and got the "jolt" that has directed his passions ever since. "It was a total epiphany," he recalled. "I just had never thought about what was going on out there with our treatment of animals. First, I became a vegetarian. Then I thought to myself, Well, if I'm interested in social justice, I can't imagine beings who are being more brutalized than nonhuman animals. People could do whatever they wanted with them and were doing whatever they wanted with them. Nonhuman animals had no rights at all. I couldn't think of any other place where my participation could do more good. I suddenly realized this is why I became a lawyer."

*'The lawyer for the aquarium was so outraged. He kept saying, "Judge, our own dolphin is suing us!" '*

He dedicated himself to getting a better sense of the general arc over the course of history of human thinking about animals. From Aristotle's Great Chain of Being that ranked animals, because they lacked reason, below man; to René Descartes's view of animals as complex but soulless automatons; to Immanuel Kant's argument against cruelty to animals, not because of any specific obligation to them but because such cruelty had an adverse effect on human relations; to the assertion by the 19th-century British philosopher and jurist Jeremy Bentham that the only arbiter of how we treat animals "is not 'can they reason?' nor 'can they talk?' but 'can they suffer?' " a view that would profoundly influence

the work of modern-day animal rights thinkers like Peter Singer.

In 1991, Wise filed an early animal rights lawsuit that both underscored the difficulty of the challenge he would be facing and helped him hone his legal strategy. The case, filed in the United States District Court of Massachusetts against the New England Aquarium, was on behalf of Kama, a 6-year-old dolphin, and several animal rights groups that objected to the aquarium's transfer of Kama to the Navy for training at the Naval Ocean Systems Center in Hawaii, a violation, the suit claimed, of the Marine Mammal Protection Act.

The judge immediately dismissed Kama's part of the suit due to insufficient "standing": the legal requirement that a plaintiff personally speak to the injury that has been done to him or her by the defendant and then show that such harm can be properly redressed by the court – a requirement that Kama, of course, could never have met.

A nonhuman is, in fact, so invisible in a court of law that the only way such a creature can seek redress is if the human plaintiffs representing that animal can prove that the injury done to it has in some way injured them. After several days of deliberation, the judge ultimately decided that the humans, too, had failed to adequately prove injury and threw out their part of the suit on the basis of standing as well.

"The lawyer for the aquarium was so outraged," Wise said. "He kept saying, 'Judge, our own dolphin is suing us!' And I understand that outrage. He felt: 'We own this. This is completely ours, and what is ours is now claiming we can't do something to it?' But what these cases made me realize is that the issue wasn't really about standing at all. What lawyers and judges had been calling an 'animal-standing problem' was really a 'not-being-a-legal-person problem.' We could show the animals had been injured, that the defendants were responsible and that the judge could remedy it. But because animals are

not legal persons, they don't even have the capacity to sue in the first place. They're totally invisible. I knew if I was going to begin breaking down the wall that divides human and nonhumans, I first had to find a way around this issue of personhood."



Steven Wise at his home office in Coral Springs, Fla. CreditChip Litherland for The New York Times

A few years later, while continuing to lecture in animal jurisprudence to law students, Wise revisited the famous case of *Somerset v. Stewart*. In 1772, the chief justice of the English Court of King's Bench, Lord Mansfield, issued a writ of habeas corpus – a court order requiring that a prisoner be brought before a judge by his or her captor in order to rule on the legality of that prisoner's detainment – on behalf of a slave named James Somerset, a being as invisible then to the law as any nonhuman. Mansfield ultimately decided to free Somerset from his Scottish-American owner, Charles Stewart – a landmark decision that would drive one of the first wedges into the wall then dividing black and white human beings from one another.

The Somerset case soon had Wise exploring other habeas corpus cases. He noted that many of them were filed on behalf of those unable to personally appear in court: prisoners, for example, or children, or mentally incapacitated adults. Habeas corpus cases, Wise realized, have the most relaxed standing requirements, precisely because the circumstances necessitate that a proxy like Wise plead the plaintiff's case.

