

Questions & Conclusion

While putting together the information in these pages, I have come to think of the work as similar to that of an armorer. The armorer produces weapons (information, facts, and data in this case) and is often agnostic as to who buys their weapons or how they are used. One difference from many armorers is that I do care about how the information in these pages is used. I hope pieces or sections of this work will not be taken out of context or used to mislead.

Regardless of how readers think about or use the information herein, I believe a few percentages, perhaps as looked at through the eyes of an accountant, deserve special thought. Each covers a lot of ground and will surely be seen and interpreted differently. On the positive side, studying, analyzing, and even arguing about the meaning of the numbers below (and the information in these pages) could bring new and interesting thoughts, theories, and conclusions about the ACLU.

- **53.65%—The ACLU’s batting average was on the winning side** (on page 9): In the 1,193 ACLU/SCOTUS cases, the ACLU was on the winning side 53.65% of the time during the 94 years of the Union’s first 100 years. What does that number say about the ACLU, if anything? Before you read or skimmed this work, did you think about what the Union’s batting average over so many years might be? Does the 53.39% seem high, low, or about what you thought? Do you think, perhaps, that the 53.65% number might be high because the Union only got involved in easy cases (assuming there is such a thing) or that number is low because you question the ACLU’s competency? Does 53.65% suggest anything about its political agenda over time?
- **25.98%—The percentage of 4–5, 5–4, 4–3 and 3–4 decisions of the 1,193 cases** (on page 9): There were 310 such cases.¹ Given that all the voting justices saw the same facts, data, and arguments on each case, why was there such a difference of opinions on more than a quar-

ter of the 1,193 cases and during so many years? Given that the justices (and all federal judges) essentially have a job for life, shouldn’t there be less politics, and less reason to feel pressure to vote one way or another on a case (because they can’t be fired for their vote on any case)? Given that the justices have all sworn to uphold the Constitution and were presented with the same facts and evidence of each case, would you expect so many cases decided by one vote? What do such close cases say about the clarity of the facts and law in those cases? How much did each justice’s personal views and legal philosophy affect their votes, if at all?

- **56.86% of justices who decided these cases were put on the Court by Republican presidents** (on page 89): Of the 51 SCOTUS justices who opined on the 1,193 cases, 29 or 56.86% of those justices were nominated by Republican presidents. Twenty-two or 43.14% of the justices were put on by Democratic presidents. If those numbers had been reversed, with 56.86% of the justices having been nominated by Democratic presidents, would the batting average of the ACLU have changed, or changed much? If the batting average had changed, how would those changed decisions have affected our country? Would our country be better or worse off today? How could one define “better” between often competing political, societal, and other interests?

In sum, after reviewing the ACLU/SCOTUS cases over so many years, the votes of the justices (on page 41), and the divergent pros and cons about the ACLU (on page 3), this complex organization is difficult if not impossible to pigeonhole. It becomes obvious that in trying to understand this organization from its SCOTUS cases, just as many questions as answers arise. What is clear, however, is the ACLU has been involved in many cases at the U.S. Supreme Court that have had impactful effects on our country.

¹ Of the 310 cases, eight were 3–4 and 4–3 decisions. Those cases are: 1. *United States ex rel. Knauff v. Shaughnessy* (338 U.S. 537); 2. *Hoffa v. United States* (385 U.S. 293); 3. *Fein v. Selective Service System Local Board No. 7* (405 U.S. 365); 4. *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.* (473 U.S. 788); 5. *Traynor v. Turnage* (485 U.S. 535); 6. *City of Lakewood v. Plain Dealer Publishing Co.* (486 U.S. 750); 7. *Murray v. United States* (487 U.S. 533); and 8. *Fisher v. Univ. of Texas at Austin* (136 S.Ct. 2198; 579 U.S. __).