

NEW YORK STATE
SUPREME COURT

COUNTY OF FULTON

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

Petitioners,

-against- Index No. 02051

PATRICK C. LAVERY, Individually and as an Officer of
Circle L Trailer Sales, Inc., DIANE LAVERY and CIRCLE L
TRAILER SALES, INC.,
Respondents.

Montgomery County Courthouse
Fonda, New York 12068
December 3, 2013

B-E-F-O-R-E:

HON. JOSEPH SISE

Supreme Court Justice

A-P-P-E-A-R-A-N-C-E-S:

ELIZABETH STEIN, ESQ.
5 Dunhill Road
New Hyde Park, New York 11040
Attorneys for the Petitioners

STEVEN M. WISE, ESQ.

THE NONHUMAN RIGHTS PROJECT

5195 NW 112th Terrace

Coral Springs, FL 33076

NATALIE K. PROSIN

NONHUMAN RIGHTS PROJECT, Executive Director

TIMOTHY RILEY

CHIEF COURT CLERK

Karen L. Kolterman, C.S.R.

Official Court Reporter

(518) 853-8377

2

1 Writ of Habeas Corpus (12/3/13)

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: This is in the matter of an

4 application for an Order to Show Cause, a petition

5 made under Article 70 of the CPLR seeking a writ

6 of habeas corpus for a nonhuman.

7 Can I have the appearance of counsel for the

8 record?

9 MS. STEIN: Yes. Elizabeth Stein.

10 THE COURT: Good afternoon, Ms. Stein. You

11 are duly admitted in New York state?

12 MS. STEIN: Yes, I am.

13 THE COURT: And I know that from your
14 submission you are from Hyde Park.

15 MS. STEIN: New Hyde Park.

16 THE COURT: New Hyde Park.

17 MS. STEIN: Yes, thank you, Your Honor.

18 THE COURT: And there's another attorney
19 here.

20 MR. WISE: I'm Steven Wise.

21 THE COURT: Admitted in New York?

22 MR. WISE: I'm admitted in Florida, but I'm
23 not admitted in New York.

24 THE COURT: Sometime when you come, you have
25 to visit the North Country in the summer.

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 MR. WISE: And I think Attorney Stein has a

3 letter to request my being admitted pro hac vice

4 for the purpose of this suit.

5 MS. STEIN: Yes. I have a motion, Your

6 Honor.

7 THE COURT: Why don't you make your motion?

8 MS. STEIN: Yes. I have known attorney

9 Steven Wise for some years now.

10 THE COURT: How many years?

11 MS. STEIN: I've known him for five years,

12 and I know of his work for many years.

13 THE COURT: Legal work?

14 MS. STEIN: His legal work, yes.

15 THE COURT: In what fields?

16 MS. STEIN: In the field of animal welfare

17 and animal rights.

18 THE COURT: Litigation?

19 MS. STEIN: Yes. He is a litigator, Your

20 Honor.

21 THE COURT: My question is to qualify the

22 statement you made where you've known of his works

23 in animal rights.

24 MS. STEIN: Yes.

25 THE COURT: And I ask, in litigation?

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

4

1 Writ of Habeas Corpus (12/3/13)

2 MS. STEIN: More so -- no, Your Honor. More
3 so in his discussion of legal personhood of
4 nonhuman animals.

5 THE COURT: Well, this is a motion, I take
6 it, to have Mr. Wise be admitted pro hac vice for
7 the purpose of litigation of this petition; is
8 that correct?

9 MS. STEIN: Yes.

10 THE COURT: That's why I ask that question.
11 Because to be friends and to share legal
12 discussions is one thing and may be relevant
13 material. That's why I ask. Do you know of his
14 representation as a litigator?

15 MS. STEIN: Yes, Your Honor.

16 THE COURT: How so?

17 MS. STEIN: He has a wonderful reputation as

18 a litigator from his -- well, one of his famous

19 decisions in...

20 MR. WISE: Would it help, Your Honor, if I

21 may say something?

22 THE COURT: Well, she's making the motion,

23 sir.

24 We're off the record.

25 (Discussion held off the record; record

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 resumed.)

