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Students' Fourth Amendment Rights and the Federal Judgeship: Examining the Link Between Political Appointments and Case Outcomes

Mario S. Torres Jr.

Jacqueline Stefkovich

STUDENTS' FOURTH AMENDMENT RIGHTS AND THE FEDERAL JUDGESHIP: EXAMINING THE LINK BETWEEN POLITICAL APPOINTMENTS AND CASE OUTCOMES

Mario S. Torres, Jr.[*] *and Jacqueline Stefkovich*[**]

I. INTRODUCTION

This study investigates whether the politics of the federal judgeship bear any influence on how students' Fourth Amendment rights are decided upon in court. Scholars have long examined political influences on the judiciary, particularly at the federal court level.[1] In particular, findings from research on federal judges' behavior seem to suggest a considerable link between political party ties and judicial outcomes.[2] In addition, while a surfeit of judicial and political studies have focused on high profile civil liberty areas such as desegregation and

* Mario S. Torres Jr. is an Assistant Professor of Educational Administration at Texas A&M University.

** Jacqueline Stefkovich is a Professor of Educational Leadership and the Chair of the Department of Education Policy Studies at Pennsylvania State University. The authors would like to express their deepest appreciation to R. Lance Potter, an advanced doctoral student in the Department of Education Policy Studies at The Pennsylvania State University, for his research and technical assistance.

1. *See generally* CHARLES A. JOHNSON & BRADLEY C. CANON, JUDICIAL POLICIES: IMPLEMENTATION AND IMPACT (Cong. Q. Press 1984); Lawrence Baum, *Recruitment and the Motivations of Supreme Court Justices, in* SUPREME COURT DECISION-MAKING 201 (Cornell W. Clayton & Howard Gillman eds., 1999); Lee Epstein & Jack Knight, *Mapping Out the Strategic Terrain: The Informational Role of Amici Curiae, in* SUPREME COURT DECISION-MAKING, *supra*, at 215; Lawrence Baum, *What Judges Want: Judges' Goals and Judicial Behavior*, 47 POL. RES. Q. 749 (1994); Ronald A. Stidham & Robert A. Carp, *Judges, Presidents, and Policy Choices: Exploring the Linkage*, 68 SOC. SCI. Q. 395 (1987).

2. Susan W. Johnson & Donald R. Songer, *The Influence of Presidential Versus Home State Senatorial Preferences on the Policy Output of Judges on the United States District Courts*, 36 L. AND SOC'Y REV. 657 (2002); Stidham & Carp, *supra* note 1, at 1; Ronald A. Stidham et al., *Patterns of Presidential Influence on the Federal District Courts: An Analysis of the Appointment Process*, 14 PRESIDENTIAL STUD. Q. 548 (1984).

religion, fewer have examined judicial outcomes as they relate to Fourth Amendment rights of students.

The U.S. Supreme Court ruling in *New Jersey v. T.L.O.*[3] has long served as the guidepost for Fourth Amendment treatment in schools. In short, the ruling established that "reasonableness," not the probable cause standard that ordinarily applies to the common citizen, was sufficient to meet constitutionality in searches of students.[4] The case attracted attention from coalitions (e.g., the National Association of Secondary School Principals and the National School Boards Association), civil libertarians (e.g., the American Civil Liberties Union and the Legal Aid Society of the City of New York), and powerful political figures, most notably former President Ronald Reagan.[5] A *New York Times* article published prior to the *T.L.O.* ruling reported that the U.S. Justice Department under the Reagan administration urged the Supreme Court "to grant greater latitude to the school authorities in conducting searches," claiming that disorder and crime had "reached epidemic proportions" in schools.[6] According to the article, President Reagan implored the U.S. Justice Department to intervene on behalf of the State, claiming public schools were generally in a state of disorder.[7] The President further characterized the condition as a national problem.[8]

President Reagan's position on the Fourth Amendment raises questions whether conservative appointed federal judges would choose to adopt the same or similar viewpoints and thus be inclined to rule for or uphold greater discretion for school officials. Votes by Supreme Court justices in the *T.L.O.* ruling

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3. New Jersey v. T.L.O., 469 U.S. 325, 327 (1985).