As Wise started to formulate it further, he saw habeas corpus as a form of redress for the denial of a "legal person's" right to bodily liberty, not necessarily a "human being's." At lunch, he outlined a broad spectrum of cases in which nonhumans have been held to be legal persons, like ships, corporations, partnerships and states. He invoked cases in India in which the holy book of the Sikhs was deemed a legal person, as well as Hindu idols. He spoke of a dispute between the Crown of New Zealand and the Maori tribe in which a river was held to be a legal person.

"A legal person is not synonymous with a human being," he told me. "A legal person is an entity that the legal system considers important enough so that it is visible and [has] interests" and also "certain kinds of rights. I often ask my students: 'You tell me, why should a human have fundamental rights?' There's not a single person on earth I've ever put that question to who can answer that without referring to certain qualities that a human has."

In his animal-law classes, Wise told me, he has his students consider the actual case of a 4-month-old anencephalic baby – that is, a child born without a complete brain. Her brain stem allows her to breathe and digest, but she has no consciousness or sentience. No feelings or awareness whatsoever. He asks the class why we can't do anything we want with such a child, even eat her.

*'We're definitely asking a judge to make a leap of faith here; what some might see as a quantum leap. My job is to*

*make it seem as small as possible.'*

"We're all instantly repelled by that, of course," Wise said. When he asked his students that question, they "get all tied up in knots and say things like 'because she has a soul' or 'all life is sacred.' I say: 'I'm sorry, we're not talking about any characteristics here. It's that she has the form of a human being.' Now I'm not saying that a court or legislature can't say that just having a human form is in and of itself a sufficient condition for rights. I'm simply saying that it's irrational. . . . Why is a human individual with no cognitive abilities whatsoever a legal person with rights, while cognitively complex beings such as Tommy, or a dolphin, or an orca are things with no rights at all?"

The other advantage of habeas corpus cases, Wise said he realized, is they allow him to circumvent federal courts, where judges tend to rule in accordance with what they perceive to be the original intentions of pre-existing statutes and laws. State courts, by contrast, where almost all habeas corpus cases are heard, are the home of common law – what Wise often characterizes as a breeding ground of ever-evolving laws where for the past 800 years judges have been making decisions based more on the available evidence and on broader principles like equality and liberty and what is morally right. The common law is the realm in which Wise feels he has the best chance to succeed. "I have to present an argument that a judge can grasp quickly. I have to go bang, bang, bang, detailing the distinct qualities of my clients. We're definitely asking a judge to make a leap of faith here; what some might see as a quantum leap. My job is to make it seem as small as possible."

**No recent case** better underscores the unique nature of Wise's present endeavor than the one that seemed, at first, to most resemble it. In October 2011, despite Wise's objections, People for the Ethical Treatment of Animals (PETA) filed a

lawsuit on behalf of five orcas at SeaWorld San Diego and SeaWorld Orlando, accusing the theme park of violating the 13th Amendment, which abolished slavery. The suit was dismissed by Judge Jeffrey Miller of the U.S. District Court for Southern California, who wrote in his ruling that “the only reasonable interpretation of the 13th Amendment’s plain language is that it applies to persons, and not to nonpersons such as orcas.”

Wise was furious over what he considered the grossly premature timing of PETA’s case. After the judge’s decision, Wise called a PETA lawyer to “share his thoughts” with him. Natalie Prosin was on that call too. “She really let me have it afterward,” Wise said. “She said, ‘You acted like you were the professor and he was your student, lecturing him for over 30 minutes on why his case was so bad.’ I said: ‘I know. And frankly 30 minutes wasn’t nearly enough.’ It was idiotic to invoke the Constitution the first time around. You know maybe in 50 years, after you’ve already laid a foundation of courts recognizing that nonhuman animals could be considered legal persons under the common law. That’s precisely why we’re avoiding the federal courts.”