3 THE COURT: Back on the record.

4 MS. STEIN: Thank you so much.

5 Yes, I am fully aware of Attorney Wise's

6 reputation in the field of litigation. I have

7 followed his different court rulings -- his
8 different court decisions and the various
9 applications that he has made.

10 I do have a letter for Your Honor that fully
11 elaborates Mr. Wise's credentials; and I -- having
12 been a member of the New York State Bar since
13 1981, I would recommend that Attorney Wise be
14 admitted pro hac vice in these proceedings.

15 THE COURT: All right. And that's your wish,
16 Mr. Wise?

17 MR. WISE: It is, Your Honor.

18 THE COURT: Okay. The Court grants that for
19 the purpose of this application for today only
20 that Mr. Wise is admitted pro hac vice for the
21 purpose of seeking an order from this Court in
22 this matter of the Nonhuman Rights Project on
23 behalf of Tommy vs. Patrick C. Lavery,
24 Individually, and as an Officer of Circle L
25 Trailer Sales, Inc., Diane Lavery and Circle L

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 Trailer Sales, Inc., this index number, 2051.

3 Who would like to address the Court?

4 MR. WISE: I would like to.

5 THE COURT: Okay. Mr. Wise, why is it that
6 you choose to bring a petition before this Court
7 on behalf of an animal under Article 70? Is that
8 the only right of redress you have in New York
9 state for what you are seeking?

10 MR. WISE: Yes, it is, Your Honor. We are
11 bringing it because -- a writ of habeas corpus
12 because Tommy is -- we are arguing that Tommy
13 is --

14 THE COURT: For the record, Tommy is what?

15 MR. WISE: Is a chimpanzee, Your Honor.

16 And --

17 THE COURT: Because I didn't make that clear
18 before.

19 MR. WISE: We are claiming that Tommy, number

20 one --

21 THE COURT: Let me ask you this -- and I

22 interrupted you not as an indication that you're

23 not going to have a chance to make a record, but I

24 want you to answer some questions I have.

25 Do you claim that the treatment of Tommy is

Karen L. Kolterman, C.S.R.

Official Court Reporter

(518) 853-8377

7

1 Writ of Habeas Corpus (12/3/13)

2 not appropriate, Tommy, the chimpanzee?

3 MR. WISE: We are not claiming that it is

4 illegal. We are claiming that it is inappropriate

5 for a chimpanzee, but we're not claiming that it

6 violates any rules, regulations or statutes that

7 we are aware of, because Tommy is seen as a legal

8 thing and you can treat him in ways that if he

9 were a legal person, which we argue he already is

10 under New York State statutory law and he should
11 be under New York common law, then indeed he is an
12 autonomous being.

13 THE COURT: Before we get to your legal
14 argument on why you think Article 70 applies to a
15 chimpanzee, my question is, is there any other
16 form of redress, i.e., are you claiming -- and I'm
17 assuming you have a claim that he's being
18 mistreated for the sophistication of the animal
19 that he is, a chimpanzee; if that were so, isn't
20 there a different way for you to petition the
21 Court for this relief other than attempting to
22 have the Supreme Court trial level to enlarge the
23 definition of human-being under Article 70 to
24 include an animal, a chimpanzee?

25 MR. WISE: We are most definitely not asking

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 the Court to redefine the term "human-being."

3 THE COURT: Then the courts have already in
4 New York found that a chimpanzee is subject -- can
5 be subject to a writ of habeas corpus?

6 MR. WISE: No, there hasn't been a ruling on
7 that.

8 THE COURT: All right. That's what I mean by
9 seeking this enhancement or enlargement of the
10 definition of who may apply for -- who or what,
11 for writ of habeas corpus. Isn't there other
12 forms of redress that you can move for?

13 MR. WISE: Perhaps.

14 MS. STEIN: May I?

15 THE COURT: Sure. Of course.

16 MS. STEIN: Your Honor, unfortunately, I
17 believe the answer to be no, that under the --

18 THE COURT: Let me ask you this. Are you
19 saying that you don't have grounds that he's being
20 mistreated?

21 MS. STEIN: No, because the --

22 THE COURT: The answer is you don't?

23 MS. STEIN: The --

24 THE COURT: Explain what you mean by "No."

25 MS. STEIN: Okay. What I would like to

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 explain is the notion of mistreatment, because the
3 way the --

4 THE COURT: Okay. I still don't know what
5 you mean yet in your initial answer of "No," so
6 let me just ask it in a better way.

