

"[T]he overall, dramatic success of [IOLTA] programs in serving the compelling interest in providing legal services to literally millions of needy Americans certainly qualifies the Foundation's distribution of these funds as a 'public use' within the meaning of the Fifth Amendment."

Brown v. Legal Foundation of Washington



*The 18th Annual Goldmark Award Luncheon
Presented by the Legal Foundation of Washington
February 20, 2004*

*2004 Charles A. Goldmark
Distinguished Service Award Recipient*

David J. Burnan

18th Annual Goldmark Awards Luncheon
February 20, 2004
The Red Lion Hotel on 5th Avenue Seattle, WA

Welcome

Barbara C. Clark
Executive Director

President's Remarks

David A. Leen

The Honorable M. Margaret McKeown
United States Court of Appeals for the Ninth Circuit

"Reflections on Justice"

Award Presentation

Harry H. Schneider
Partner, Perkins Coie

Charles A. Goldmark Distinguished Service Award

David J. Burnan

Partner, Perkins Coie

Closing Remarks

David A. Leen

Excerpted from Chief Justice Alexander's remarks on the WSBA Award of Merit September 11, 2003.

The one bright spot in funding in the past few years has been IOLTA. In our state, IOLTA has become the single largest source of funding for legal services for the poor. And because the highest court of every state in the Union has established an IOLTA program similar to ours, nationally IOLTA is providing revenue in the neighborhood of \$200 million annually.

Well, our sense of satisfaction about this wonderful IOLTA program was severely shattered in 1997 when the justices of the Washington Supreme Court and the Legal Foundation of Washington were sued in the U.S. District Court for the Western District of Washington by an organization called, interestingly, the Washington Legal Foundation.

Given the stakes, it is not surprising that the Legal Foundation of Washington took great pains to find just the right lawyers to defend IOLTA and the interests of the millions of people who benefit from IOLTA-funded programs. Based on David Burman's extraordinary record of handling important constitutional cases and the commitment of his law firm, Perkins Coie, to allow him to provide legal services pro bono, the Perkins Coie team consisting of Mr. Burman, Katie O'Sullivan, and Nick Gellert, undertook the representation of the Legal Foundation of Washington. At the same time the office of our attorney general, Christine Gregoire, undertook the representation of the Supreme Court justices. The attorney assigned to the case by General Gregoire was senior assistant attorney general, Maureen Hart.

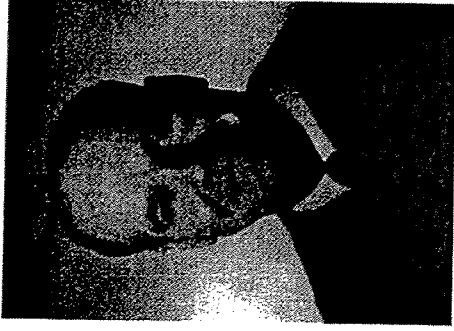
At the U.S. District Court, our team prevailed. The case then went to the Ninth Circuit where initially a setback was suffered when a three-judge panel ruled in favor of our opponent's position. Undeterred by that turn of events, our team pushed forward for en banc review, which was granted. Happily, an eleven-judge en banc panel reversed the three-judge panel and withdrew the earlier decision. The case then made its way to the U.S. Supreme Court.

I went back to the U.S. Supreme Court and observed the oral arguments in the case which were brilliantly presented on behalf of our position by Dave Burman for the foundation and former Solicitor General Walter Dellinger, who handled the argument for the justices, pro bono, at the invitation of our attorney general and Maureen Hart. After that I held my breath along with a lot of other people and hoped for a favorable decision—and we got it.

By a five-to-four vote the U.S. Supreme Court concluded that Washington's IOLTA program did not run afoul of the U.S. Constitution. This ruling, of course, had the effect of not only protecting the integrity of our system, but of every IOLTA program in the U.S. When Justice Stevens wrote the words in our case "states have a compelling interest in providing legal services to literally millions of needy Americans," we knew we had achieved a huge victory for the concept of equal justice under law.

