

Gorillas, Guerrillas, and 501(c)(3)s

03.14.19 | Linda J. Rosenthal, JD



Several months ago, we posted [*Monkey Gets Day in Court*](#), the years-long tale about “a [crested macaque monkey called Naruto](#) [who] lived peaceably, minding his own business, among others of his endangered species” in Indonesia, when he encountered a camera on a tripod set up by a British wildlife photographer.

A selfie was taken. [We use the passive voice here in one of the few officially sanctioned ways: when the “who” is legitimately in question.]

The U.S.-based animal rights group, a 501(c)(3) organization, People for the Ethical Treatment of Animals (PETA), took up Naruto’s cause, and the whole affair wound up in federal court in San Francisco. Read the post if you want to learn what happened, although the story (and Naruto’s now-famous grin) were splashed over headlines around the world.

Since *Monkey*, we’ve hoped to find another good story about our glorious primate relatives and a 501(c)(3) organization. We now present [a gorilla custody case](#) that “is looking increasingly like bickering over reputation” between the Cincinnati Zoo and The Gorilla Foundation.

In December 2018, a federal district judge told the parties they must go to mediation to solve the dispute over Ndume, a 37-year-old, 400-pound, male silverback gorilla. Ndume is no stranger to news stories either; there is an important connection to the world-famous, sign-language-communicating gorilla, Koko, recently deceased. And PETA, once again, is involved.

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Koko – star of PBS documentaries and many children’s books – lived at The Gorilla Foundation for most of her 46 years. Her caretakers there [taught her to communicate](#) with humans through sign language. In 1991, they decided she should have a mate, but since there were no eligible candidates in the vicinity, they staged what can only be called one of the most intriguing episodes ever of the

“The Dating Game.” Koko watched videos of potential male partners; she chose Ndume, who was in the custody of the Cincinnati Zoo. Officials negotiated a contract to send Ndume to the Foundation for the duration of Koko’s life. Koko seemed attracted to Ndume on their video date, but the two never mated, remaining platonic best friends only until Koko’s death last year.

The issue now is what will happen to Ndume. “Correspondence between the organizations seems to have become strained. [The Foundation] says [The Zoo] ‘refused to respond’ to requests for mediation” which, in turn, has accused the Foundation of “cut[ting] them off.” The Zoo filed a lawsuit in October 2018 to retrieve Ndume.

The litany of arguments and responses made by both sides has now taken on elements of sniping worthy of TV’s “Divorce Court.” For instance, there’s the matter that the relationship was never consummated. According to the Foundation, “Koko was never given the opportunity (by the zoo community) to have a natural gorilla family group—with multiple females and one male.”

At issue, too, is that Ndume’s caretakers never taught him sign language. The Foundation asserts that the sign-language restriction was part of the original transfer/loan agreement, adding its claim that Zoo included that provision because officials there were “worried that he would communicate his unhappiness about his [earlier] life [at The Zoo]. They argue that he has, nevertheless, expressed his wishes clearly to his Foundation caretakers; “when he overheard conversations about transferring him back to the zoo, he ‘cried, gave hoot-series, screamed, banged and shoved objects for 14 hours straight, all indicating extreme anguish.’”

The Association of Zoos and Aquariums (AZA) and PETA have sided with the Zoo for several reasons including that the Foundation “does not have any other gorillas with whom Ndume could socialize. Like their human cousins, gorillas grow depressed without community.” PETA vice president of captive animal law enforcement Delcianna Winders added that The Foundation facilities are “tumbledown” and the organization “has a history of failures in veterinary care and cleaning.”

The Zoo argues that its facilities are excellent and will be the best place for Ndume to live out the rest of his life which could last another ten years or so. It recently “updated its gorilla enclosure and already houses ten gorillas, three of whom are Ndume’s relatives.”

U.S. District Judge Richard Seeborg ordered the parties to pursue “expedited alternative dispute resolution,” noting – quite correctly – that “the courtroom ‘may not allow for a full, and fully-informed, evaluation of all of the potential impacts to Ndume,’ which is, after all, both parties’ purported main concern.”

Guerrillas ... and 501(c)(3)s

Another recent case of interest about a 501(c)(3) organization has nothing to do with gorillas, but is noteworthy anyway, and of course, there’s a play on words – guerrillas – which is hard to resist.

Protesters inside New York’s Whitney Museum of African Art staged a “guerrilla protest” aimed not at the art itself but targeted against the Museum’s board vice chairman, Warren G. Kanders.

According to them, Kanders owns “weapons manufacturers that supply Trump’s attacks on families and children seeking asylum.” They are part of a “movement of artists” that refuse “to allow our

institutions to side with hate.”

Mr. Kanders’s business affiliations were not a secret, but a news article on November 27, 2018, reported on this connection, sparking outrage by a variety of groups including some 100 Whitney staff members who signed an open letter of support.

“We understand this is not new information to leadership,” they wrote, “or likely to the rest of the Board, but many of us learned of the connection [via the news report].” They added: “We also understand the nuanced and vital relationship any nonprofit has to its Board. But we believe that this recently aired knowledge about Mr. Kanders’s business is demonstrative of the systemic injustice at the forefront of the Whitney’s ongoing struggle to attract and retain a diverse staff and audience.” They chose to speak up and address this “injustice directly, even as the Whitney has chosen not to. To remain silent is to be complicit.”

The staff members end the letter with a demand of Whitney leadership to discontinue “funding – even, or perhaps especially transformative funding – from individuals who are knowingly complicit in the injustices committed on our own land and across our borders is negative peace. We demand positive peace.”

This is not the first – or the last – protest by 501(c)(3) organizational stakeholders and supporters against key officials or donors for their unsavory personal or business connections, beliefs, or practices.

Conclusion

We will continue, as usual, to scan the Internet for intriguing and relevant stories about gorillas and guerrillas. Who knows what will turn up?