7 MS. STEIN: Sure.

8 THE COURT: Do you have grounds that you can
9 allege that this chimpanzee is being mistreated?

10 MS. STEIN: No. What I --

11 THE COURT: It's not dispositive of the
12 motion; I just want to know what your --

13 MS. STEIN: Yes.

14 THE COURT: So you do have grounds?

15 MS. STEIN: What we do know is that Tommy --

16 THE COURT: You do have grounds?

17 Off the record.

18 (Discussion held off the record; record
19 resumed.)

20 THE COURT: Back on the record.

21 Let the record indicate that off the record I
22 explained to counsel that my questions were not
23 aimed to be dispositive of the issue, that I'm
24 trying to clarify what the issue is for the Court
25 so that I am fully aware of the legal grounds and

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)
2 the legal arguments on why you seek this redress
3 under Article 70.

4 Okay. Please respond as you see fit.

5 MR. WISE: Thank you, Your Honor.

6 We brought a writ of habeas corpus because a
7 writ of habeas corpus is aimed at the denial of a
8 legal person, not necessarily a human-being, but a
9 legal person's right to bodily liberty.

10 THE COURT: Do you have any authority under
11 New York law or federal law that a legal person
12 can be defined as chimpanzee or a chimpanzee can
13 fit within that definition? Do you have any
14 precedent?

15 MR. WISE: We do.

16 THE COURT: What's the name of the case?

17 MR. WISE: We cite cases in which various
18 nonhumans have been held to be legal persons.
19 Some of them are New York --

20 THE COURT: You're talking about habeas
21 corpus cases or no?

22 MR. WISE: No. There's not a habeas corpus
23 case on that.

24 THE COURT: In what type of case has a
25 nonhuman been held as a human-being?

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

11

1 Writ of Habeas Corpus (12/3/13)

2 MR. WISE: Well, aside from the average,

3 which is ships and corporations and partnerships

4 and states, there are also cases in other common

5 law jurisdictions. There is an Indian Supreme

6 Court case where the holy books of the Sikhs have

7 been held to be a legal person. There's another

8 Indian case with Hindu idols. There was a treaty

9 last year between the Crown of New Zealand and the

10 Maori Tribes in which a river was held to be a

11 legal person.

12 A legal person is not synonymous with a

13 human-being, as we talked about in our memorandum.

14 A legal person is an entity that the judicial

15 system here -- we're asking this Court to begin to

16 consider it, that the judicial system considers is

17 important enough so that it's visible and its
18 interest, whether it's a river or a Hindu idol or
19 a holy book or corporation or -- and I must say,
20 this Court also -- not this Court but this state
21 was a leader in holding blacks in the antebellum
22 north before the Civil War were also legal persons
23 who were subject to writs of habeas corpus. The
24 Lemmon vs. People case is probably the most famous
25 and one of the strongest, most powerful statements

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

12

1 Writ of Habeas Corpus (12/3/13)
2 in the United States of holding a black person who
3 was a slave when he was taken into here, into New
4 York, and he was -- he came -- they came out
5 persons.

6 These were based on the famous case of
7 Somerset vs. Stewart, which was 1772 England, a

8 common law writ of habeas corpus case which was
9 absorbed into the common law of New York when New
10 York became a state. And that was for the first
11 time you had a black slave who was seen as a legal
12 thing, was able to come into court, went in front
13 of --

14 THE COURT: Court's not even going to
15 consider that as synonymous, so you'll have to use
16 your other cases. I'm just telling you, the Court
17 will reject that argument, the argument that the
18 cases involving human-beings who were slaves in
19 the 1800s as synonymous with a chimpanzee. I
20 reject it.

