



## ANIMAL RIGHTS

## Lawsuits Seek 'Personhood' For Chimpanzees

Chimpanzees are getting their day in court. An animal rights group known as the Non-human Rights Project (NhRP) filed lawsuits in three New York counties this week in an attempt to get judges to declare that the great apes are legal persons and free them from captivity. The litigation, on behalf of two research chimps at Stony Brook University and two chimps on private property, is the first salvo in a coordinated campaign to secure "legal personhood" for a variety of animals across the United States.

If NhRP is successful in New York, it could be a significant step toward upending millennia of law defining animals as property and could set off a "chain reaction" that could bleed over to other jurisdictions, says Richard Cupp, a law professor at

Pepperdine University in Malibu, California, and a proponent of focusing on animal welfare rather than animal rights. "But if they lose it could be a significant step backward for the movement. They're playing with fire."

The effort began nearly 30 years ago in the mind of a Boston attorney named Steven Wise. An early member of the Animal Legal Defense Fund (ALDF), a then-small group of lawyers dedicated to obtaining rights for pets, livestock, and other creatures in U.S. courts, Wise began thinking about what it would take to turn animals into legal persons. "But in 1985, the law, the science, and the court of public opinion wasn't ready," he says, so he began writing a series of law review articles—then books—on the topic. Wise, who holds a bachelor's degree in chemistry,

**Property or person?** A series of lawsuits could free U.S. chimpanzees from captivity.

relied heavily on animal cognition research, arguing that creatures like chimpanzees and dolphins were so self-aware that keeping them in captivity was tantamount to slavery. "It's a terrible torture we inflict on them, and it has to stop," he says. "And all of human law says the way things stop is when courts and legislatures recognize that the being imprisoned is a legal person. Otherwise, they ignore them."

In 2007, Wise founded NhRP, an association of about 60 lawyers, scientists, and policy experts who began to formulate a strategy to gain legal personhood for animals. He felt he now had public sentiment on his side. Support for animal research was declining, lawmakers were imposing tough new restrictions on factory farms, and ALDF had blossomed into a national organization with chapters at most U.S. law schools. "Animal rights had entered the mainstream," he says. "I felt that judges were willing to hear my arguments."

They hadn't in the past. In 1993, Wise attempted to sue on behalf of a dolphin that had been transferred to a Navy facility, but the judge ruled that, as nonpersons, animals don't have the legal "standing" to sue. (More recently, a federal judge dismissed a 2011 lawsuit by People for the Ethical Treatment of Animals when it tried to argue that SeaWorld had violated the 13th Amendment of the U.S. Constitution by keeping orcas as "slaves.")

NhRP is taking an entirely different tack. The strategy is based on the 1772 case of James Somerset, a black slave who escaped from his owner in England. He was captured and imprisoned on a ship bound for the slave markets of Jamaica. Abolitionists petitioned Lord Mansfield, chief justice of the Court of King's Bench, to issue a common law writ of habeas corpus, which allows a person being held captive to have a say in court. Mansfield granted the writ, tacitly acknowledging that Somerset was a "person," and freed him. The case helped spark the eventual abolition of slavery in England.

Wise, who wrote a book on the Somerset case, calls it a "metaphor and a blueprint" for NhRP. "It was a transubstantiation," he says. "It turned a legal thing into a legal person."

In its new litigation, the group is applying two crucial aspects of the case. First, it is trying to modify the common law rather than appealing to written statutes or the Constitution. "Common law changes as

society changes,” Wise says. “Judges can rely on their own morals.” And second, the group will petition for a writ of habeas corpus, which gets around the legal-standing roadblock by allowing someone else to argue on the captive’s behalf.

NhRP spent 5 years honing its strategy. The group also had to find sympathetic jurisdictions—courts that had, for example, been early proponents of civil rights and animal welfare. “We were looking for judges who might aspire to be as great as Lord Mansfield,” Wise says.

The upshot: lawsuits filed in three New York trial courts on behalf of four resident chimpanzees. “We scoured the entire state for captive chimps,” Wise says, “and these were the only ones we could find.” One, named Tommy, lives in Gloversville in a “used trailer lot ... isolated in a cage in a dark shed,” according to an NhRP press release. Another, Kiko, resides in a cage on private property in Niagara Falls, the group says. The final two, Hercules and Leo, are research chimps at Stony Brook University. Wise says 11 scientists have filed affidavits in the cases; most of them, including Jane Goodall, have worked with nonhuman primates. NhRP is seeking only one legal right at this point: the right to bodily liberty. If the group wins any of the cases, it will ask that the animals be transferred to a chimpanzee sanctuary in Florida. Any loss, Wise says, will immediately be appealed.

