



NONHUMAN RIGHTS PROJECT

“The Nonhuman Rights Project’s Struggle to Gain Legal Rights
and Personhood for Nonhuman Animals”

Kevin Schneider, Esq.

Executive Director

The Nonhuman Rights Project

Climate Change, Coasts & Communities Symposium

Monmouth University – April 17, 2019



NONHUMAN RIGHTS PROJECT

Founded in 1996 by attorney Steven M. Wise, the NhRP works to secure legally recognized fundamental rights for nonhuman animals through litigation, advocacy, and education. Our mission is to change the legal status of at least some nonhuman animals from mere “things,” which lack the capacity to possess any legal right, to “persons,” who possess such fundamental rights as bodily integrity and bodily liberty and those other legal rights to which evolving standards of morality, scientific discovery, and human experience entitle them. Our current plaintiffs are members of species who have been scientifically proven to be autonomous: currently, great apes, elephants, dolphins, and whales.

Our Approach



NONHUMAN RIGHTS PROJECT

Welfare vs. Rights



Still prioritizes the interests of humans.



Prioritizes animals' own interests.



NONHUMAN RIGHTS PROJECT



Litigation

In December, 2013, the NhRP filed the world's first common law habeas corpus petition on behalf of a nonhuman animal when we filed on behalf of Tommy, a chimpanzee we found alone in a cage in a shed on a trailer lot in upstate New York.





Litigation

What is “common law habeas corpus”?

The “common law” is the law that judges make, as opposed to acts of legislatures, parliaments, or the executive.

At one time, the common law was the primary source of English law that judges used in deciding cases, and it still plays an important role in parts of the law.



Litigation

Habeas corpus is one of the oldest “tools” in the common law, dating to near the time of the Magna Carta.

Habeas corpus was created to protect the autonomy of “persons” and historically was used to contest private and unlawful detention (i.e., it could be invoked to get the state involved in setting an innocent “person” free, including by force if necessary).



Litigation

The key word is “person”: Who counts as one?

Why does it matter?



Litigation

The law generally categorizes the world crudely into “things” or “persons.” We can also understand this distinction as “objects” and “subjects.”

In the eyes of the law, all that “person” means is the capacity for legal rights.



Litigation

In the eyes of the law, “person” has never been and still is not a matter of biology; rather it’s a matter of public policy.

After hundreds of years of struggle, it is now the birthright of every human being to be a person.

For hundreds of years before that, corporations and ships, among other nonhuman entities, were already being treated as “persons.”



Litigation

A “person” can have a theoretically infinite number of rights, while a “thing” is incapable of having any rights, even those which protect her most fundamental interests.

Currently, virtually every nonhuman animal in the world is a legal thing.

How can a legal thing become a legal person?



Litigation

We build our cases around those principles that judges claim to believe in, including liberty, equality, and **autonomy**.

Autonomy is one of the most important principles in our court cases, and drives much of the scientific evidence we submit, including scientific affidavits from some of the world's leading experts in nonhuman animal cognition.



Litigation

Science shows beyond doubt that we are not the only species who have and value our autonomy.

A primary stated purpose of the law is to protect autonomy.

We argue autonomy is a *sufficient but not necessary* basis for personhood and rights.

Elephant Experts:

- Lucy Bates
- Richard Byrne
- Karen McComb
- Cynthia Moss
- Joyce Poole

Chimpanzee Experts:

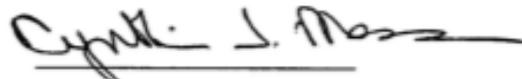
- James Anderson
- Christophe Boesch
- Mary Lee Jensvold
- William McGrew
- Sue Savage-Rumbaugh
- Jane Goodall
- Jennifer Fugate
- James King
- Tetsuro Matsuzawa
- Mathias Osvath

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 2008).

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.

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.


