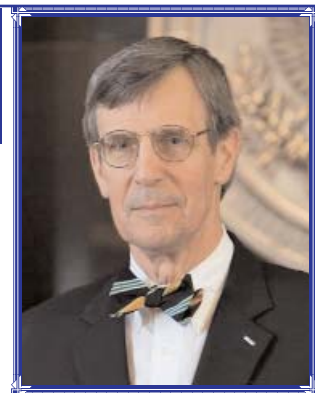


## THE REAL IVAN

By Phil Brandt, Western District of Washington



Ivan, a western lowland silverback gorilla, was two years old when captured in the Congo in 1964. For the next several years he was raised in the home of one of the owners of the B&I, “the World Famous Circus Store,” a modest shopping center in Tacoma, Washington. He was treated as a member of the family, but by the late 1960s he had grown too large to live in the home, and was moved to a small cage in the center.

Taking children to see Ivan was one of the things Tacoma parents did, and we took ours in the late 1980s. Ivan had a TV set and seemed friendly with his keeper, but alternated between lethargy and pacing his cage. Our son, now an animal protection lawyer, says the experts believe the pacing is a sign of stress and anxiety.

Gorillas are social beings, and Ivan’s solitary and austere situation attracted attention. By the late 1980s, there was a local “Free Ivan” petition, and the Progressive Animal Welfare Society (“PAWS”) began a campaign on his behalf, raising money in hopes of buying and donating him to Seattle’s Woodland Park Zoo. In 1991, Ivan became a national story when a National Geographic documentary compared his circumstances with those in zoos providing large and naturalistic habitats for groups of gorillas.

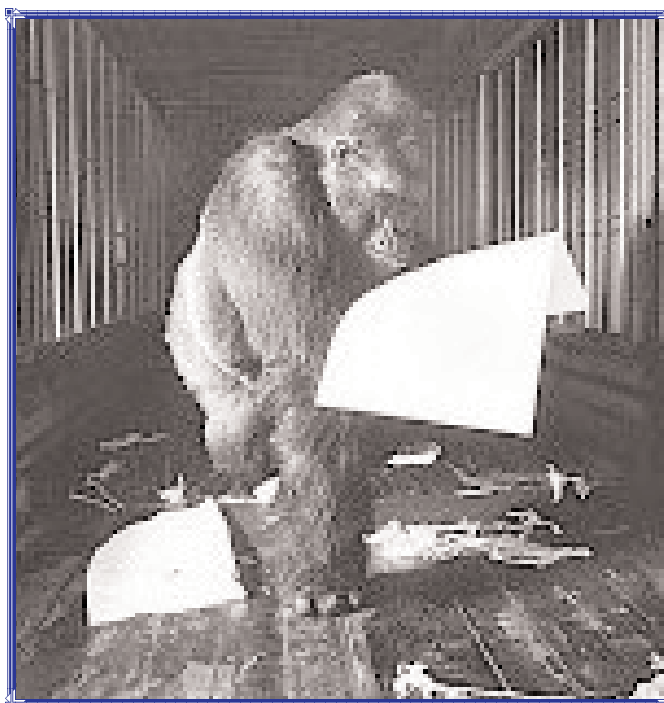
Perhaps coincidentally – there were calls to boycott the center – the B&I’s financial situation deteriorated, and it filed a Chapter 11 petition in 1992. The children who had grown up with Ivan in their home were now the corporation’s principals, and they hoped to restructure, hold onto the center, and keep Ivan in it.

The creditors mostly opposed spending estate funds on Ivan’s upkeep and the principals’ battle to keep him. Not at all coincidentally, I became a bankruptcy judge in late 1991, and was assigned the B&I case.

A battle for stay relief to enforce the Endangered Species Act ensued. Post-petition, PAWS sent the statutorily-required letter notifying the B&I that it intended to sue unless, within 60 days, Ivan was relinquished to an appropriate zoo. In my opinion on the motion in *In re B&I Realty Co., Inc.*, 158 B.R. 220 (Bankr. W.D. Wash. 1993), I held that PAWS was not entitled to the police powers exception to the automatic stay, as it was not attempting to enforce state law (as it could in certain circumstances); rather, PAWS was seeking to bring a citizen’s action under a federal statute. Nor did it have standing – PAWS was neither a creditor (having unsuccessfully resisted B&I’s motion to pay in full the small claim it had purchased) nor a party in interest – it only wanted to bring a citizen’s suit. Nor was there cause, since the Secretary of the Interior could enforce the Act and had the benefit of the police and regulatory power exception to the automatic stay. Finally, I held the notice letter violated the automatic stay as an attempt to assert control over property of the estate, and therefore, the notice was void.

