

## STEVEN WISE TRIBUTE, PART III

### TRIBUTO A STEVEN WISE, PARTE III

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#### ABSTRACT

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The Nonhuman Rights Project (NhRP) was founded in 1995 by attorney Steven Wise, a recognized visionary in the field of animal rights. With Steve as the guiding force, the organization has achieved historic legal firsts, including the first habeas corpus hearings on behalf of nonhuman animals, powerful judicial opinions in support of chimpanzees' and elephants' right to liberty, and affirmation of the importance of nonhuman animal autonomy when considering recognition of this right. Historian Jill Lepore called one of the NhRP's court cases, with Steve as the lead attorney, "the most important animal-rights case of the 21st century." Steve argued that advances in science and the fundamental principles of justice, liberty, and equality compelled the recognition of nonhuman animal rights. Throughout his career, Steve was well known for how accessibly and compellingly he conveyed these difficult legal concepts to diverse audiences and gained support for the animal rights cause. In February of 2024, Steve passed away from cancer. This article reflects on the history of Steve's thinking, the development of his unique legal approach, the progress he achieved, and the lasting impact he will have—catalyzing not just judicial imaginations but also hope for a world where nonhuman animals are no longer irrationally and unjustly seen as legal "things" with no rights but legal persons with fundamental rights.

#### KEYWORDS

Animal Law; Animal Rights; Autonomy; Chimpanzee; Elephant; Equality; Habeas Corpus; Justice; Liberty; Nonhuman; Person; Personhood; Thing; Wise.

#### RESUMEN

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El Nonhuman Rights Project (NhRP) fue fundado en 1995 por el abogado Steven Wise, un reconocido visionario en el campo de los derechos de los animales. Con Steve como guía, la organización ha logrado hitos jurídicos históricos, como las primeras audiencias de *habeas corpus* en favor de animales no humanos, importantes dictámenes judiciales en apoyo del derecho a la libertad de chimpancés y elefantes y la afirmación de la relevancia de la autonomía de los ani-

males no humanos, a la hora de plantearse el reconocimiento de este derecho. La historiadora Jill Lepore calificó uno de los casos judiciales del NhRP, con Steve como abogado principal, como “el caso sobre derechos de los animales más importante del siglo XXI”. Steve argumentó que los avances de la ciencia y los principios fundamentales de justicia, libertad e igualdad exigían el reconocimiento de los derechos de los animales no humanos. A lo largo de su carrera, Steve fue muy celebrado por la forma tan accesible y persuasiva, con la que supo transmitir estos complejos conceptos jurídicos a audiencias de todo tipo, gracias a lo que consiguió el apoyo para la causa de los derechos de los animales. En febrero de 2024, Steve falleció de cáncer. Este artículo reflexiona sobre la historia del pensamiento de Steve, el proceso de desarrollo de su enfoque jurídico singular, los avances que logró y el impacto duradero que seguirá teniendo, no sólo catalizando la creatividad judicial, sino también la esperanza de un mundo en el que los animales no humanos dejen de ser vistos irracional e injustamente como “cosas” jurídicas sin derechos y se conviertan en personas jurídicas con derechos fundamentales.

### **PALABRAS CLAVE**

Derecho Animal; Derechos de los Animales; Autonomía; Chimpancé; Elefante; Igualdad; Habeas Corpus; Justicia; Libertad; No Humano; Persona; Personalidad; Cosa; Wise.

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**The Founding and Development of the Nonhuman Rights Project**

In 1995, attorney Steven Wise established the Center for the Expansion of Fundamental Rights. In his Application for Recognition of Exemption filed with the Internal Revenue Service, Steve stated the activities of the organization would include researching and writing articles and books and “litigating to establish that fundamental rights need not be limited to human beings but can be applied to certain nonhuman animals, including chimpanzees and bonobos. This [litigation] will be initiated within 10 years.” This was a bold statement for Steve who was just embarking on his work as an animal rights attorney, rather than an animal protection attorney. Many years later, he would jokingly say he thought it would take 10 years to prepare for the first lawsuit when instead it took nearly 20 years. This was quintessential Steve – declaring that something would happen and then *making* it happen regardless of the obstacles or the number of years required.

Over time, Steve began to refer to the work of the Center for the Expansion of Fundamental Rights as the Nonhuman Rights Project and, in 2012, officially renamed the organization to reflect that fact. Steve felt it was important to use the term “nonhuman rights” as a reminder that human beings are also animals—the only animals with legally recognized and enforceable rights.