4. *Id.* at 326.

5. *See* Brief for National Association of Secondary School Principals et al. as Amici Curiae Supporting Petitioner, New Jersey v. T.L.O., 469 U.S. 325 (1985) (No. 83-712); Brief for National School Boards Association as Amicus Curiae Supporting Petitioner, New Jersey v. T.L.O., 469 U.S. 325 (1985) (No. 83-712); Brief for American Civil Liberties Union of New Jersey as Amicus Curiae Supporting Respondent, New Jersey v. T.L.O., 469 U.S. 325 (1985) (No. 83-712); Brief for Legal Aid Society of New York as Amicus Curiae Supporting Respondent, New Jersey v. T.L.O., 469 U.S. 325 (1985) (No. 83-712); Leslie M. Werner, *U.S. Asks Court to Back School in a Search Case: Greater Leeway Sought to Enforce Discipline*, N.Y. TIMES, Aug. 1, 1984, at A8.

6. Werner, *supra* note 5, at A8.

7. *Id.*

8. *Id.*

by party appointment reveal that political partisanship may be partly influential (i.e., five Republican nominated justices ruled for greater administrative latitude in student searches). Should Republican appointed judges embrace President Reagan's thinking on "greater latitude," one would expect that such judges would tend to support greater administrative discretion over the more liberal interest of greater privacy protection. If true, the implications for students' rights as well as the legal system's capacity to resolve cases fairly and objectively are far reaching.

To assess the extent of political influence, this study examines how federal judges ruled according to distinctive search and seizure attributes central to each case and includes: (a) case outcomes (i.e., did the student win or lose the case?), (b) the severity of the student offense in question (e.g., weapons violation versus non-criminal school policy violation), (c) the intrusiveness of the search (i.e., the type of search and frequency of separate searches per case), and (d) the level of suspicion employed by the school officials (i.e., individualized search versus group search). Section II of the paper contains brief summaries of the three Supreme Court cases, *New Jersey v. T.L.O.*,[9] *Vernonia School District 47J v. Acton*,[10] and *Board of Education v. Earls*,[11] relating to the Fourth Amendment in schools. Within these summaries, the variables of interest to the study are highlighted and discussed in greater detail (e.g., the intrusiveness of the search and the level of suspicion). Section III utilizes theoretical and empirical literature pertaining to the political nature of the federal court judgeship to frame the research problem. The methodology, discussion, and conclusions are presented in Sections IV, V, and VI respectively.

II. U.S. SUPREME COURT, FOURTH AMENDMENT CASE LAW

A. New Jersey v. T.L.O.

The *New Jersey v. T.L.O.* case was the first of three Fourth Amendment cases heard by the Supreme Court within the

9. *T.L.O.*, 469 U.S. at 325.
10. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995).
11. Bd. of Educ. v. Earls, 536 U.S. 822 (2002).

school context. The incident involved a high school student, T.L.O, suspected of violating a school policy that prohibited the smoking of cigarettes in campus restrooms.[12] A teacher became suspicious after detecting the scent of cigarettes in a restroom where two female students were present.[13] The student and her peer were referred to the assistant principal where an interrogation of the alleged offense began.[14] Although the companion freely confessed to violating the policy, the respondent, T.L.O., denied both the allegation and the fact that she smoked at all.[15] The assistant principal demanded to view the contents of T.L.O.'s purse.[16] Cigarettes were discovered along with a small quantity of marijuana and other items suggesting she was involved in drug transactions with other students.[17]

Reversing a lower state court ruling, the New Jersey Supreme Court ruled T.L.O.'s search unconstitutional and the evidence obtained inadmissible for trial.[18] The Supreme Court however, reversed the New Jersey Supreme Court ruling by holding that school officials, although not fully exempt from affording students privacy, were not required to have probable cause and obtain warrants to search students.[19] The Court held that warrants place an unnecessary burden upon the interests of school officials in maintaining order, and having reasonable suspicion instead of probable cause provided ample grounds to administer a search.[20] Using a two-part inquiry, the Court concluded that student searches pass constitutional scrutiny when searches are justified at their inception (i.e., observation, fact pattern, or behavioral history used in building justification) and reasonable in scope (i.e., searches should be reasonable in that they account for age, sex, and the infraction warranting the search).[21] Thus, as the Court surmised, no violation of T.L.O.'s rights occurred because reasonable