Cynthia J. Moss

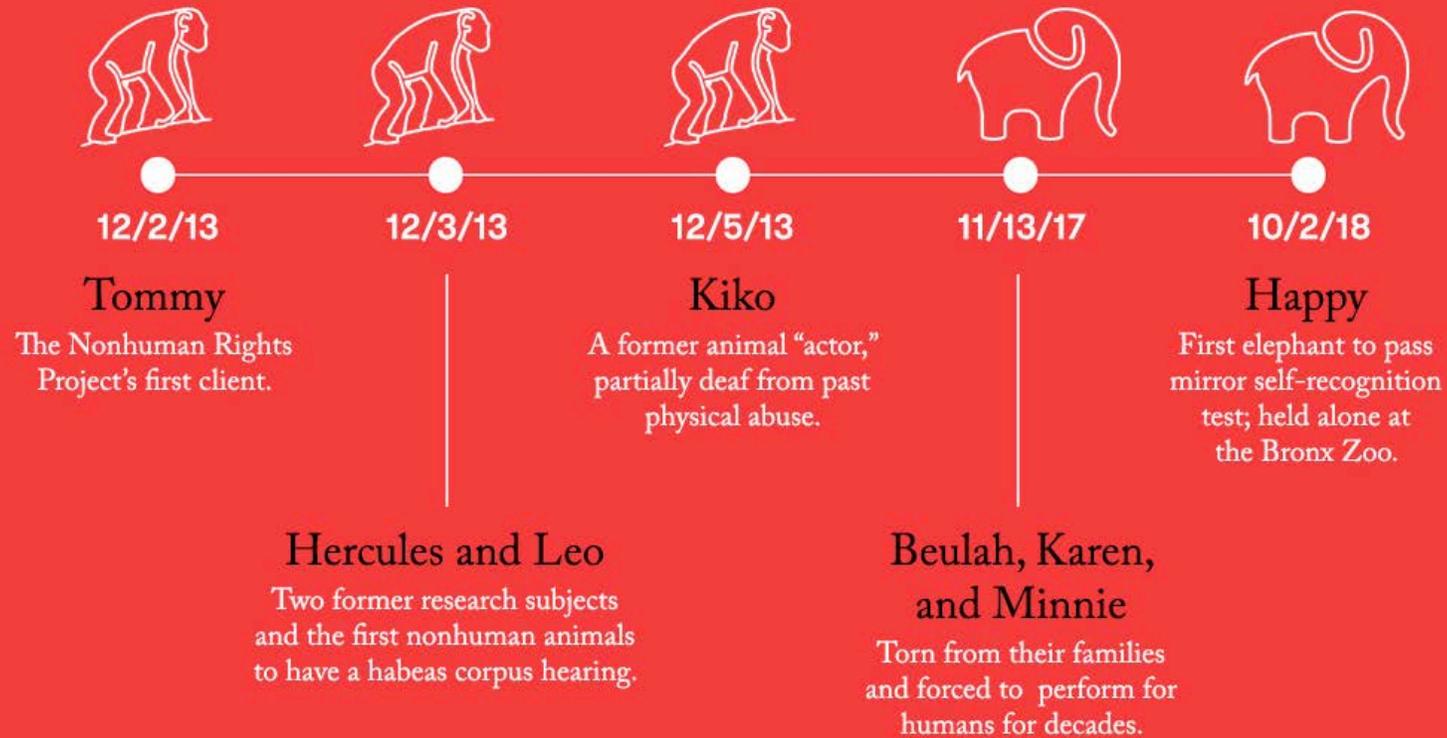
24. None of the many field staff, students and other researchers who have worked among the Gombe chimps for 55 years have ever been really harmed. We have been hit, stamped on and dragged during displays, but never received bite wounds. One male in particular, Frodo, was continually charging people and hitting them, and he sometimes pushed me over. It is clear, however, that the chimpanzees only intend to impress, to emphasize their superiority. They could so easily harm us badly, even kill us. On three separate occasions, when I was above a very steep drop, Frodo charged up but did not make contact. Our videographer, Bill Wallauer, reported four such occasions. It was very clear to us that Frodo understood what would have happened on those seven occasions. The same thing happened to me once with a different alpha male. They are clear examples of intention *not* to harm.

25. I have written about a male chimpanzee in captivity who rescued his human caretaker, Mark Cusano, with whom he had a close relationship, from a very bad attack from three adult females. Mark told me that the chimp had saved his life.

26. Based upon my research and expertise in this field, I support the NhRP's petition for a writ of habeas corpus on behalf of Tommy and the application of common law personhood to chimpanzees.


Jane Goodall, Ph.D, DBE

Our Clients





Hercules and Leo

Two former research subjects
and the first nonhuman animals
to have a habeas corpus hearing.



FILED: NEW YORK COUNTY CLERK 04/20/2015 12:50 PM

INDEX NO. 152736/2015

NYSCEF DOC. NO. 34

RECEIVED NYSCEF: 04/20/2015

At I.A.S Part 12 of the
Supreme Court of the State of
New York, held in and for the
County of New York, at the
Courthouse thereof, 80 Centre
Street, New York, NY, on the
20 day of April, 2015

BARBARA JAFFE
J.S.C.

PRESENT: HON. _____
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of a Proceeding under Article 70 of the CPLR
for a Writ of Habeas Corpus,

THE NONHUMAN RIGHTS PROJECT, INC., on
behalf of HERCULES and LEO,

Petitioner,
-against-

SAMUEL L. STANLEY JR., M.D., as President of
State University of New York at Stony Brook a/k/a
Stony Brook University and STATE UNIVERSITY
OF NEW YORK AT STONY BROOK a/k/a STONY
BROOK UNIVERSITY,

Respondents.

TO THE ABOVE NAMED RESPONDENTS:

PLEASE TAKE NOTICE, That upon the annexed Verified Petition of Elizabeth Stein,
Esq. and Steven M. Wise, Esq. (subject to *pro hac vice* admission), filed the 19th day of
March, 2015, the exhibits and affidavits attached thereto, the Memorandum of Law in
support of the Verified Petition, and upon all pleadings and proceedings herein, the Respondents

RECEIVED

APR 17 2015

PART 12

ORDER TO SHOW CAUSE &
WRIT OF HABEAS CORPUS

Index No.: 152 736/15





“ Isn't it incumbent on the judiciary to at least consider whether a class of beings might be granted a right or something short of the right under the habeas corpus law? ”