The organization began with one paid employee and a team of dedicated volunteers who shared Steve’s vision and passion for securing rights for nonhuman animals. Through Steve’s tireless efforts, the NhRP became the voice for animal rights. With that came a steady increase in donations. As funding grew, Steve was able to hire more people – talented lawyers and communications professionals who sparred with Steve over legal strategies and shaped the way the organization presented his ideas to the public.

In the early years, Steve directed his team to research each of the 50 states in search of the most favorable U.S. jurisdiction for filing the NhRP’s first habeas corpus lawsuit. The goal of Steve’s litigation was for a court to recognize a nonhuman animal’s right to bodily liberty protected by habeas corpus and ultimately secure their freedom from imprisonment. The team applied a rubric it devised incorporating a myriad of questions, including the following: (1) Does the state recognize common law habeas corpus? (2)

Does the common law of the state incorporate the famous English common law habeas corpus case *Somerset v Stewart*? (3) If there is a statute implicating habeas corpus, is it clear the statute is procedural and does not affect who may avail themselves of the protections of the writ? (4) Is it clear an unrelated third party can file a petition on behalf of the imprisoned individual? (5) Does the state recognize autonomy, liberty, and equality as supreme common law values to be protected above all else? (6) Does the prisoner have a right to appeal the denial of the petition?

## Why Habeas Corpus

For a millennium, English-speaking judges have used the common law to decide cases that turn on general legal principles such as liberty and equality as opposed to those that require interpretation of statutes, constitutions, or treaties. Steve understood that, unlike fixed and immutable statutory law, the common law is in constant growth, adapting to changing conditions, advances in science, new knowledge, and human experience to accord with the demands of justice.<sup>1</sup> Since its founding, the NhRP has been uniquely committed to urging judges to reflect on the rightlessness of nonhuman animals so that they may attain visibility in the eyes of the law – in other words, become rights-holders.

## Why Common Law Habeas Corpus

Habeas corpus has its roots in the common law and throughout history has been used as a means of challenging an individual's imprisonment and thus serves as a guarantor of one's liberty.<sup>2</sup> Most notably, writs of habeas corpus were issued on behalf of humans whose right to bodily liberty was not yet recognized and who thus lacked standing to file a habeas petition. The most famous example is the landmark habeas case of *Somerset v Stewart*,<sup>3</sup> in which Lord Mansfield issued a habeas writ and ultimately freed an enslaved Black man, James Somerset, who was not a legal person at the time the petition was filed.

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<sup>1</sup> See *Gallagher v. St. Raymond's R.C. Church*, 21 N.Y.2d 554, 558 (1968) (The "common law of the State is not an anachronism, but is a living law which responds to the surging reality of changed conditions."); *Woods v. Lancet*, 303 N.Y. 349, 355 (1951) (The Court "act[s] in the finest common-law tradition when [it] adapt[s] and alter[s] decisional law to produce common-sense justice.").

<sup>2</sup> See *People ex rel. Pruyne v. Walts*, 122 N.Y. 238, 241-242 (1890) (The New York "common-law writ of habeas corpus [is] a writ in behalf of liberty, and its purpose [is] to deliver a prisoner from unjust imprisonment and illegal and improper restraint."); *People ex rel. Tweed v. Liscomb*, 60 N.Y. 559, 566 (1875) (The writ of habeas corpus is "the *magna charta* of personal rights.").

<sup>3</sup> *Somerset v. Stewart*, 1 Lofft. 1, 98 Eng. Rep. 499 (K.B. 1772).

Steve spent several years writing a book about *Somerset* entitled “Though the Heavens May Fall: The Landmark Trial That Led to the End of Human Slavery,” which was reviewed on the front page of the New York Times Book Review section. He understood that *Somerset*, along with its progeny,<sup>4</sup> provided the precedent to argue that a court should assume, without deciding, that the nonhuman animal prisoner could have the right to bodily liberty for purposes of issuing the habeas corpus writ. The nonhuman animal could then have their day in court to have the case adjudicated on the merits, just as a human prisoner would.

Steve also understood that for purposes of securing the right to liberty for nonhuman animals, the question of who may avail themselves of the protections of habeas corpus must be a matter for a court to decide based on flexible common law principles<sup>5</sup> and not a matter of statutory interpretation.<sup>6</sup> He argued that autonomy is at the core of the right to liberty — the right to be free from unwanted interference — and is sacredly guarded by the courts.<sup>7</sup> For years, Steve studied the scientific research on the cognitive abilities of various nonhuman animals and summarized much of the research in his books, “Rattling the Cage: Toward Legal Rights for Animals” and “Drawing the Line: Science and the Case for Animal Rights.” Steve decided his first clients should be members of species with scientifically proven autonomy – great apes, elephants, and cetaceans.