12. *T.L.O.*, 469 U.S. at 328.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 330.
19. *Id.* at 340.
20. *Id.*
21. *Id.* at 341.

suspicion had been met and the scope of the search was reasonable.[22]

1. Intrusiveness

The second part of the *T.L.O.* analysis cautioned that searches should avoid being "excessively intrusive in light of the age and sex of the student and the nature of the infraction."[23] Although *T.L.O.* failed to clearly identify which search methods were appropriate to which circumstances,[24] Ivan Gluckman[25] and Julie O'Hara[26] note that lower court rulings have generally ruled that the type of search varies along a low to high intrusiveness continuum. For instance, strip searches, which Justice Stevens in a dissenting opinion in *T.L.O.* argued "have no place in the schoolhouse,"[27] are generally considered the most intrusive.[28] In contrast, locker searches are usually perceived as less intrusive as no search of the body takes place.[29] As for the legality of strip searches, the decision is entirely left to the state and local governments.[30] While states such as Wisconsin and California have outlawed the use of strip searches in schools, lower courts in the South[31] and Midwest[32] have continually upheld their use.[33]

Although highly intrusive searches such as strip-searches may be justified in situations, Gluckman[34] and O'Hara[35] separately contend the selection of the search should appropriately balance the interests of the school and the

22. *Id.* at 341–42.

23. *Id.* at 342.

24. *See* Jacqueline A. Stefkovich, *Strip Searching After* Williams*: Reactions to the Concern for School Safety?* 93 ED. LAW REP. 1107, 1110 (1994).

25. Ivan B. Gluckman, *Schools Searches and the 4th Amendment,* 13 ED. LAW REP. 199, 206 (1984).

26. Julie U. O'Hara, *Search and Seizure Analysis in School Settings*, 13 ED. LAW REP. 1, 4 (1984).

27. *T.L.O.*, 469 U.S. at 382, n.25.

28. O'Hara, *supra* note 26, at 5–6.

29. *Id.* at 5.

30. LAWRENCE F. ROSSOW & JACQUELINE A. STEFKOVICH, SEARCH AND SEIZURE IN THE PUBLIC SCHOOLS (3d ed. 2006).

31. *E.g. Williams v. Ellington*, 936 F.2d 881 (6th Cir. 1991).

32. *E.g. Cornfield v. Consolidated High Sch. Dist.*, 991 F.2d 1316 (7th Cir. 1993).

33. Stefkovich, *supra* note 24, at 1111.

34. Gluckman, *supra* note 25, at 205–06.

35. O'Hara, *supra* note 26, at 4.

student. Both Gluckman and O'Hara suggest that the type of search should be guided by factors such as intent, the object of the search, the standard of suspicion, and students' expectations of privacy. For example, Gluckman contends that strip searches would require school officials to have a greater than reasonable level of suspicion and provide students a greater expectation of privacy.[36] Conversely, locker searches, which do not ordinarily involve bodies, would provide the student with fewer privacy provisions on the whole.[37] O'Hara in much the same way argues that the type of search should correlate to the search intent.[38] For instance, if criminal activity was suspected, searches involving bodies might be appropriate but a greater degree of suspicion approaching the probable cause standard would also be necessary.[39] O'Hara, moreover, suggests that the standard of suspicion should increase incrementally as the intrusiveness of the search shifts from lockers to bodies.[40]

A second variable representing intrusiveness involves the number of separate sub-searches falling under one search incident. Typically, in such events, a school official after failed attempts may choose to conduct more than one search to uncover evidence (e.g., a locker search followed by a vehicle search followed by a body search). Because *T.L.O.* provided little to no insight into the constitutionality of separate searches, administrators are left to decide whether extra searches adhere to the reasonableness requirement.