- Justice Barbara Jaffe



Hercules



Leo

PROJECT
CHIMPS

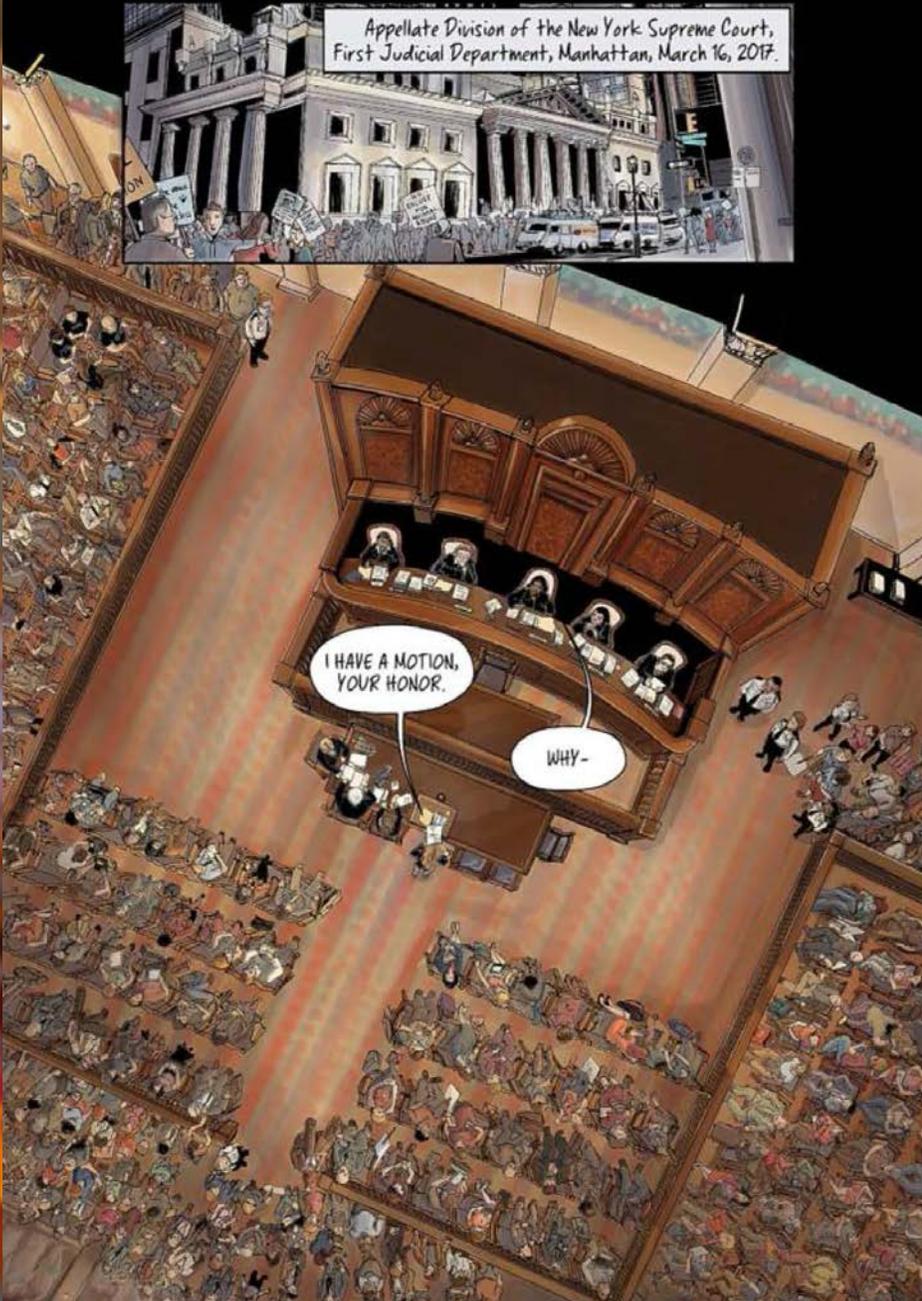


Tommy & Kiko

The Nonhuman Rights Project's first client. A former animal "actor," partially deaf from past physical abuse.

Tommy's first case began in December 2013 and ended in an appeal decision in 2014 stating that rights require a correlative ability to bear "social duties and responsibilities," and that chimpanzees lack it.

Kiko's first case began in December 2013 and ended in an appeal decision in 2015 stating that seeking transfer to sanctuary was not an appropriate use of habeas corpus since we were not seeking "immediate release."



On May 8, 2018, Judge Eugene Fahey of the New York Court of Appeals issued an opinion in *Nonhuman Rights Project v. Lavery*, which begins:

“The inadequacy of the law as a vehicle to address some of the most difficult ethical dilemmas is on display in this matter.”

State of New York
Court of Appeals

This opinion is uncorrected and subject to revision before publication in the New York Reports.

Motion No. 2018-268
In the Matter of Nonhuman Rights Project, Inc.,
on Behalf of Tommy,
Appellant,
v.
Patrick C. Lavery, &c., et al.,
Respondents.

In the Matter of Nonhuman Rights Project, Inc.,
on Behalf of Kiko,
Appellant,
v.
Carmen Presti et al.,
Respondents.

Decided May 8, 2018:
Motion for leave to appeal denied. Chief Judge DiFiore and Judges Rivera, Fahey, Garcia and Wilson concur, Judge Fahey in an opinion. Judges Stein and Feinman took no part.

FAHEY, J. (concurring):

The inadequacy of the law as a vehicle to address some of our most difficult ethical dilemmas is on display in this matter.

In these habeas corpus proceedings brought by petitioner on behalf of Tommy and Kiko, two captive chimpanzees, from an order of the Appellate Division, First Department Supreme Court declining to sign orders to show cause for relief. The adult chimpanzees, according to the habeas their owners to small cages in a warehouse and a cement area, respectively.

If this Court were to grant petitioner leave to appear to affirm pursuant to CPLR 7003 (b) (Successive petitions in the Court's decision to deny leave.

However, I write to underscore that denial of leave merits of petitioner's claims. The question will have to non-human animal be entitled to release from confinement corpus? Should such a being be treated as a person or as

"A person (legally imprisoned or otherwise restricted or one acting on his [or her] behalf . . . may petition writ corpus to inquire into the cause of such detention and for The lower courts in this appeal and related cases, it unavailable to challenge the legality of the chimpanzee instance or dictionary definitions. The habeas corpus and dictionaries instruct us that the meaning of the word is

However, I write to underscore that denial of leave to appeal is not a decision on the merits of petitioner's claims. The question will have to be addressed eventually. Can a non-human animal be entitled to release from confinement through the writ of habeas corpus? Should such a being be treated as a person or as property, in essence a thing?

recognized by law as having most of the rights and duties Dictionary (10th ed 2014), person (3): <http://www.oed.com> [last accessed May 4, 2018], per corporate body . . . recognized by the law as having certain