21 MR. WISE: We're not making that --

22 THE COURT: However, I don't reject your
23 ability to argue further in this regard.

24 MR. WISE: We're not comparing chimps to
25 blacks. We are not at all. What we're doing is

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)
2 saying there's been a whole spectrum of legal
3 things, and that includes rivers and idols and
4 corporations and black slaves. And they have been
5 able to in the appropriate cases argue that they
6 are indeed legal persons, that their interests
7 should be acknowledged and they should have the
8 capacity to have certain kinds of rights.

9 Now, we argue, Judge, and I think this is
10 very important, number one -- there's two reasons
11 why Tommy fits that. Number one, the Pet Trust
12 Act in New York specifically says that an animal
13 like Tommy can be the beneficiary of a trust. We
14 have indeed set up a trust for Tommy. There has
15 been -- the only case in New York under the Pet
16 Trust statute indeed held that --

17 THE COURT: This is all in your papers,
18 correct?

19 MR. WISE: Yup.

20 THE COURT: Let's turn to the reason why

21 you're here. What is it about Tommy and his
22 treatment that causes you to seek this writ of
23 habeas corpus?

24 MR. WISE: Thank you very much for asking.

25 Your Honor, in March of this year, we decided

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

14

1 Writ of Habeas Corpus (12/3/13)
2 that we wanted to file a writ of habeas corpus on
3 behalf of two chimpanzees. In April --

4 THE COURT: "We" as in --

5 MR. WISE: "We," the Nonhuman Rights Project.

6 Both of them are dead. We then were
7 concerned about this and we identified all five
8 chimpanzees who were alive in the state of New
9 York. One of them have died. Three of the seven
10 chimpanzees in the state of New York are now dead
11 in the last seven months. We are now filing a

12 lawsuit here on behalf of Tommy, we're filing
13 another lawsuit in Niagara Supreme Court on behalf
14 of Peto, and we're filing another lawsuit in the
15 Supreme Court in Suffolk County on behalf of
16 Hercules and Leo.

17 We believe that all chimpanzees in the state
18 of New York should be declared legal persons, that
19 there is ample precedent to do that. They already
20 are legal persons under the Pet Trust statute.
21 And if not -- or in addition to it, under the
22 common law, they ought to be. They're fully
23 autonomous, extraordinarily complex beings, and
24 their autonomy, their ability to self-determine,
25 ability to make choices --

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)
2 THE COURT: Is that why you're making this

3 argument, because the level of sophistication of a
4 chimpanzee versus some other animal? Is that what
5 your argument rests on?

6 MR. WISE: There are two arguments.

7 THE COURT: No, no, no. The argument you
8 just made.

9 MR. WISE: That part rests not on the general
10 cognitive sophistication but on the fact that
11 chimpanzees possess the autonomy that New York
12 courts highly value in human-beings.

13 THE COURT: But you're not making your
14 argument and differentiating the chimpanzee from
15 other animals, are you?

16 MR. WISE: We are, Your Honor.

17 THE COURT: So it does matter, the cognitive
18 ability of a chimpanzee, in your argument.

19 MR. WISE: Absolutely. My --

20 THE COURT: It would be important for you to
21 understand what my questions are.

22 MR. WISE: Sometimes I don't get it, so --

23 THE COURT: Stop. I'll give you a full

24 opportunity to be heard, but this is not a
25 discussion.

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

16

1 Writ of Habeas Corpus (12/3/13)

2 My question to you is you're differentiating
3 chimpanzees from other animals. It's key to your
4 argument. Right?

5 MR. WISE: We are differentiating.

6 THE COURT: A chimpanzee from a dog, from a
7 horse, from a zebra, from --

8 MR. WISE: But you --

9 THE COURT: You haven't heard what I'm
10 asking. You're doing it again.

11 MR. WISE: I apologize.

12 THE COURT: Sit down. Sit down, please.

13 MR. WISE: Yes, sir.

14 THE COURT: Here's my question. Perhaps you

15 won't need to respond when you're sitting and then
16 you can stand when you want to respond.
17 It strikes me that you're making an argument
18 and part of your argument - and I see that
19 Ms. Stein and your associate are shaking their
20 heads - that it's the level of sophistication of
21 the chimpanzee that is important here, and so I am
22 asking to flush out that issue as opposed to other
23 animals. It's important as part of your argument
24 that a chimpanzee is more sophisticated than other
25 animals. And I'm asking, is that important to

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

17

1 Writ of Habeas Corpus (12/3/13)
2 your argument? Because it sounds like that's what
3 you're saying.
4 MR. WISE: We are saying that but not in a
5 general manner of sophistication. It's because

6 they are autonomous.