Anatomist Susan Larson, who studies the Stony Brook chimpanzees to shed light on the origin of bipedalism in humans, says she is “very shocked and upset” by the lawsuit. She says the chimps, which are on loan from the New Iberia Research Center in Louisiana, live in an indoor enclosure composed of three rooms—“about the size of an average bedroom”—plus another room where they can climb, hang, and jump from ladders and tree trunks. “Everything I do with these animals I’ve done on myself,” she says. “I understand that animal rights activists don’t want these animals mistreated, but they’re hampering our ability to study them before they become extinct.”

Regardless of what happens, the cases won’t set legal precedent unless they are heard by a higher state court, says Cupp, the legal expert. If Wise’s group wins in one of these higher courts, the decision could

confer personhood to all captive chimps in the state. A loss could set the opposite precedent, he notes, potentially dooming the movement nationwide.

Frankie Trull, the president of the National Association for Biomedical Research in Washington, D.C., says her organization is ready to fight back if it looks like personhood

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BIOMEDICAL RESEARCH

is advancing in the courts. Chimpanzees are important models for behavioral research, as well as for developing vaccines against viruses like hepatitis C, she says. “Assigning rights to animals akin to what humans have would be chaotic for the research community,” she says. “First it’s chimps; what’s next?”

Wise has an answer for that. His group is already preparing litigation for other states and other animals. “Gorillas, orangutans, elephants, whales, dolphins—any animal that has these sorts of cognitive capabilities, we would be comfortable bringing suit on behalf of,” he says. Some would be research animals; others would be creatures that simply live in confined spaces, like zoos and aquariums. “No matter how these first cases turn out ... we’re going to file as many lawsuits as we can over the next 10 or 20 years.”

That worries researchers like Heidi Harley, a comparative psychologist at the New College of Florida in Sarasota who has studied dolphin communication at aquariums and theme parks for 30 years. “I don’t think there’s anyone who works with these animals who doesn’t think about their welfare on a regular basis,” she says. “But there’s still so much we don’t know about them. I don’t think we know enough to know what’s best for them.” Marine mammal scientist Louis Herman, who ran a dolphin lab in Hawaii for 34 years, is concerned that the personhood movement will draw resources away from initiatives to save animals in the wild. “Cetacean kills, elephant kills, gorilla kills is where continued and even great effort and protection is needed,” he writes in an e-mail. “We should not be diverted from that goal.”

Chimp research may be on its way out even without NhRP. In June, the National Institutes of Health (NIH) announced plans to retire all but 50 of its 360 research chimpanzees and phase out much of the chimp research it supports; any projects that continue, such as behavioral studies, will have to meet stricter welfare guidelines (*Science*, 5 July, p. 17). The U.S. Fish and Wildlife Service, meanwhile, has recommended that captive chimps be listed as endangered, which would limit any research that isn’t in their best interest. “Soon, the type of work I do will no longer be possible,” Larson says.

Stephen Ross wonders if there’s a compromise. Ross, the director of the Lester E. Fisher Center for the Study and Conservation of Apes at the Lincoln Park Zoo in Chicago, Illinois, has studied chimp behavior and cognition for more than 20 years. He helped design the zoo’s expansive ape habitat—replete with a bamboo forest, termite mounds, and dozens of trees—and played a role in crafting NIH’s new chimp policy. “I think these animals should have some rights. They should have



**Slippery slope.** Legal personhood for chimpanzees could affect other animals like dolphins.

the right to be comfortable and live in an engaging environment,” he says. “But you don’t need personhood to do that.” Instead, Ross advocates ending private ownership of chimps, which is hard to police, as well as invasive research. All other chimpanzees, whether located at zoos or universities, should live in large enclosures, with access to the outside, and in groups of at least seven individuals.

“I think we share a common philosophy,” Ross says of NhRP. “We want to make things better for chimps. We just disagree on how to get there.”

—DAVID GRIMM