The Appellate Division then reasoned that chimpanzees lack "the capacity or ability . . . to bear legal duties, for their actions" (*Matter of Nonhuman Rights Project*, 114 Dept 1077) ([see also](http://www.courts.state.ny.us/appellate/114%20Dept%201077) *Paragics et al. v. Nonhuman Rights*, 148, 152 [3d Dept 2014], <http://www.courts.state.ny.us/appellate/148%20Dept%2014>); *Paragics et al. v. Nonhuman Rights*, 151-156 [2d ed 2004]). Petitioner and amici law professors Law and Samuel Wiseman question this assumption. Even nonhuman animals cannot bear duties, the same is true human adults, yet to one would suppose that it is improper on behalf of one's infant child ([see](http://www.courts.state.ny.us/appellate/151%20Dept%2014) *Paragics et al. v. Nonhuman Rights*, 151-156 [2d ed 2004]). In short, being a "moral agent" who can freely choose to act as morality requires is not a necessary condition of being wronged and may have the right to redress wrongs ([see](http://www.courts.state.ny.us/appellate/151-156), *for Animal Rights 151-156* [2d ed 2004]).

227 AD2d 969 [4th Dept 1996]). In short, being a "moral agent" who can freely choose to act as morality requires is not a necessary condition of being a "moral patient" who can be wronged and may have the right to redress wrongs (see generally Tom Regan, *The Case for Animal Rights* 151-156 [2d ed 2004]).

Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery, 31 N.Y.3d 1054 (May 8, 2018) ("*Tommy*") (Eugene Fahey, J., concurring)

The Appellate Division's conclusion that a chimpanzee cannot be considered a "person" and is not entitled to habeas relief is in fact based on nothing more than the premise that a chimpanzee is not a member of the human species (see Nonhuman Rights Project, Inc., 152 AD3d at 78 [stating that petitioner's argument "that the ability to

Boumediene v Bush, 553 US 723 [2008]), but, in elevating our species, we should not lower the status of other highly intelligent species.

Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery,
31 N.Y.3d 1054 (May 8, 2018) ("*Tommy*") (Eugene Fahey, J., concurring)

through sign language. Chimpanzees make tools to catch insects; they recognize themselves in mirrors, photographs, and television images; they imitate others; they exhibit compassion and depression when a community member dies; they even display a sense of humor. Moreover, the amici philosophers with expertise in animal ethics and related areas draw our attention to recent evidence that chimpanzees demonstrate autonomy by self-initiating intentional, adequately informed actions, free of controlling influences (see Tom L. Beauchamp, Victoria Wobber, Autonomy in chimpanzees, 35 Theoretical Medicine and Bioethics 117 [2014]; see generally Jane Goodall, The Chimpanzees of Gombe: Patterns of Behavior 15-42 [1986]).

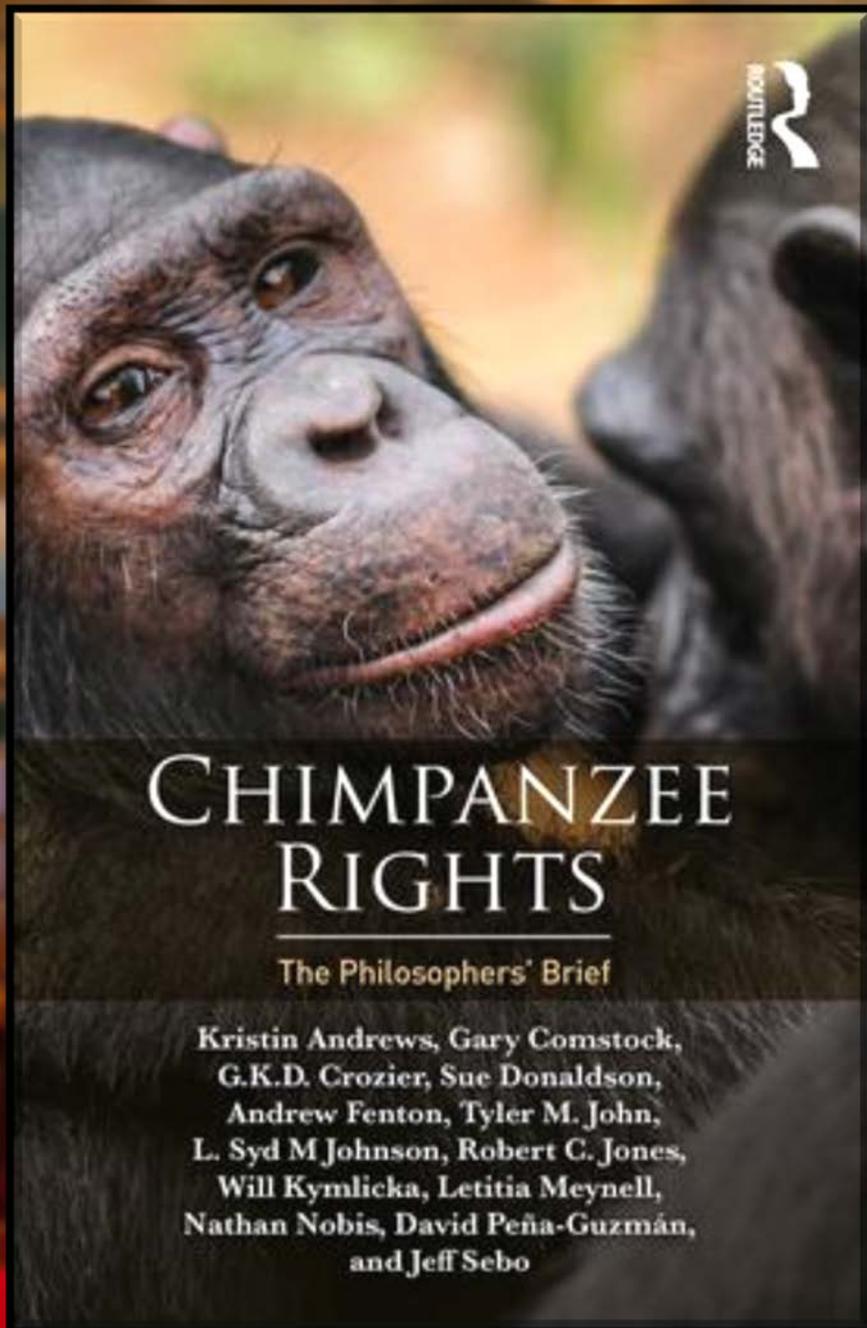
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“We write as a diverse group of philosophers who share the conviction that if the concept of ‘personhood’ is being employed by the courts to determine whether to extend or deny the writs of habeas corpus, they should employ a consistent and reasonable definition of ‘personhood’ and ‘persons.’ We believe that the previous judgements offered by the Third, Fourth, and First Departments of the Appellate Division of the New York Supreme Court applied inconsistent definitions of ‘personhood.’”