But, Steve knew judges would question what autonomy actually means. To answer that question, Steve looked to world-renowned scientists and other relevant experts who provided affidavits explaining that autonomy, as a psychological concept, implies the individual is directing their behavior based on an internal cognitive process that is not observable, reflexive, innate, or learned. These affidavits also attested to the extraordinary cognitive complexity of the imprisoned nonhuman animals and collectively formed the basis for arguing that their autonomy is sufficient though not necessary for the judicial recognition of their right to bodily liberty protected by habeas corpus. Steve

<sup>4</sup> See *Lemmon v. People*, 20 N.Y. 562, 604-06, 618, 623, 630-31 (1860), in which the New York Court of Appeals, relying heavily upon *Somerset*, issued a writ of habeas corpus upon the petition of five slave children who were not deemed legal “persons” at the time the writ was issued and ultimately found in favor of their freedom.

<sup>5</sup> See *People ex rel. Keitt v. McCann*, 18 N.Y.2d 257, 263 (1966) (citation omitted) (“One of the hallmarks of the writ [is]... its great flexibility and vague scope.”).

<sup>6</sup> In the State of New York, habeas corpus is not “the creature of any statute... and exists as a part of the common law of the State.” *Liscomb*, 60 N.Y. at 565. The writ “cannot be abrogated, or its efficiency curtailed, by legislative action.... The remedy against illegal imprisonment afforded by this writ... is placed beyond the pale of legislative discretion.” *Id.* at 566.

<sup>7</sup> *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891) (quoting *Cooley on Torts* 29), (“The right to one’s person may be said to be a right of complete immunity: to be let alone.”); *Rivers v. Katz*, 67 N.Y.2d 485, 4993 (1986), (Because “notions of individual autonomy and free choice are cherished... [courts must] insure that the greatest possible protection is accorded [one’s] autonomy and freedom from unwanted interference with the furtherance of [one’s] own desires.”).

argued that to deny them the right to liberty solely because they are not human is arbitrary, unjust, anachronistic, and contrary to core common law principles—including justice, liberty, and equality.

Finally, as in any habeas corpus case, the imprisonment at issue must be unlawful for the prisoner to be entitled to release. Steve argued that the nonhuman animal's imprisonment was unlawful because it violated their common law right to bodily liberty protected by habeas corpus, not because it violated a statute.<sup>8</sup> Thus, the fact that the jailors may have been in compliance with relevant animal welfare laws did not render the confinement lawful. Notably, habeas corpus has been used historically to protect an individual's autonomy and secure their liberty when the captivity was unjust even though lawful by statute.<sup>9</sup>

### The Journey for Animal Rights Begins in New York State

After scouring the laws of all 50 states, it was time for Steve and his team to decide what state seemed most amenable to hearing a habeas corpus case on behalf of a nonhuman animal. In the historical context, this would be the first time a petition for a writ of habeas corpus was filed on behalf of a nonhuman animal in the United States. Steve understood that by filing such a petition, he was asking judges to change a status quo that has long shut the courtroom doors to the consideration of nonhuman animal rights. Steve recognized even if we chose a state that met all of the criteria in our rubric, we were likely to be met with opposition in the courtroom. The question was, in which state would that opposition be most amenable to bending towards justice.

Steve and his team ultimately concluded that New York was ideally suited to be the first state to hear their case. On Dec. 2, 2013, a habeas corpus petition was filed on behalf of a chimpanzee named Tommy who was imprisoned alone in a cage in a shed on a used trailer lot in Gloversville, New York. The day after filing Tommy's petition, the NhRP filed on behalf of Kiko, a chimpanzee imprisoned in a cage in a storefront in Niagara Falls, New York. Both petitions were denied and the denials were affirmed on appeal for different reasons.<sup>10</sup>

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<sup>8</sup> See *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 637 (2022) (Rivera, J., dissenting) (“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.”).

<sup>9</sup> See *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 579 (2022) (Wilson, J., dissenting) (“[H]istorically, 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.”).

<sup>10</sup> *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.d.3d 148 (3d Dept. 2014) (Tommy’s appeal also referred to as *Lavery I*); *Nonhuman Rights Project, Inc. v. Presti*, 124 A.D. 3d 1334 (4th Dept. 2015) (Kiko’s appeal).