7 THE COURT: Says who? And I say that
8 because -- I'm asking the question because that's
9 beyond your ken and beyond my ken. It's beyond
10 the ken of the normal fact-finder. You're stating
11 something that only expert testimony could supply.

12 MS. STEIN: Yes, Your Honor. That is why, in
13 fact, we have the affidavits attached to the
14 petition and the memorandum of law from the most
15 renown primatologists in the world. They are from
16 Sweden, Germany, England, Scotland, Japan and five
17 of them within the Continental United States.

18 THE COURT: So, what is it that you are
19 asking the Court to do in terms of Article 70,
20 make an exception for chimpanzees only?

21 MR. WISE: We are asking only that --

22 THE COURT: You understand the question,
23 right, the legal reasoning or the legal conundrum
24 the Court is in based upon your argument?

25 MR. WISE: We are -- in a specific legal way,

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 we're simply asking that you issue the writ of
3 habeas corpus on behalf of Tommy; in a general
4 way, on behalf of chimpanzees.

5 THE COURT: You're asking the Court to
6 recognize chimpanzees over other animals and
7 things as a person. That's what you're asking me
8 to do --

9 MR. WISE: That's --

10 THE COURT: -- specifically for Tommy.

11 MR. WISE: Partly so, Your Honor. We are
12 asking that -- we are saying that the reason that
13 this Court should do that is Tommy, as these
14 experts pointed out, is autonomous and that a
15 chimpanzee, a gorilla and an orangutan, a bonobo,
16 those are all the great apes, they are almost
17 certainly as autonomous as Tommy is. But we don't
18 know that. We haven't proven that. What we have

19 proven clearly is that Tommy and chimpanzees are
20 autonomous, and that's as far as we want to go.

21 So, we are asking that this Court recognize
22 that chimpanzees have what it takes for legal
23 personhood within the meaning of the habeas corpus
24 statute, which is autonomy, self-determination,
25 self-agency, the ability to choose how to live

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

19

1 Writ of Habeas Corpus (12/3/13)
2 their lives. That's what we're asking.

3 THE COURT: All right. Anything further?

4 MR. WISE: We have so much, Your Honor. We
5 have a lot that we have to say, but I'm interested
6 in specifically addressing any other questions you
7 may have.

8 We're asking that you issue the writ of
9 habeas corpus, too, so that we can flush out what

10 we think are very complex legally, interesting and
11 significant issues; and that specifically we are
12 concerned that Tommy is going to die and the other
13 chimpanzees are going to die, like the three
14 chimpanzees have died in the last seven months.

15 THE COURT: I think before we reach the
16 merits -- and when I say the "merits," the merits
17 of whether or not Tommy is being mistreated as a
18 highly sophisticated animal, you first would have
19 to meet the threshold that Article 70 should apply
20 to a chimpanzee.

21 And so when I say "anything further,"
22 anything further on the argument of whether or not
23 this Court should recognize Article 70 to include
24 chimpanzee, specifically this chimpanzee, Tommy,
25 as part of a protected class that can seek a writ

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 of habeas corpus? Anything further in that
3 regard?

4 MR. WISE: I do, Your Honor.

5 So, the writ of habeas corpus says that
6 anyone may seek a writ of habeas corpus when a
7 person is being imprisoned. It does not say
8 "human-being." It says "person." Part of our
9 memorandum specifically points out that
10 "human-being" is not a synonym for "person,"
11 "person" is not a synonym for "human-being."

12 Throughout history, which we clearly pointed
13 out, there have been human-beings who have not
14 been legal persons for purposes of habeas corpus
15 and there have been nonhuman-beings who are legal
16 persons for purposes of writs of habeas corpus.