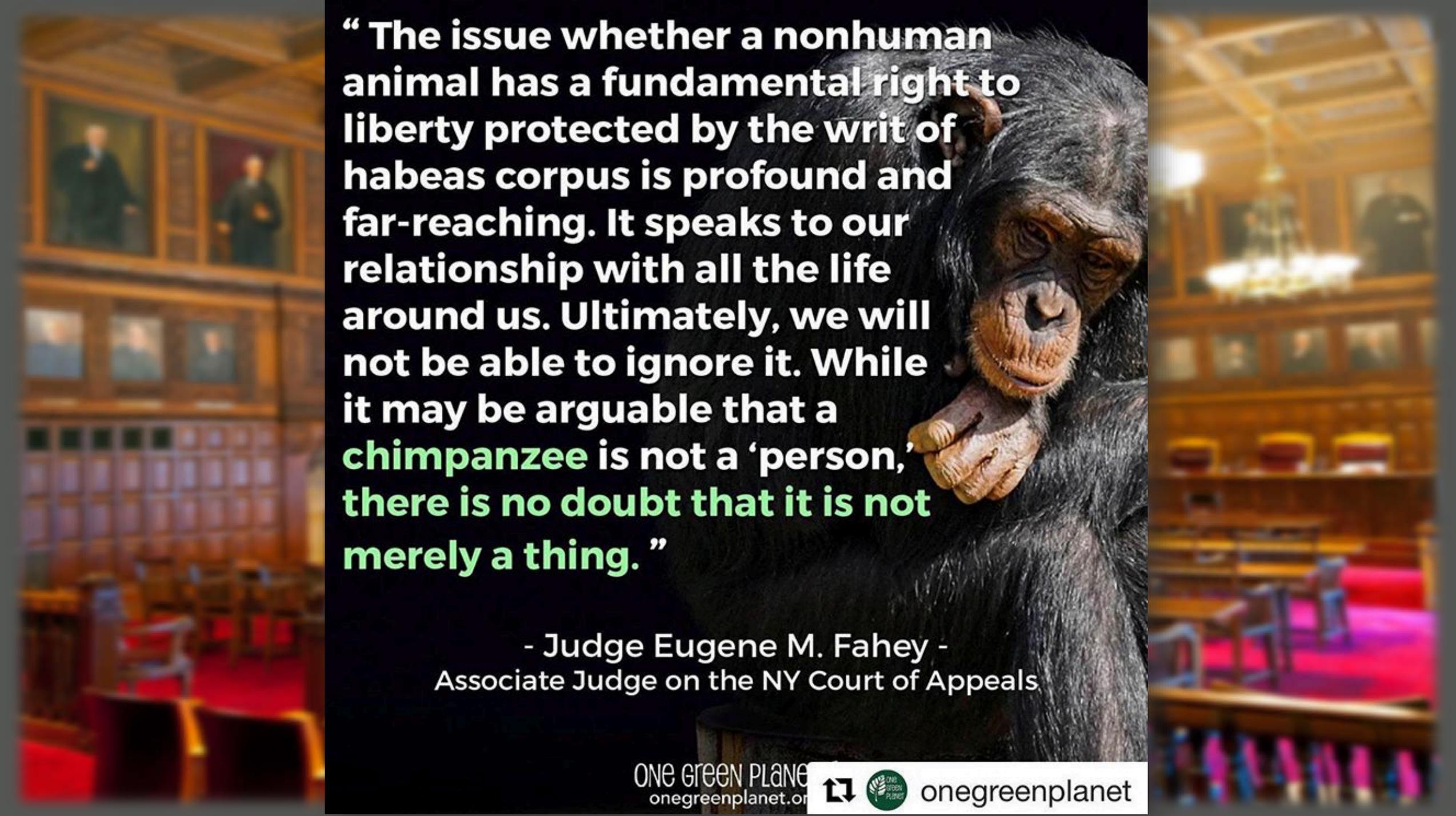
Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention. 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. Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect (see generally Regan, *The Case for Animal Rights* 248-250).