Although on a superficial level PAWS lost the battle, it did not lose the war. The hearing on the motion, among others, afforded opportunities to make clear that no plan that called for spending money to keep Ivan (likely in violation of federal law) stood a chance of confirmation. The parties worked out their differences and ultimately I confirmed an agreed plan calling for Ivan’s transfer to a zoo.

The Gorilla Species Survival Plan, established in compliance with the Endangered Species Act by the zoos with appropriate facilities and that had other gorillas – the “Gorilla Mafia” in hearings – concluded



Ivan should go to Atlanta, and he was transferred in October 1994.

After almost 30 years of interacting only with humans and their pets, and some adjustment time, Ivan rejoined gorilla society in Zoo Atlanta's African Rain Forest. Although he socialized with females, he never became a father. He did become a painter, signing with his thumbprint, and a beloved celebrity. Ivan died last year at the age of 50, and was mourned in Tacoma and Atlanta.

The bankruptcy case might merit an occasional footnote as the first (and apparently the only) one to deal substantively with the Endangered Species Act (or a gorilla), but it is of note for another reason – it inspired Katherine Applegate to write “The One and Only Ivan.” Written from Ivan’s perspective, as if it were his autobiography, the setting and other characters, human and animal, are fictionalized. But the essential story remains the same and recounts Ivan’s journey from Africa to a family home to a cage in a mall to a well-run zoo.

Ms. Applegate won the Newberry Medal for the year’s outstanding contribution to children’s literature

this past January. As of August 1, 2013, her book has been on the New York Times’ Best Seller List for children’s middle grade books for 25 weeks, reaching number one in March. In February she was the featured speaker at the Tenth Annual Children’s Literature Conference at Western Washington University in Bellingham. Dorothy and I were invited to the reception, and we were pleased to present her a copy of the order modifying the B&I plan to formalize Ivan’s transfer – a modest perk not mentioned in Baby Judges School.

The idea that one’s legacy to the bankruptcy world might be the fate of a gorilla prompts somewhat rueful thoughts – what about all those other cases that significantly affected numerous lives? What about numerous bankruptcy appellate panel and trial court opinions and decisions, many affirmed on appeal, some adopted by reviewing courts and cited with approval by one’s colleagues, and few reversed? Still, having a part in the story of Ivan was an interesting departure from the routine allocation of misfortune which befalls bankruptcy judges.

**From the Public Outreach Committee:  
PUSHING PRO BONO FROM THE INSIDE OUT**  
By Catherine Peek McEwen, Middle District of Florida



The third week in October is National Celebrate Pro Bono Week. How can we, as judges, foster pro bono service to parties who cannot afford an attorney? Before I toss out some suggestions, let me make the case for why we need to motivate attorneys to step up their game in the pro bono commitment arena and why we need to cultivate support for legal services providers to the indigent.

*Why Pro Bono?*

Aside from the obvious need to provide the disadvantaged meaningful access to the courts - and the corollary solemn oath that attorneys in some states (including Florida) take to serve the defenseless and oppressed, the efficiency of the judicial system itself suffers when parties are unassisted by a lawyer. As well, some of the circuits’ case law directs trial courts to treat pro se parties different from those represented by counsel -with “looser reins,” “greater leeway,” “reasonable allowances,” or “special care,” *see, e.g., Johnson v. Pullman, Inc.*, 845 F.2d 911, 914 (11th Cir. 1988). This means that we who administer justice in such circuits must take extra time to understand what relief pro se parties seek and to ensure they understand the process and the court’s rulings. This slows the pace of other hearings set at the same time or afterwards on the day’s docket. And our case managers, already pushed to the max due to budget-driven downsizing suffered by most all bankruptcy courts, have to devote more time to process pro se cases, which slows down their processing of all other cases even more.

Further, your own court’s numbers might make a compelling statement of the need for pro bono service. (If you don’t know your percentage of pro se filings, year-to-date, I hope you will immediately put down this column and ask your Clerk of the Court.) For example, in my court’s Tampa division, as of mid-July, pro se debtors had filed 12.65 percent of our cases. And that represents a lot of folks, 840 as of that date – and more if you count

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