Considering the narrowness of the victory, I am convinced that we could not have achieved this result at the Supreme Court without the extraordinary commitment of the Perkins Coie team that spent 4,000 hours at a value of about \$1 million defending Washington's IOLTA program together with the great lawyering by senior assistant attorney general, Maureen Hart, who wrote the brief that was presented on behalf of the justices of the Washington Supreme Court.

So, Dave Burman, Katie O'Sullivan, Nick Gellert, and Maureen Hart, we say thank you. You have earned the enduring gratitude of the legal profession, the equal justice community, and more importantly, millions of needy Americans for the great legal victory you have achieved.





David J. Burman
Partner, Perkins Coie, Seattle, WA

Born in Burlington, Iowa, David J. Burman grew up in Laramie, Wyoming. He received his B.A. in 1974 from the University of Wyoming, and his J.D. in 1977 from Georgetown University Law Center, where he was Editor-in-Chief of the Georgetown Law Journal. Dave was Law Clerk to the Hon. Spottswood W. Robinson, III of the D.C. Circuit, and to Justice Byron R. White of the U.S. Supreme Court.

Dave has practiced with Perkins Coie LLP in Seattle since 1979. His areas of emphasis are complex litigation, intellectual property, antitrust and trade regulation, constitutional law, and appellate practice. He was chair of the litigation department from 1992-98 and on the firm's management committee from 1995-2000. In addition to the IOLTA litigation, his pro bono matters have included death penalty cases in Arizona, Idaho, and Nevada and First Amendment, privacy, equal protection, and prisoner's rights matters. In 2002 he received the firm's pro bono award.

He is co-author of several articles and of chapters in two West Group treatises, *Successful Partnering Between Inside and Outside Counsel* and *Business and Commercial Litigation in Federal Courts*. For many years, Dave has been listed as one of the top lawyers in Washington by *The Best Lawyers in America*; *Chambers International*; *Puget Sound Business Journal*; *Washington Law & Politics*; and *National Law Journal*.

Dave was elected to the American Law Institute in 1998 and is a Fellow of the American Bar Foundation. In 2002, Dave received the King County Bar Foundation's Champion of Justice Award, and in 2003, he received the King County Bar Association's President's Award and the Washington State Bar Association's Award of Merit with fellow IOLTA legal team members Nick Gellert and Katie O'Sullivan of Perkins Coie, and Maureen Hart of the Washington State Attorney General's Office.

Dave is married to DeeAnn Burman. They have two daughters, Kendall and Blaire.

The Honorable M. Margaret McKeown United States Court of Appeals for the Ninth Circuit

Judge McKeown was born in Casper, Wyoming. She attended the University of Madrid and graduated Phi Beta Kappa from the University of Wyoming with a B.A. and from Georgetown University Law Center with a J.D. Judge McKeown was a White House Fellow in 1980-81, serving as a Special Assistant to the Secretary of the Interior and Special Assistant at the White House. In 1993 she served as a Japan Society Leadership Fellow in Tokyo.

Judge McKeown was a partner in the Seattle and Washington, D.C. offices of Perkins Coie before joining the bench. Her practice focused on complex litigation, intellectual property, antitrust and trade regulation. She was named by the *National Law Journal* as one of "the 50 Most Influential Women Lawyers" in the United States. She has received a number of awards including the Georgetown University Law Center Outstanding Alumnae Award and Outstanding Mentor Award from Big Sisters.

Judge McKeown serves on the Judicial Conference of the United States Codes of Conduct Committee, the Ninth Circuit Court of Appeals Executive Committee, and the board of the American Judicature Society. She is a member of the American Law Institute. Judge McKeown is widely published in the area of intellectual property and is an author of *Business and Commercial Litigation in Federal Courts*.





Thomas Jefferson supposedly said, "the harder I work, the luckier I seem to get." I mentioned this in a good luck card we gave Dave the day before the oral argument at the U.S. Supreme Court. You might say we got lucky in the IOLTA case, but I know that no one worked harder than Dave Burman toward that result. He drafted, reviewed, and revised countless drafts of our Supreme Court briefs and reviewed countless comments from lawyers around the country.

