

*"[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.*

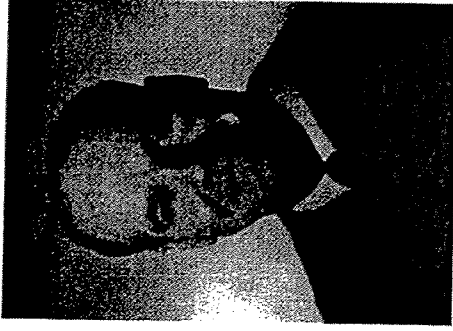
*At the U.S. District Court, our team prevailed. The case then went to the Ninth Circuit where initially a setback was suffered when a three-judge panel ruled in favor of our opponent's position. Undeterred by that turn of events, our team pushed forward for en banc review, which was granted. Happily,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

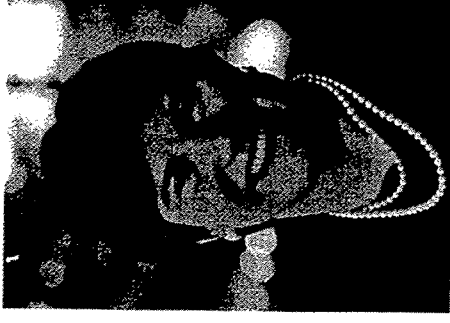
Dave is married to DeeAnn Burman. They have two daughters, Kendall and Blaire.

## *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!"

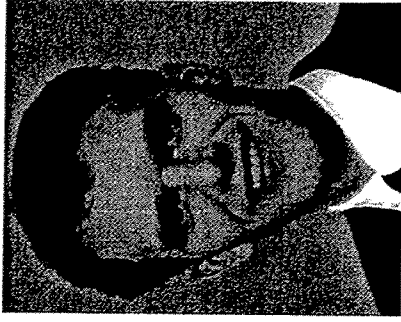
This is the third U.S. Supreme Court case I have had the privilege of working on in my career, which is always exciting, and fortunately—a major win! Working with such high quality, socially conscious lawyers and law firm personnel on this important litigation is personally very rewarding.

#### ***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

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 Kansas Bar Foundation  
 Kentucky ICJTA Fund  
 Louisiana Bar Foundation/ICJTA  
 Maine Bar Foundation  
 Maryland Legal Services Corporation  
 Massachusetts ICJTA Committee/  
 Massachusetts Bar Foundation/  
 Boston Bar Foundation  
 Michigan State Bar Foundation  
 Minnesota Lawyer Trust Account/  
 Minnesota Judicial Center  
 Mississippi Bar Foundation ICJTA Program  
 Missouri Lawyer Trust Account Foundation  
 State Bar of Montana  
 Nebraska Lawyers Trust Account Foundation  
 Nevada Law Foundation  
 New Hampshire Bar Foundation  
 ICJTA Fund of the Bar of New Jersey/  
 New Jersey Law Center  
 Center for Civic Values ICJTA Program (NAD)  
 ICJTA Fund of the State of New York  
 North Carolina State Bar Plan for ICJTA  
 North Dakota Bar Foundation  
 Ohio Legal Assistance Foundation  
 Oklahoma Bar Foundation  
 Oregon Law Foundation  
 Pennsylvania Lawyer Trust Account Fund  
 Rhode Island Bar Foundation ICJTA Program  
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 Tennessee Bar Foundation ICJTA Program  
 Texas Equal Access to Justice Foundation  
 Utah Bar Foundation ICJTA Program  
 Vermont Bar Foundation ICJTA  
 Virgin Islands Legal Assistance Foundation, Inc.  
 Legal Services Corporation of Virginia  
 Legal Foundation of Washington  
 West Virginia Bar Foundation  
 Wisconsin Trust Account Foundation  
 Wyoming ICJTA Program/Wyoming State Bar Foundation

It is June 24, 1997 — it is almost midnight (3:00 a.m. in Washington D.C. where the Justices were working) — we learn that the United States Supreme Court denied our final request to try to prevent Arizona from executing William Lyle Woratzeck.



