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## **Witold Walczak: The Power of Persuasion And Principle; Professional Excellence Awards**

Saranac Hale Spencer

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# Witold Walczak: The Power of Persuasion And Principle; Professional Excellence Awards

The Legal Intelligencer (Online)

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## The Legal Intelligencer

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### Body

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Ninety percent of the ACLU's cases are brought in federal court, Witold Walczak estimated, but he pushed to file one of the biggest to come up in recent years in Pennsylvania state court.

So far, it's proven to be the right call. In January, the Commonwealth Court issued a permanent injunction to the state's law requiring voters to show photo ID at the polls. It will almost certainly be appealed to the state's Supreme Court, which was skeptical of the law on its first trip up the appellate ladder just before the last presidential election.

When that case came in to the American Civil Liberties Union, "it was clear that there were many people who would be disenfranchised," Roslyn Litman, a Pittsburgh lawyer who sits on the board for both the local chapter and the national ACLU, said of the law's likely effect. But "U.S. Supreme Court precedent was such that it didn't look hopeful" for the ACLU to prevail, she said. In 2008, the Supreme Court let stand an Indiana law similar to Pennsylvania's that had been challenged on the federal track, deciding that it was constitutional.

Walczak, who, as legal director of the ACLU of Pennsylvania, is charged with analyzing cases that come in, was very aware of that U.S. Supreme Court opinion, Crawford v. Marion County Election Board, he said at the time the Pennsylvania case was filed in 2012. He decided to try it under the Pennsylvania Constitution.

"Sometimes we use a quarter, sometimes we use a nickel," he said of how the ACLU decides whether or not to take on a case. More seriously, he said, it's a balancing act between the weight of the issue presented by a case and the availability of other public interest groups that can take them on-Philadelphia has several.

Especially with First Amendment cases, though, there aren't many other organizations equipped to handle them.

Walczak has represented Klan members and sex offenders and says of reconciling those clients with his work, "there's no reconciling for me, because we believe in those cases." Nobody quarrels with the first two pieces of the phrase in the pledge of allegiance, "liberty and justice for all," he said. "The problems come in the 'for all' part."

The tough cases are on widely recognized principles, on behalf of unpopular clients, Walczak said.

In those cases, imagine them with different facts, he said. Change the group and change the message, then see if it should be stifled. When the ACLU is representing the Ku Klux Klan, Walczak said, most of the case law they rely on is what was developed by the civil rights marchers of the 1960s.

"We firmly believe that rights exist only if they belong to everybody," Walczak said.

Generally, the ACLU takes cases that will have the biggest effect on the greatest number of people, he said-"the bigger the bang, the more likely we are to invest the bucks." Those are the cases like the one challenging the voter ID law and the state's ban on same-sex marriage.

They also take individual cases that generate public outrage, like the one in which the U.S. Supreme Court earlier this month left undisturbed an ACLU win for two middle-school girls who challenged their school district's punishment for wearing breast cancer awareness bracelets stamped with the phrase "I [heart] boobies."

The protection of civil liberties became the focus of Walczak's considerable drive through two equally formative encounters as a young adult-doing juvenile social work in Washington, D.C., and seeing what life looks like under martial law in Poland.

"It's fear," he said of what that looks like. "It's that constant fear ... that keeps people in a place of submission."

During the period of martial law in Poland-the country from which his parents were refugees-in the early 1980s, Walczak as a student at Colgate University went there and stayed with a Gdansk shipyard worker who was part of the trade union the government had instituted martial law in order to suppress. It was called Solidarity.

"So, any literature, anything that that promoted or reflected Solidarity was illegal," Walczak said.

Meat and cheese were rationed. Chocolate and fresh fruit were unheard of, he said. Walking around after he got there, he saw a beautiful display in a grocery store window with a cornucopia of food-the store owner told him it was for party members only.

"I went off," Walczak said. "The guy I was with slapped his hand over my mouth, looked around, and said, 'We could get arrested for that.'"

It is that fear that keeps people in submission, he said.

"He's intelligent, he's articulate and he's quite passionate about individual rights and using the law to protect the guaranteed rights under the Constitution," Litman said.

He's also able to easily work with the sometimes strong-minded characters who are the trial lawyers at big firms he enlists to work with the ACLU on big cases, Litman said.

Walczak had the trial team for the intelligent design case-Kitzmiller v. Dover School District, which got intelligent design curriculum tossed out of Pennsylvania public schools-listen to Bruce Springsteen's "Part Man, Part Monkey" every day on their way to court.

Then, a few years after the 2005 decision in that case, he got some of the plaintiffs together to see a concert in Hershey and convinced Springsteen to play the song, although he hadn't played it in years and some members of his band had never played it before.

"So, you can see how persuasive he is," Litman said.

He is able to open the minds of people who might doubt or disagree with his position, said Mark Aronchick, of Hangley Aronchick Segal Pudlin & Schiller, who is working with Walczak on the first case filed to challenge Pennsylvania's ban on same-sex marriage. It's scheduled for trial in June.

That power of persuasion is the "hallmark of a great advocate," Aronchick said.

"He found his calling," Aronchick said. Justice, the legal system, advocacy, "that's just in his DNA."

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