As hasty an overreach as Wise thought PETA’s legal gambit to be, the Nh.R.P.’s has been plodding and precise. As many as 70 volunteers have been working over the past four years on different facets of his legal offensive. Perhaps the most important is the Nh.R.P.’s Science Working Group, which collaborates with Dr. Lori Marino, an Emory University specialist in the cetacean brain and the evolution of animal intelligence. This group is assigned the task of gathering available research and expert testimony on the cognitive abilities of the plaintiffs that the Nh.R.P. plans to represent.

As recently as 10 years ago Wise’s effort would have been laughed out of a courtroom. What has made his efforts viable now, however, is in part the advanced neurological and genetic

research, which has shown that animals like chimpanzees, orcas and elephants possess self-awareness, self-determination and a sense of both the past and future. They have their own distinct languages, complex social interactions and tool use. They grieve and empathize and pass knowledge from one generation to the next. The very same attributes, in other words, that we once believed distinguished us from other animals. Wise intends to wield this evidence in mounting the case that his clients are "autonomous beings," ones who are able, as Wise defines that term, "to freely choose, to self-determine, to make their own decisions without acting from reflex or innate behavior." He sees these abilities as the minimum sufficient requirement for legal personhood.

Another element of the Nh.R.P.'s strategy is the Legal Working Group, which selects optimal jurisdictions for their lawyers and then finds potential clients there, a reversal of the typical process in which a lawyer has a client and then argues their case in whatever jurisdiction that client happens to live. For the first set of cases, the 20 or so members of the Legal Working Group scoured the records on the habeas corpus rulings of all 50 states and composed memos, each at least 15 pages, before finally settling on New York, where seven privately owned chimps were being held throughout the state.

Wise, Prosin, Stein and Monica Miller, another lawyer, filed habeas corpus petitions on behalf of four of the chimps (the three others died before the Nh.R.P. could do so). The day after Tommy's case was presented, the lawyers were in Niagara Falls, N.Y., filing on behalf of a chimp there named Kiko. Two days after that, they traveled to Riverhead, N.Y., on Long Island, to file a third suit in the name of Leo and Hercules, two chimps being kept at Stony Brook University for studies on human locomotion.

In addition, the Nh.R.P.'s Sociological Working Group has been collecting whatever information it can on the judges within a prospective jurisdiction, everything from their sex, age and

political party to their leisure activities and whether or not they own pets. It's all by way of getting the best sense of the kind of judge the plaintiffs might be facing.

The hope is that they will get what Wise calls a "substantive-principles judge," one not as bound by precedent, who makes what he or she believes is a just decision, regardless of what ramifications the decision may have. A judge like Lord Mansfield, who before setting the slave James Somerset free, said, "*Fiat justitia, ruat coelum*" ("Let justice be done, though the heavens may fall").

"I'm looking for a Lord Mansfield," Wise told me, "but as I often tell my students, be careful what you wish for. You may get a principles judge, and it turns out that the principles the judge holds are the ones that make him say: 'You lose. I don't agree with your principles. I agree with the principle that God created humans, and we all have souls, and we're special, and nonhuman animals do not and so aren't.' And in that case you've just shot yourself in the head."

**Of course,** a number of people both in the legal world and beyond find the very premise of seeking legal personhood for animals an oxymoron. There are, they assert, already ample protections available under current animal-welfare laws, on both the federal and state levels, without having to go down the practically and philosophically fraught path of extending a human right to a nonhuman.

Richard Epstein, a New York University law professor, is an outspoken critic of Wise and of the notion of extending rights to animals. He bristles at what he sees as the potential practical consequences of such an outcome, a slippery-slope effect that would eventually abolish long-established institutions like the agriculture-and-food-production industry. "[T]here would be nothing left of human society," Epstein once asserted in a 1999 essay, "The Next Rights Revolution?" "if we treated animals not as property but as



independent holders of rights." He also considers Wise's legal approach to be "completely misguided."