17 There is some requirement other than being human,
18 though we do believe and we would argue that -- at
19 least in the year 2013, that being a member of the
20 species homosapiens is indeed a sufficient
21 condition for personhood, but there are other

22 sufficient conditions for personhood, as well; and
23 we would argue that based upon New York law common
24 law, US Supreme Court has talked about common law,
25 that indeed autonomy is one of the most highly

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

21

1 Writ of Habeas Corpus (12/3/13)
2 protected attributes of human-beings. Court of
3 Appeals of New York will allow you to die.
4 They'll allow you to take your own life. They'll
5 allow you to represent yourself in court, even
6 though we all know you're going to lose.
7 Autonomy is an extraordinarily important
8 attribute, and we argue that autonomy -- that a
9 being who is autonomous, who can choose, who is
10 self-aware, these, Your Honor, are essentially us.
11 They're so extraordinarily close to us.
12 We have presented 150 pages of affidavits

13 from the world's greatest primatologists who set
14 out in specific and even excruciating detail just
15 how from language to culture -- these beings have
16 cultures, there are cultures, they have language.
17 They can use human language. They can use
18 chimpanzee language. They are extraordinarily
19 similar to us. And if we focus in on not just how
20 they look, their brains are similar to us, the way
21 their brains work are similar to us. They're
22 essentially almost us. And if you focus on the
23 issue of autonomy, self-determination, choice,
24 that those are such powerful concerns of the
25 courts of New York that a being who can

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)
2 demonstrate, which we do demonstrate, that they
3 indeed have that autonomy, that is a sufficient

4 condition for legal personhood.

5 Plus, under the Pet Trust statute, the New
6 York legislature has already determined that they
7 are legal persons, because Tommy is a beneficiary
8 of a trust that we have created. We created it
9 for him. He owns the corpus of his trust. He can
10 sue. And, indeed, Attorney Stein is the enforcer
11 of that Pet Trust statute. So he already has
12 certain kinds of rights, and we're saying that he
13 should also have the fundamental right to bodily
14 liberty that protects his fundamental interest in
15 bodily liberty.

16 Now, that is an argument as a matter of
17 liberty. We have another argument under common
18 law equality in New York that Tommy should -- the
19 only reason that someone could not issue a writ of
20 habeas corpus on behalf of Tommy is, one, that he
21 is a chimpanzee. And we look at the case of Romer
22 vs. Evans, and in Romer vs. Evans you have Justice
23 Kennedy saying that -- striking down Amendment 2
24 of a Colorado constitution saying that to choose a
25 single trait and essentially strip someone, in

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

23

1 Writ of Habeas Corpus (12/3/13)

2 that case, gay human-beings of all their rights
3 because they have a single attribute so
4 fundamentally undermines the argument both from
5 constitutional equality for our purposes, more
6 importantly, from common law equality, that it is
7 violative of equality. And the only difference --
8 essential difference between Tommy and myself is
9 that I'm a human-being and Tommy is a chimpanzee.

10 Other than that, autonomy has the
11 self-determination, self awareness. We have
12 probably 40 different attributes that show a
13 complex cognition, a very complex one. He has
14 essentially the same as we have.

15 And so not only as a matter of liberty, but
16 as a matter of equality under the common law,

17 Tommy should be entitled to be viewed as a legal
18 person as well and he also for the exact same
19 reasons should be entitled to the right to bodily
20 liberty which the common law -- or the common
21 law --

22 THE COURT: What's the standing?

23 MR. WISE: Standing -- actually, we have a
24 section on standing, but, essentially, the writ of
25 habeas corpus is a different sort of cause of

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)
2 action in that a person who is being imprisoned
3 generally is not able to leave the place of
4 imprisonment to come and seek a writ of habeas
5 corpus. So what happens is that the usual
6 standing requirements are exceedingly relaxed so
7 that a third party -- in fact, under the statute,

8 it says anyone can come in and seek a writ of
9 habeas corpus on behalf of a person who is
10 imprisoned. That's what we do. That's what the
11 Nonhuman Rights Project does. But even if it
12 wasn't, any person could come in and seek a writ
13 of habeas corpus on behalf of Tommy under the
14 statute as well as under the constitutional law.