Two days after filing on behalf of Kiko, the NhRP filed in Suffolk County Supreme Court on behalf of Hercules and Leo, two chimpanzees imprisoned at the State University of New York at Stony Brook for locomotion research. While this petition was also denied, Steve and his team strategically decided not to appeal but to refile Hercules' and Leo's petition in a different county, New York County, as was specifically allowed under the New York habeas corpus procedural rules—a move that proved to be historic.

Recognizing the importance of the case before it, the New York County Supreme Court issued a habeas order to show cause, marking the first time in history that a U.S. court applied habeas corpus law to a nonhuman animal. A hearing was held in which Steve and an attorney from the New York Attorney General's office stood before a judge to argue the merits of securing habeas corpus relief for Hercules and Leo, just as if they were human prisoners. The court ultimately held it was bound by *Lavery I* (which in essence concluded that only humans can have rights) but nonetheless stressed, “[e]fforts to extend legal rights to chimpanzees are thus understandable; some day they may even succeed.”<sup>11</sup>

While the hearing held on behalf of Hercules and Leo was a historic milestone in Steve's quest for the recognition of nonhuman rights, he knew change would only come if a case was heard by the highest court of a state, which has the final authority to evolve the common law. In New York State, the highest court is the Court of Appeals. The appeals taken by the NhRP on behalf of Tommy and Kiko brought this goal closer to reality when they resulted in an influential opinion by Court of Appeals Judge Eugene Fahey (now retired). While Judge Fahey concurred with the majority on a procedural issue, he wrote at length about the merits of the case, calling the chimpanzees' imprisonment “a manifest injustice” and urging his fellow judges to consider whether a nonhuman animal such as a chimpanzee has the right to seek habeas corpus relief when deprived of their liberty.<sup>12</sup>

Judge Fahey's fellow judges took heed when in 2022, the Court of Appeals became the first high court of an English-speaking jurisdiction to hear a habeas corpus case on behalf of a nonhuman animal, an imprisoned elephant named Happy (the habeas corpus order issued on Happy's behalf was the first ever issued on behalf of an elephant<sup>13</sup>).

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<sup>11</sup> *Matter of Nonhuman Rights Project, Inc. v. Stanley*, 49 Misc.3d 746, 772 n.2 (Sup. Ct. 2015).

<sup>12</sup> *Matter of Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054, 1055-59 (2018) (Fahey, J. concurring).

<sup>13</sup> See DIEFENBACH, M. Orleans County issues first habeas corpus on behalf of elephant, The Daily News (Nov. 32, 2018), <https://bit.ly/3AwkCWV>. After issuance of the writ, the case got transferred to Bronx County Supreme Court where a three-day hearing was held during which Steve argued on behalf of Happy's right to liberty and ultimate freedom. Based on the expert scientific evidence presented by the NhRP, the court concluded that Happy “is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty.” 2020 WL 1670735, at \*3 [Sup.



While the majority chose not to free Happy, the decision yielded two historic dissents totaling more than 90 pages by now-Chief Judge Rowan Wilson and Judge Jenny Rivera.<sup>14</sup> Judge Wilson agreed that “the detention of an elephant can ... 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.” *Nonhuman Rights Project, Inc. v. Breheny*, 38 N.Y.3d 555, 579 (2022) (Wilson, J., dissenting). Judge Rivera further concluded that Happy was in fact entitled to her liberty: “[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.” *id.* at 629 (Rivera, J., dissenting). The dissents also pointedly refuted the following egregious errors made by the majority: (1) habeas corpus is limited to human beings; (2) the issue of recognizing Happy’s right to liberty is a matter for the legislature; (3) transfer from a zoo to a sanctuary is inappropriate habeas corpus relief; (4) freeing Happy would have a potential disruptive impact on society (the slippery slope argument).

Happy’s case exemplifies the overwhelming support across diverse disciplines — academic, judicial, religious, and scientific communities — that Steve’s cases garnered. Eighteen amicus briefs signed by 146 distinguished scholars, lawyers, judges, civil rights pioneers, and religious and moral leaders were filed in support of Happy’s freedom. Her case drew worldwide attention to elephant captivity and informed public opinion about rights for nonhuman animals generally, including an article in *The Atlantic* by Harvard historian Jill Lepore in which she called Happy’s case “the most important animal-rights case of the 21st century.”<sup>15</sup>

Steve understood dissents often later become majority opinions. He understood the conversation around animal rights needs to be normalized so that judges have the courage to change the status quo. And perhaps most importantly, Steve understood every time he stood before a judge to plead the case for the freedom of a nonhuman animal, it was in itself a victory for the movement to secure rights for nonhuman animals.