B. Mass Suspicion-less Drug Testing: Vernonia School District 47J v. Acton *and* Board of Education v. Earls

In two separate cases, the U.S. Supreme Court has attended to the constitutionality of drug testing segments of the student population. In *Vernonia School District 47J v. Acton*,[41] a student seeking membership on the school football team was not permitted to participate based on his and his parents' refusals to consent to a urinalysis. The Actons, on

36. *Id.* at 5.
37. Gluckman, *supra* note 25, at 204.
38. O'Hara, *supra* note 26, at 4.
39. *Id.*
40. *Id.* at 5.
41. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995).

behalf of their son, sought declaratory and injunctive relief, claiming the school's student athlete drug policy violated the Fourth and Fourteenth Amendments as well as an Oregon statute protecting student privacy.[42] Although a federal district court upheld the program, the decision was reversed by the Ninth Circuit Court of Appeals, which held that such policies were inconsistent with provisions in both the U.S. and Oregon constitutions.[43] Vacating the Ninth Circuit ruling, the Supreme Court held the policy to be reasonable in light of a student drug crisis in the school.[44] The Court reasoned that drug testing created no constitutional burden when students were engaged in activities justifying a decreased expectation of privacy (i.e., highly regulated and extracurricular sports participation), when searches were relatively unobtrusive in scope (i.e., the mode and intent of the drug testing), and when the severity of need was present to justify such a search (i.e., school safety and order are threatened).[45]

The more recent case of *Board of Education v. Earls*[46] addressed the legality of student drug testing as well. In this case, however, the Court was forced to decide whether all students participating in extracurricular activities could be subject to drug screening.[47] In the fall of 1998, a school district in Tecumseh, Oklahoma instituted a policy requiring every middle and high school student to submit to a drug test prior to membership and participation in all competitive extracurricular activities, including the Future Homemakers of America, the Academic Team, the Future Farmers of America, band, choir, cheerleading squad, and, of course, athletic teams.[48] While the Tenth Circuit Court ruled that the severity of the need was unmet to justify the drug testing program,[49] the Supreme Court reversed, basing their holding on many of the same principles employed in *Vernonia*.[50] First, the Court held that students voluntarily participating in extracurricular

42. *Id.* at 651–52.
43. *Id.* at 652.
44. *Id.* at 663.
45. *Id.* at 664–65.
46. Bd. of Educ. v. Earls, 536 U.S. 822 (2002).
47. *Id.* at 825.
48. *Id.* at 826.
49. *Id.* at 827.
50. *Id.* at 829–30.

activities have reduced expectations of privacy.[51] Second, the Court found that the manner in which the drug testing was administered was relatively unobtrusive.[52] Third, the district proved a sufficient need was evident to warrant the drug testing policy.[53]

1. Level of suspicion

Prior to *T.L.O.*, it was presumed that suspicion should be individualized such that information on the suspected individual or individuals was sufficient to administer a search. Whether the same principle applied to schools was an issue unresolved by *T.L.O.* because individualized suspicion was employed in *T.L.O.*'s purse search. The *T.L.O.* court did suggest that some individualized suspicion was required, but stopped short of making it obligatory in instances when the "privacy interests implicated by the search [were] minimal"[54] and precautions were in place to protect the individuals from arbitrary discretionary practices.[55] The *Vernonia* and *Earls* rulings soon confirmed that individualized suspicion was not an irreducible requirement[56] in every instance.

Like with *T.L.O.*, unanticipated issues have come about on the heels of these rulings. The *Vernonia* Court failed to elaborate on instances when the interests for both parties, that is, the interests of the subject and the interests of the state, are seemingly the same,[57] or the standing of more protective state drug testing statutes versus what is permissible under federal case law.[58] Criteria for "special needs" (e.g., evidence of rampant drug use) were not clearly identified in either of the rulings,[59] nor were financial and logistical issues in school

51. *Id.* at 831.

52. Bd. of Educ. v. Earls, 536 U.S at 833.

53. *Id.* at 835.

54. New Jersey v. T.L.O., 469 U.S. 325, 342 (1985).

55. *Id.*

56. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 653 (1995).

57. *See* Marc A. Stanislawczyk, *An Evenhanded Approach to Diminishing Student Privacy Rights Under the Fourth Amendment:* Vernonia School District v. Acton, 45 CATH. U. L. REV. 1041 (1996).