15 THE COURT: The trust you say that's set up
16 for this chimpanzee, has it been used by the owner
17 of the chimpanzee or is it --

18 MR. WISE: The -- I am so sorry, Your Honor.

19 THE COURT: That's okay. Go ahead. You were
20 going to answer. Go ahead.

21 MR. WISE: The answer is the trust is for the
22 care and maintenance of Tommy, and so we have --
23 right now he's being treated as a legal thing. We
24 hope he's going to be treated as a legal --

25 THE COURT: I'm sorry. Is the trust monies

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

1 Writ of Habeas Corpus (12/3/13)

2 used for Tommy?

3 MR. WISE: Yes, Your Honor.

4 THE COURT: So the owner of Tommy has been

5 using the money?

6 MR. WISE: Nope. There is no -- the trust is

7 not for Tommy as a legal thing. Tommy cannot --

8 Tommy could not --

9 THE COURT: You said the trust is used for

10 his care.

11 MR. WISE: No. The trust shall be used for

12 his care.

13 THE COURT: So it hasn't been used yet.

14 MR. WISE: It hasn't been used for his care,

15 because the Nonhuman Rights Project has spoken

16 to -- has arranged with the North American Primate

17 Sanctuary Alliance, who has a string of primate

18 sanctuaries throughout the United States, they

19 have several of them in which they have some

20 spectacular sanctuary, they're going to take care
21 of Tommy and we're going --
22 THE COURT: Has the owner been approached and
23 will not sell Tommy, will not release Tommy? Has
24 it even been approached?
25 MR. WISE: This owner has not been

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

26

1 Writ of Habeas Corpus (12/3/13)
2 approached.
3 THE COURT: This owner has not been
4 approached?
5 MR. WISE: Tommy is just there. We've seen
6 him.
7 THE COURT: All right. What else? Anything
8 else?
9 Ms. Stein, anything else?
10 MS. STEIN: No, Your Honor.

11 THE COURT: Your impassioned representations
12 to the Court are quite impressive. The Court will
13 not entertain the application, will not recognize
14 a chimpanzee as a human or as a person as a person
15 who can seek a writ of habeas corpus under Article
16 70. I will be available as the judge for any
17 other lawsuit to right any wrongs that are done to
18 this chimpanzee because I understand what you're
19 saying. You make a very strong argument.
20 However, I do not agree with the argument only
21 insofar as Article 70 applies to chimpanzees.

22 Good luck with your venture. I'm sorry I
23 can't sign the order, but I hope you continue. As
24 an animal lover, I appreciate your work.

25 MS. STEIN: Thank you. And I in no way was

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

2 trying to avoid your answer.

3 THE COURT: No.

4 Off the record.

5 (Discussion held off the record; record
6 resumed.)

7 THE COURT: Anything further for the record?

8 MS. STEIN: No. Thank you, Your Honor.

9 MR. WISE: Thank you. We certainly
10 appreciate it.

11 THE COURT: This Court will maintain this
12 verified application and petition as part of the
13 record, and it will be held on file for a
14 reasonable period of time before it is condensed
15 and removed.

16 Thank you. Good luck.

17 (Whereupon, the proceedings held in the
18 above-entitled matter were concluded.)

19

20

21

22

23

24

25

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377

28

1 Writ of Habeas Corpus (12/3/13)

2

3

4 C E R T I F I C A T I O N

5

6

7 I, KAREN L. KOLTERMAN, a Certified Shorthand

8 Reporter, an Official Court Reporter and Notary

9 Public in and for the State of New York, do hereby

10 CERTIFY that the foregoing record was taken by me

11 at the time and place as noted in the heading

12 hereof, was recorded stenographically by me, and

13 that the foregoing transcript is a correct and

14 accurate transcript of my stenographic notes, to

15 the best of my ability and belief.

16

17

18

19

KAREN L. KOLTERMAN
Certified Shorthand Reporter

20

21

22

23

24

25

Karen L. Kolterman, C.S.R.
Official Court Reporter
(518) 853-8377