The remainder of our team (led by Aaron Caplan now with the ACLU of Washington) is in Arizona and joins the crowd holding vigil outside the prison.

Dave and I are in our offices in Seattle from where we had played point on getting last minute briefs written and filed with the Ninth Circuit and Supreme Court.

The building from where we practice law never has been so eerily silent as it was that night as the clock ticked forward to June 25 and Arizona put our client to his death.

The ivory tower never felt more cold.

It is March 26, 2003 — it is just after 7:00 a.m. (10:00 a.m. in Washington D.C.) —

Dave comes bounding down the hall with two simple words: “We won!”

He was, of course, referring to the Supreme Court’s decision in *Brown v. Legal Foundation of Washington*. We knew the vote would be close, and we knew that again lives were on the line (though not in the same direct way as in a death penalty case).

The office never felt more alive.

One of my other mentors at the practice of law used to say, only partially tongue in cheek, that one does not become a “real litigator” until he/she has lost a large dollar verdict (which this mentor had done more than once).

Dave is the epitome of what this mentor was referring to by a “real litigator” — a lawyer with true empathy for his clients’ stake in litigation. He has tasted the bitter pill of defeat, making the taste of his numerous successes only more sweet.

Dave has saved lives (including clients that got off death row) and changed lives for the better (including mine).

And throughout, he remains humble and thankful.

**Nicholas P. Gellert - IOLTA Litigation Team - Perkins Coie**

Many years ago (in the ‘60s), I worked for Legal Services, and I know just how important those services are. I would like to say that I am so proud of Dave, Nick, Katie, and Charles for doing this. **L. Marilyn Rogen - Legal Secretary - Perkins Coie**



as W. Archer  
President

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February 20, 2004

David J. Burman  
c/o Harry H. Schneider, Jr.  
Perkins Coie  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101

Dear David:

I regret that I could not be in attendance today to see you receive the 2004 Charles A. Goldmark Distinguished Service Award at the Eighteenth Annual Luncheon sponsored by the Legal Foundation of Washington. I would have liked to have been with you and to join others in recognizing the considerable efforts that you and your firm have displayed in undertaking this pro bono representation, and to salute the remarkable success you achieved in obtaining a result at the United States Supreme Court that quite literally has benefited thousands of our less fortunate fellow citizens and, in the future, will benefit millions more. Because preexisting commitments prevent me from traveling to Seattle, I have asked Harry to be sure you receive this letter today.

As you and I discussed at dinner in Seattle about this time last year, the stakes for legal aid and legal services for the poor could not have been any higher than they were in the IOLTA case. An adverse decision immediately would have crippled funding for legal aid as we know it in this country. I recall Wayne Lee, President-elect of the Louisiana State Bar, telling us at the same dinner that evening in Seattle that every single program in his state would be out of business if the Supreme Court found IOLTA funding to be unconstitutional as a taking of property without just compensation under the Fifth Amendment. I am sure the same would be true in all the other 49 states as well. Given that we did not know the outcome of the case that evening, I can only imagine that our remarks added a little gratuitous weight to your already burdened shoulders, but you obviously handle the pressure well.

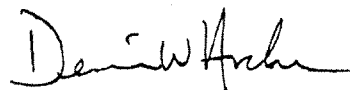
Thank goodness, and thanks to you and your team, the Court went the other direction, albeit with the barest of a majority. By all accounts, the oral argument you presented in December 2002 had something to do with the final outcome in March 2003.

The folks who will benefit most from your work do not know who you are, much less how to thank you, but I do. So, on behalf of the American Bar Association and our

David J. Burman  
February 20, 2004  
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less fortunate fellow citizens nationwide who receive legal services from a vast range of agencies that are funded by IOLTA money, thank you very, very much. The Goldmark Award is well received today, and we are all better off for your example and your leadership.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dennis W. Archer".

Dennis W. Archer, President  
American Bar Association