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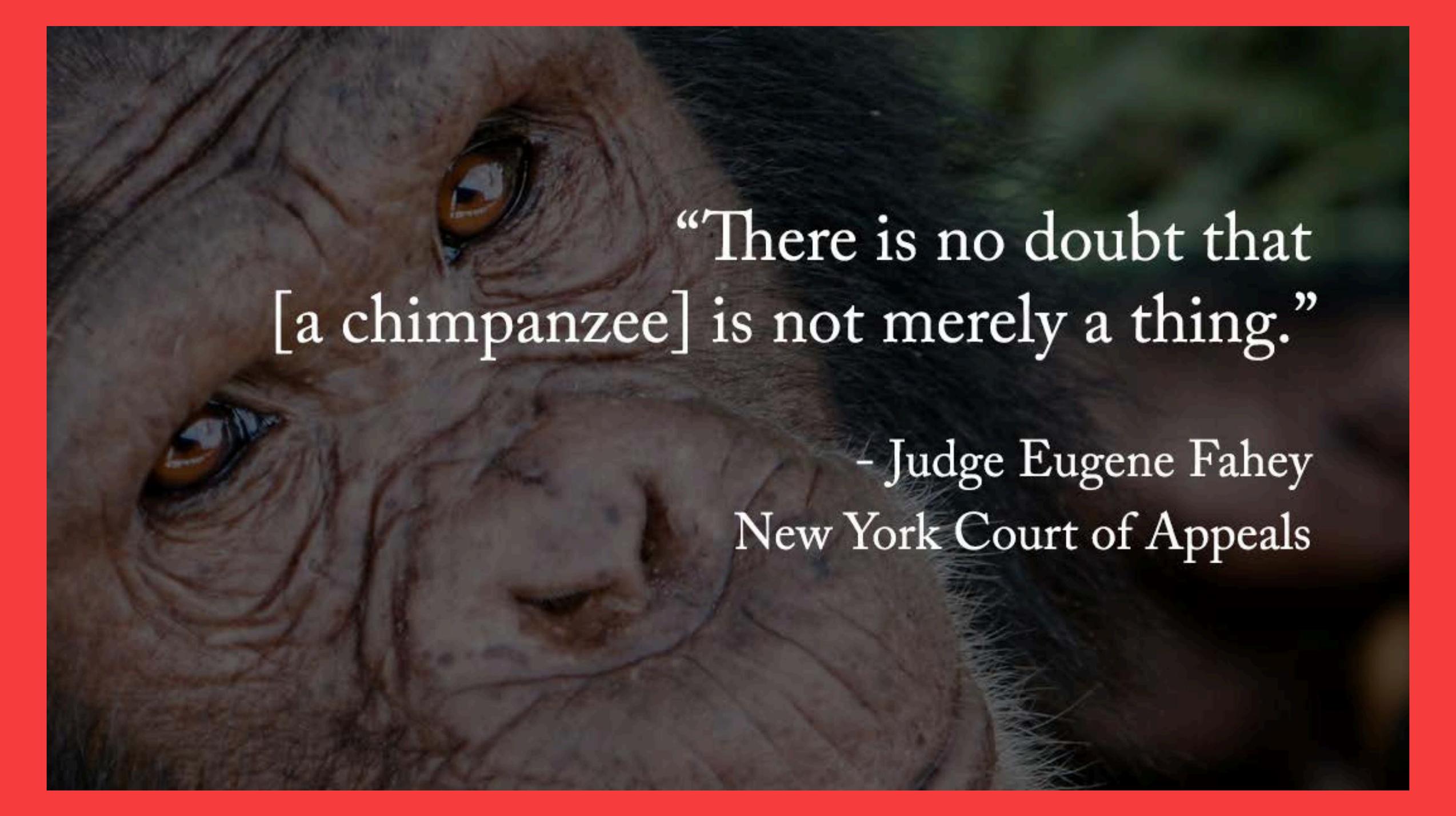
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“ The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of habeas corpus is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it. While it may be arguable that a chimpanzee is not a ‘person,’ there is no doubt that it is not merely a thing. ”

- Judge Eugene M. Fahey -
Associate Judge on the NY Court of Appeals

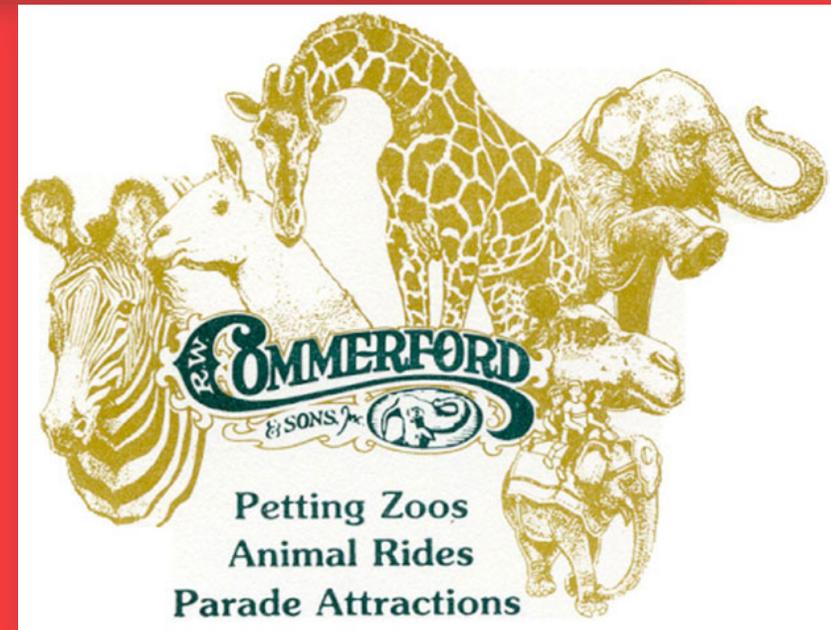
A close-up photograph of a chimpanzee's face, showing its eyes, nose, and mouth. The chimpanzee has a thoughtful or somber expression. The image is overlaid with white text. The background is a solid red color.

“There is no doubt that
[a chimpanzee] is not merely a thing.”