"Steven is extremely ingenious," Epstein told me in his N.Y.U. office in January. "I don't think he's a great intellect. He's a man of tremendous persistence. He just doesn't think there is any serious argument that can be made on the other side. It's like watching someone with tunnel vision. . . . My attitude is this: There are two ways to think about it. He thinks of it as rights. I think about it as protection. You can guarantee the things he's seeking through animal-protection legislation without calling them rights. I mean, you may want to enforce the laws better. I just think the argument of making animals into sort of human beings is what's crazy."

But Wise contends that present forms of protection are effectively unenforceable in a case like Tommy's, primarily because under current animal-welfare laws on both the state and federal levels, it isn't illegal to keep a chimp in a cage, Tommy's present owner, Pat Lavery, has said that Tommy's cage is legal and inspected annually. In those cases in which cages do not meet proper standards, animals are rarely taken from their owners because they're still considered private property.

Ultimately, Wise is not interested in trying to distinguish between bad and better forms of captivity. What he is trying to provoke is a paradigm shift in how we think of our relationship to animals. "One day we'll be filing a suit on behalf of SeaWorld orcas," Wise said, "these amazingly intelligent and social animals who were captured from the ocean and are now being kept in a tiny pool, and yet obviously it's not illegal. SeaWorld is making tens of millions of dollars a year. No one is suggesting they be charged with cruelty to animals, and nobody has any ideas about how to get those orcas out. It's the same thing with chimpanzees. So the reason we chose habeas corpus over other causes of action is

that it's the only possible remedy."

Even some in the animal rights community have criticized Wise for the anthropocentrism of stressing his clients' similarity to us rather than that basic Benthamite barometer of "can they suffer?" For Wise, though, "can they suffer?" is still the defining arbiter. It's simply one that has been lent a whole new meaning and level of urgency by something obviously unavailable to a 19th-century British philosopher: the ever-growing body of scientific evidence pushing us into the increasingly discomfiting corner of knowing that, in the end, it isn't really his clients' likeness to us but their distinctly different and yet compellingly parallel complexity that now may command not just a philosophical regard but a legal one as well.

**At just past** 2 p.m. on Dec. 2, Nh.R.P.'s legal team of Wise, Prosin and Stein sat at the plaintiff's table in the main courtroom of the Montgomery County courthouse in Fonda, N.Y., nervously awaiting the entrance of Justice Joseph M. Sise.

Wise had told me what he could expect from a decision made in a lower court like this one. "At this level," he said, "it's not going to be an emotional decision, but a very practical, serious one. The judge is going to want to rule in a way in which he feels reasonably supported by the existing laws. He doesn't want to look like an idiot. But if he's willing to hear the case, or even write a decision on it, as long as his rejection goes on the record, we can go to the Court of Appeals. That's where you can argue with more emotion and where most common law gets made anyway."

On the drive from Johnstown to the courthouse, Prosin was on her phone, trying to get information on Sise, a justice on the State Supreme Court. "Brother was a judge," Prosin muttered. "Father a judge. He's young. Graduated law school 1988. Conservative Republican." There was, however, little clear indication of whether he might be a Lord Mansfield.

Now in the courtroom, a voice called, "All rise." Through a sudden opening in the room's oak paneling, Sise, a tall, lean, dark-haired man in his early 50s, emerged and strode swiftly to his seat at the bench. Wise listened, rapt as Sise spoke the words he had been waiting his entire career to hear in court: "This is in the matter of . . . an application . . . seeking a writ of habeas corpus for a nonhuman."

When Sise asked Wise why Article 70 of the Civil Practice Law and Rules – New York State's habeas corpus provision – "should be enlarged to include an animal, a chimpanzee," the typically voluble Wise struggled to speak. You could almost hear the gears of his brain snagging, the various lines of argument that he had been planning and honing over the years for this very moment, getting all bound up now into one hopeless snarl.