Even before the NhRP filed its first case, the NhRP’s cause gained media attention in prominent media outlets because of how bold, how novel, and how deeply rooted in legal history, science, and social justice the NhRP’s approach — as carefully elaborated by Steve — was. The NhRP’s chimpanzee rights cases immediately ignited serious me

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Ct., Bronx County, Feb. 18, 2020, index No. 260441/19, Tuitt, J.]. “Regrettably,” however, the court held it was bound by adverse Appellate Division caselaw. *Id.* at \*9.

<sup>14</sup> The opinions of Judges Wilson, Rivera, and Fahey demonstrate that the “intellectual foundations [of the legal wall separating humans from nonhuman animals] are so unprincipled and arbitrary, so unfair and unjust, that it is crumbling.” WISE, S.M. *Rattling the cage: Toward legal rights for animals* (2000) 5.

<sup>15</sup> LEPORE, J. *The Elephant Who Could Be a Person*, *The Atlantic* (Nov. 16, 2021), <https://www.theatlantic.com/idea/archive/2021/11/happy-elephant-bronx-zoo-nhrp-lawsuit/620672>.



dia attention in local, regional, and national media outlets such as *The New York Times*<sup>16</sup> and the *Washington Post*.<sup>17</sup> This media attention continued for the duration of each case. Year after year under Steve's leadership, media coverage of the NhRP's mission and individual cases had a potential global reach of over a billion people. Over the course of a decade, Steve was interviewed for pieces in prestigious print and online publications, legal publications, blogs devoted to animal advocacy, radio shows on science and social change, mainstream TV segments, and more, on the NhRP's arguments and court cases. Memorably, Steve even lightly sparred with Stephen Colbert on Comedy Central's *The Colbert Report*. With all of the media coverage, Steve was always at ease in front of a camera. In fact, the camera sharpened how he defended his legal theories and sparked his wit. Steve loved being in front of a camera — it was fun for him. But more importantly, he understood that to have his ideas accepted by the general public and by judges, he needed an audience — and nothing delivers a larger audience than a camera.

In 2015, Steve delivered a TED Talk that has been watched by over a million people. Three years after the NhRP filed its first cases, acclaimed filmmakers Chris Hegedus and D A Pennebaker premiered at the Sundance Film Festival a documentary called *Unlocking the Cage* that followed Steve and the NhRP's chimpanzee cases, even going inside the courtroom for Hercules and Leo's historic habeas corpus hearing. A year later, the film premiered on HBO and was subsequently nominated for an Emmy award. The film continues to reach and inspire new people to join the cause.

No matter the interview or opportunity, Steve served as a tireless, cheerful, and forthright lead spokesperson for the NhRP and its clients. He had an extraordinary ability to convey difficult legal and scientific concepts in ways that would make sense to and resonate with a wide audience. Because he was a talented lawyer and a talented communicator, the legal scholarship and moral integrity that guided his vision came through loudly and clearly in stories about the NhRP's work. For decades, he led the way in normalizing and making legible and accessible the concept of nonhuman animal rights.

Steve will be remembered for his perseverance. He was unrelenting in achieving his goals because he knew justice was on the side of recognizing rights for nonhuman animals. His enthusiasm for his work was never derailed or even diminished by what may have seemed at first glance like a loss. Steve understood the win/lose paradigm that may be relevant in other types of litigation simply does not apply when fighting to change an entrenched injustice. Thus, with any loss came the victory that the nonhuman animal's case was even heard.

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<sup>16</sup> See e.g. SIEBERT, C. Should a Chimp Be Able to Sue Its Owner, *The New York Times Magazine* (April 23, 2014), <https://www.nytimes.com/2014/04/27/magazine/the-rights-of-man-and-beast.html>.

<sup>17</sup> See BRULLIARD, K. Chimpanzees are animals. But are they 'person'? *The Washington Post* (March 2017) <https://www.washingtonpost.com/news/animalia/wp/2017/03/16/chimpanzees-are-animals-but-are-they-persons/>.

Steve was resilient in the face of criticism and even ridicule. Throughout his career in animal rights, people laughed at him, and many people in the field of law initially thought his legal ideas far-fetched. But he believed completely in what he was trying to accomplish and was certain his legal strategies were sound and would ultimately prevail, as they have clearly begun to do. The world is better for it, and the team that will continue Steve's work with the same resilience and perseverance knows steady progress will continue.

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