- Judge Eugene Fahey
New York Court of Appeals

Beulah, Karen, and Minnie

Torn from their families
and forced to perform for
humans for decades.

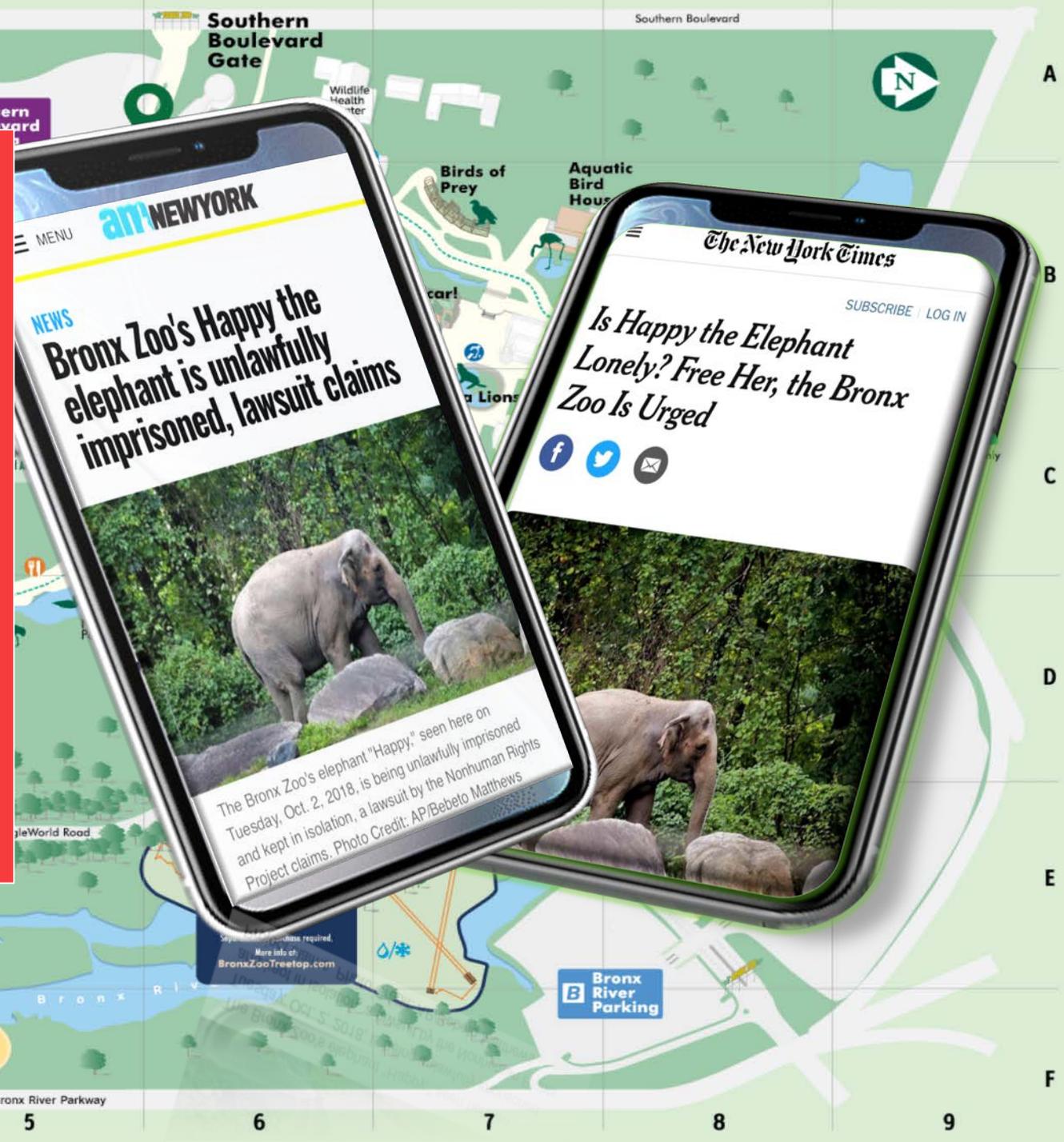


Happy

First elephant to pass mirror self-recognition test; held alone at the Bronx Zoo.



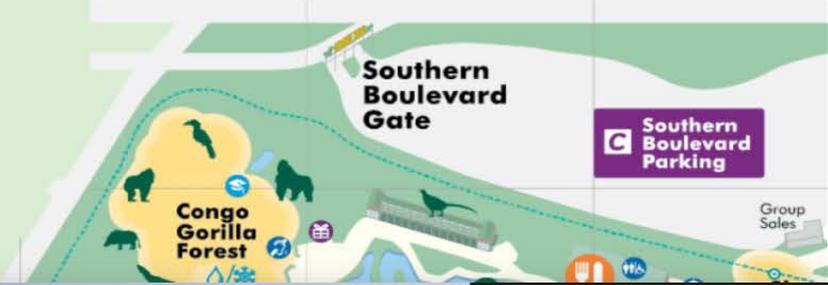
Armed with Judge Fahey's concurring opinion, as well as another recent case from an upstate New York appellate court referring to the personhood of nonhuman animals as a matter of "common knowledge" (*People v. Graves*), the NhRP filed a habeas petition for Happy on October 2, 2018.



JIM BREHENY

DIRECTOR OF THE BRONX ZOO

“The Nonhuman Rights Project is exploiting the Bronx Zoo elephants to advance their own failing cause in the courts as they put forth ludicrous legal arguments and lies about our elephants, facilities and staff.”



I HAVE THE RIGHT
 to liberty, to socialize with members of my own species, to live in an environment similar to my natural habitat



Elephants are autonomous beings. It's time to recognize their fundamental rights.