"I couldn't believe I was finally about to argue this case before a judge," he told me later. "I really got choked up for a moment."

The hearing took no more than 20 minutes. The justice interrupted often at the start, pre-empting Wise's attempts at building an argument, knocking him back on his heels with repeated questions about why Article 70 was the only form of redress in this instance.

"Isn't there a different way," Sise asked at one point, "for you to petition the court for . . . relief other than attempting to have the Supreme Court . . . enlarge the definition of 'human-being' under Article 70 to include an animal?"

"We are most definitely not asking the court to redefine the term 'human being,' " Wise boomed, his heart at last having loosened its grasp on his throat. "We brought a writ of habeas corpus because [it] is aimed at the denial of a legal person's, not necessarily a human being's, but a legal person's right to bodily liberty."

Wise next began to make his case for why all chimps in New York should be declared legal persons, arguing that they are fully autonomous beings. "Says who?" Sise asked. "And . . . I'm asking the question because that's beyond your ken and beyond my ken. It's beyond the ken of the normal fact-finder. You're stating something that only expert testimony could supply."

Wise quickly cited the affidavits from the world's leading primatologists. The previously curt and pre-emptive Sise fell silent, leaning in, his head nodding slightly.

"So what is it that you're asking the court to do in terms of Article 70, make an exception for chimpanzees only?" Sise asked. "You understand the question, right? The legal conundrum the court is in based upon your argument?"

"We are, in a specific, legal way . . . simply asking that you issue the writ of habeas corpus on behalf of Tommy," Wise began calmly. "We are saying the reason that this court should do that is Tommy, as these experts pointed out, is autonomous. . . . Being a member of the species *homo sapiens* is indeed a sufficient condition for personhood, but there are other sufficient conditions for personhood, as well. . . . Autonomy is an extraordinarily important attribute, and we argue . . . that a being who is autonomous, who can choose, who is self-aware, these, your honor, are essentially us."

"All right," Sise said. "What else? Anything else?"

Wise appeared spent. "No, your honor."

The justice sat back in his chair. "Your impassioned representations to the court are quite impressive," he said. "The court will not entertain the application, will not recognize a chimpanzee as a human or as a person . . . who can seek a writ of habeas corpus under Article 70. I will be available as the judge for any other lawsuit to right any wrongs that are done to this chimpanzee, because I understand

what you're saying. You make a very strong argument. However, I do not agree with the argument only insofar as Article 70 applies to chimpanzees. Good luck with your venture. I'm sorry I can't sign the order, but I hope you continue. As an animal lover, I appreciate your work."

**I managed to** get hold of Sise on the phone a few weeks later and asked him about his ruling. "I thought they should have an opportunity to make their argument as to why Article 70 should be enlarged to include nonhumans," Sise said. "Ultimately, I felt that they had the right to make a record so that they could appeal. I thought, Here's this group of lawyers, living and dying this, they deserve due process, and they deserve to be told just how impressed at least I was by the effort they're making on behalf of animals."

I said that I imagined it wasn't the sort of case that came across his desk very often.

"Obviously not," he said, laughing. "But in terms of the legal questions before the court, it was very similar to many applications we have: Whether or not a petition has been rightfully filed under an article and whether that article applies. So the legal analysis was not novel, although the facts certainly were."

The Nh.R.P. ended up losing their other two New York cases as well, with the judges arguing that the petitioners had other remedies they could seek through existing animal-protection laws. But before Justice Ralph A. Boniello III, of the State Supreme Court for the County of Niagara, rendered his decision, Wise was given full leave to air for the record his petition on behalf of Kiko. The justice called the argument "excellent" but concluded that he was "not prepared to make this leap of faith."

On balance, Wise and his colleagues emerged from their first round of suits ecstatic. They had all they needed to take the

cases to the appellate level to keep making their argument.