In the weeks leading up to the argument, Dave read every single takings (excuse me, I mean "just compensation") case ever decided by the Supreme Court. There are over 200 cases. Dave is not someone who sleeps a lot. He thrives on coming up with creative legal arguments and crafting them in briefs and for presentation at oral argument.

In 1995, I was a summer associate at Perkins Coie, and I worked with Dave on some constitutional issues concerning affirmative action. After law school, I returned to the firm, in part, so that I would continue to have the opportunity to work with Dave Burman. Nine years later, I am very proud to be his partner.

Katie O'Sullivan - IOLTA Litigation Team - Perkins Coie

Sometime in 1997, working with Nick Gellert, I became the keeper of the Perkins Coie files for the IOLTA case. I had no idea what the case was really about for quite some time [common in the fast-paced life of a Legal Secretary]. "What is 'IOLTA?'" I would think. It wasn't until I started reading the press coverage that I started to understand—it was very different from the typical litigation in a large law firm. . . and now I fully understand that (to quote an attorney I recently heard), "This is one of the most important *pro bono* cases EVER!"

This is the third U.S. Supreme Court case I have had the privilege of working on in my career, which is always exciting, and fortunately—a major win! Working with such high quality, socially conscious lawyers and law firm personnel on this important litigation is personally very rewarding.

Rose Kelly - Legal Secretary - Perkins Coie

- Alabama Law Foundation, Inc.
- Alaska Civil Justice Foundation
- Alaska Bar Association IOLTA Program
- Arizona Foundation for Legal Services & Education
- Arkansas IOLTA Foundation, Inc.
- Legal Services Trust Fund Program State Bar of California
- Colorado Lawyer Trust Account Foundation
- Connecticut Bar Foundation IOLTA Program
- Delaware Bar Foundation
- District of Columbia Bar Foundation IOLTA Program
- The Florida Bar Foundation
- Hawaii Justice Foundation
- Ibaho Law Foundation IOLTA Program Inc.
- Lawyers Trust Fund of Illinois
- Indiana Bar Foundation
- Iowa Lawyer Trust Account Commission
- Kansas Bar Foundation
- Kentucky IOLTA Fund
- Louisiana Bar Foundation IOLTA
- Maine Bar Foundation
- Maryland Legal Services Corporation
- Massachusetts IOLTA Committee
- Massachusetts Bar Foundation
- Nebraska Bar Foundation
- Michigan State Bar Foundation
- Minnesota Lawyer Trust Account
- Minnesota Judicial Center
- Mississippi Bar Foundation IOLTA Program
- Missouri Lawyer Trust Account Foundation
- Nebraska Lawyers Trust Account Foundation
- State Bar of Nevada
- Nevada Law Foundation
- New Hampshire Bar Foundation
- IOLTA Fund of the Bar of New Jersey
- New Jersey Law Center
- Center for Child Values IOLTA Program (NAD)
- IOLTA Fund of the State of New York
- North Carolina State Bar Plan for IOLTA
- North Dakota Bar Foundation
- Ohio Legal Assistance Foundation
- Oklahoma Bar Foundation
- Oregon Law Foundation
- Pennsylvania Lawyer Trust Account Fund
- Rhode Island Bar Foundation IOLTA Program
- South Carolina Bar Foundation IOLTA Program
- South Dakota Bar Foundation IOLTA Program
- Tennessee Bar Foundation IOLTA Program
- Texas Equal Access to Justice Foundation
- Utah Bar Foundation IOLTA Program
- Vermont Bar Foundation IOLTA
- Virgin Islands Legal Assistance Foundation, Inc.
- Legal Services Corporation of Virginia
- Legal Foundation of Washington
- West Virginia Bar Foundation
- Wisconsin Trust Account Foundation
- Wyoming IOLTA Program/Wyoming State Bar Foundation