#RumbleForRights
 #NonhumanRights



NONHUMAN RIGHTS PROJECT



NhRP client Happy, an Asian elephant, housed at the Bronx Zoo





Legislation

We will launch a campaign for the world's first nonhuman animal rights ordinance in a major US city in 2019.

It will seek rights to bodily liberty and bodily integrity for chimpanzees and elephants, much the same we are seeking through our lawsuits.

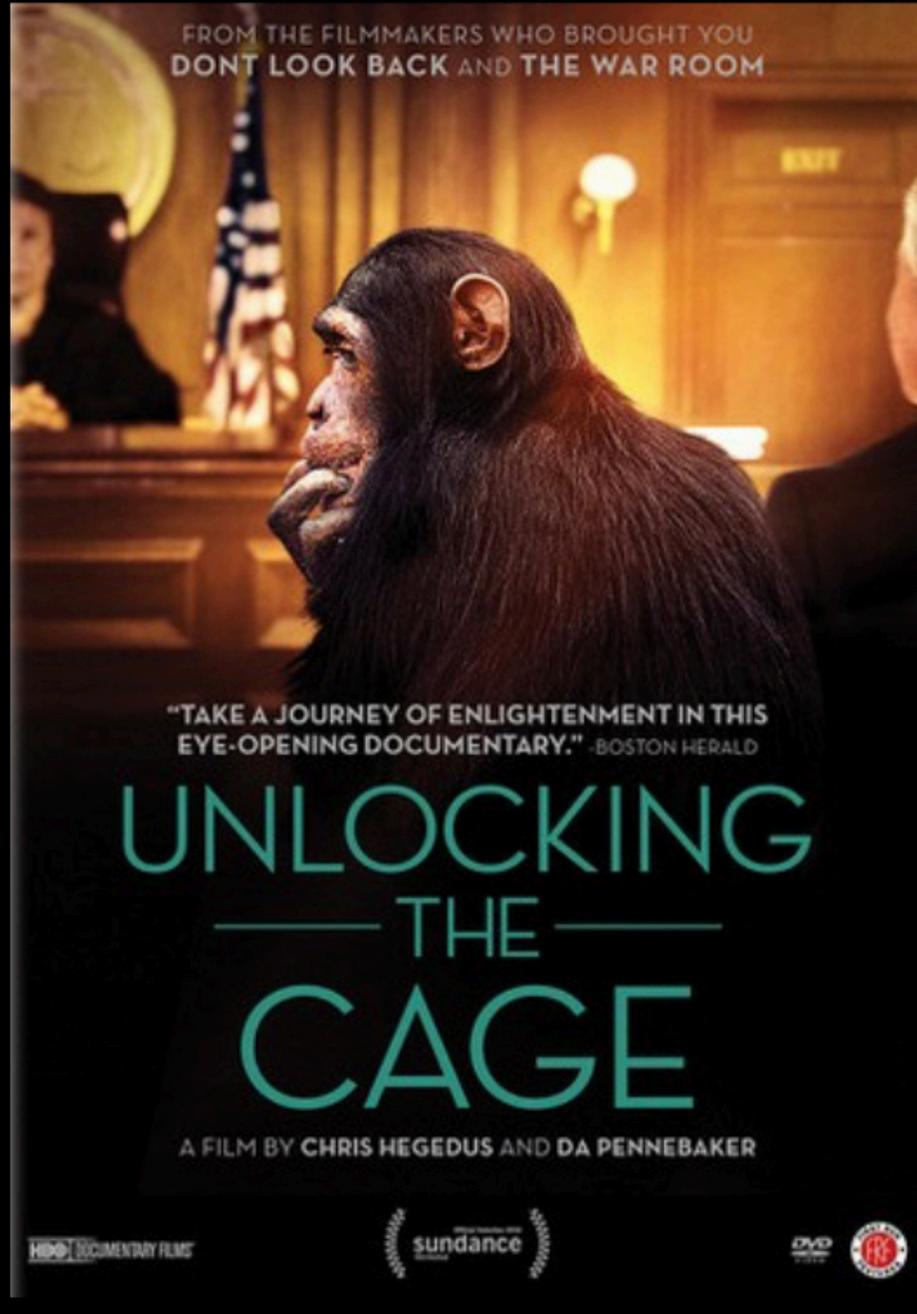
THE POWER OF MUNICIPALITIES TO ENACT LEGISLATION GRANTING LEGAL RIGHTS TO NONHUMAN ANIMALS PURSUANT TO HOME RULE

Steven M. Wise, Elizabeth Stein, Monica Miller & Sarah Stone[†]

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[†] The co-authors are staff attorneys for the Nonhuman Rights Project, the mission of which is to attain fundamental legal rights for at least some nonhuman animals through litigation and legislation and whose work is the subject of the 2016 HBO Documentary Films presentation of the Pennebaker Hegedus Films production, *Unlocking the Cage*. They would like to acknowledge the following individuals who helped bring this article to fruition over several years: Kevin Schneider, Esq., Ryan Gordon, Esq., Natalie Prosin, Esq., and Professor Jessica Rubin.



Education

Our work is the subject of the 2016 Pennebaker Hegedus/HBO documentary film *Unlocking the Cage*, which has been seen by millions around the world.

“How should we relate to beings who look into mirrors and see themselves as individuals, who mourn companions and may die of grief, who have a consciousness of ‘self?’ Don’t they deserve to be treated with the same sort of consideration we accord to other highly sensitive beings: ourselves?”

Jane Goodall



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www.nonhumanrights.org

Kindly consider joining our email list and making a donation to support
our work!

kschneider@nonhumanrights.org
[@nonhumanlawyer](https://www.instagram.com/nonhumanlawyer)