In February, the Nh.R.P. lawyers were in New York City for a weekend-long meeting to refine their pending appeals for later this year and to decide on the next roster of plaintiffs. In a couple of weeks Wise would be back on the road, reviewing new prospects: mostly chimps and a few circus elephants. For the latter, Wise told me, the California-based animal-protection organization PAWS is willing to provide sanctuary on a case-by-case basis.

Over dinner one night, I asked Wise about the oft-stated position that there are already ample forms of redress for the likes of Tommy. Did he ever feel that gaining legal rights for such creatures is really a symbolic gesture? As Richard Epstein put it in his N.Y.U. office, "He's just sticking his fingers in your eyes."

"In whose eyes?" Wise said, smiling. "In the world's eye? For what purpose? Look, he's a law professor. He doesn't practice law. If he does, it isn't this kind of law. It's hardly symbolic for the animals."

I reminded Wise at one point that he, the crusader against speciesism and ordained hierarchies, has been accused of erecting a speciesist hierarchy of his own by singling out only certain sufficiently sophisticated animals to represent in court. I asked him, for example, if he would also consider filing a suit on behalf of a captive vervet monkey or a tortoise or a rat.

"I don't know the answer to the question," he responded. "The reason I do know the answer for the animals we are currently choosing to represent is we've spent years trying to understand what their cognitive capabilities are. But we feel very comfortable in saying that for any nonhuman animal who is autonomous, whatever species they may be, then we will go into court and make the argument that they have a sufficient

condition for rights. We've never claimed it's a necessary condition, and as the public debate evolves, people may be making other arguments based on other factors. I mean, how autonomous do you have to be anyway? Look at human beings. We all have rights, and we range from drooling, nonautonomous people to people who are extraordinarily autonomous, like Richard Epstein."

Wise told me he was well aware of the fact that for creatures like Tommy, a victory in court could only result in transfer to a kinder type of captivity. The larger significance of winning for Wise, however, is the clear message it sends about the wrongfulness of holding captive a chimp or a circus elephant or a SeaWorld orca in the first place.

In a 2001 debate with Peter Singer, Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit – who has debated Wise as well – argued that only facts will lead to according animals rights, not intuitions. "Much is lost," Posner stated at one point, "when . . . intuition is made a stage in a logical argument."

And yet in that same debate, Posner stated that the special status we humans accord ourselves is based not on tests or statistics but on "a moral intuition deeper than any reason that could be given for it and impervious to any reason that you or anyone could give against it." That inherent irrationality at the heart of humanity's sense of exceptionalism is what most worries Wise.

"It's those deeply held beliefs that I'm concerned about," he told me. "The judge who either doesn't recognize that he's ruling against us on those grounds, or who does, and decides that way anyway. Our challenge is to lay bare that bias against our facts. I will say: 'Judge, you know, we've been here before. We've had people who've essentially said, "I'm sorry, but you're black." Or "I'm sorry, you're not a male or a heterosexual." And this has led us to some very bad places.'

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Much like other civil rights movements, the Nh.R.P.’s efforts are designed to be a systematic assault; a continued and repeated airing of the evidence now at hand so that other lawyers and eventually judges and society as a whole can move past what Wise considers the increasingly arbitrary distinction of species as the determinant of who should hold a right.

Wise said he doesn’t expect to win in the first round of suits, and neither does he in the fifth or the 20th. “For me this has been a 25-year plan. All my books and my courses were designed to help me think through this problem. Now I want to spend the rest of my life litigating. If we lose, we keep doing it again and again, until we find a judge who doesn’t feel that the way is closed off. Then our job is to produce the facts that will allow that judge to make that leap of faith. And when it happens, it will be huge. I wouldn’t be spending my life on this otherwise.”

**[Charles Siebert](#) is a contributing writer and the author, most recently, of “[Rough Beasts: The Zanesville Massacre, One Year Later.](#)”**

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A version of this article appears in print on April 27, 2014, on page MM28 of the Sunday Magazine with the headline: The Rights of Man...and Beast. [Order Reprints](#)|[Today’s Paper](#)|[Subscribe](#)