58. *See* Kristi L. Helgeson, *To Test or Not to Test: Article 1, Section 7 and Random Drug-Testing of Washington's Public School Student-Athletes*, 71 WASH. L. REV. 797 (1996).

59. *See* Kimberly M. Glassman, *Shedding Their Rights: The Fourth Amendment and Suspicionless Drug Testing of Public School Students Participating in*

administrative searches of groups discussed.[60] The lack of clarity over these issues gives school officials considerable latitude in actualizing reasonableness. While the judiciary seemingly serves to ensure that reasonableness is abided by schools, external political forces of various kinds can impact the ruling process to a large degree.

III. POLITICS OF THE FEDERAL JUDGESHIP

Although federal courts are entrusted to properly interpret Supreme Court case law, environmental factors often intervene in the ruling process. For instance, Peltason's research[61] on federal district court implementation of Supreme Court integration orders after *Brown v. Board of Education*[62] illustrates the burdensome challenges faced by Southern federal judges in applying superior judicial orders. Federal judges struggled with enforcing desegregation rulings in jurisdictions where they lived. The Supreme Court's presumption that judges would fully enforce the ruling along with its failure to submit specific desegregation guidelines consequently permitted federal judges to issue rulings upholding token forms of desegregation (e.g., enrolling a "few Negroes" in "white" schools[63]). Peltason's findings provide only a glimpse of the struggles, but nonetheless demonstrate the political nature of court rulings.

To more fully understand the scope of political influence on the court system, literature regarding the process for selection of judges and empirical studies probing the relationship between the political party of the nominating president and federal court case outcomes is enlisted to frame the analysis. Taken as a whole, the research suggests that the judicial system is impacted by politics to a fair degree.

Extracurricular Activities, 51 CATH. U. L. REV. 951, 955–59 (2002); Jennifer Smiley, *Rethinking the "Special Needs" Doctrine: Suspicionless Drug Testing of High School Students and the Narrowing of Fourth Amendment Protections*, 95 NW. U. L. REV. 811 (2001).

60. Irene M. Rosenberg, *Public School Drug Testing: The Impact of* Acton, 33 AM. CRIM. L. REV. 349 (1996).

61. *See* JACK W. PELTASON, FIFTY-EIGHT LONELY MEN (1961).

62. Brown v. Bd. of Educ., 347 U.S. 483 (1954).

63. PELTASON, *supra* note 61, at 245.

A. The Politics of Judicial Selection

A factor warranting consideration is the inherently political process of selecting judges. Baum argues that recruitment strategies for judges, particularly at the federal court level, have driven courts deep into politics.[64] The Nixon and Reagan Supreme Court appointments in the 1970s and 1980s demonstrated the reach of politics into the judiciary, as it shifted from a progressive body to one advocating judicial restraint.[65] While the selection process for federal judges would appear straightforward (i.e., nominating a like-minded judge with like-minded policy views), it entails, by contrast, a large measure of strategy and preparation accounting for factors such as the extent of political division in the federal government and timing during congressional sessions (i.e., the political party in control of the Senate will likely influence the timing of the nomination),[66] senatorial politics (i.e. courtesy),[67] and party allegiance.[68] While the selection process may appear multidimensional, studies tend to conclude case outcomes are very much dependent on partisan viewpoints.

B. Ideology of the Nominating President and Judicial Outcomes

While the motives for nominating a particular judge may vary, studies examining the influence of the political ideology of the nominating president on case outcomes consistently reveal a tight linkage.[69] What is more, the findings of studies routinely convey Republican affiliated federal judges are less sympathetic than Democratic affiliated federal judges in cases involving civil liberty matters.[70] For instance, a study by

64. *See* Baum, *Recruitment*, *supra* note 1, at 206.

65. Stidham, et al., *supra* note 2, at 552–55 (1984); Ronald A. Stidham, et al., *The Voting Behavior of President Clinton's Judicial Appointees*, 80 JUDICATURE 16, 19–20 (1996).

66. *See* Tajuana D. Massie et al., *The Timing of Presidential Nominations to the Lower Federal Courts*, 57 POL. RES. Q. 145, 153 (2004).

67. *See* Michael W. Giles et al., *Picking Federal Judges: A Note on Policy and Partisan Selection Agendas*, 54 POL. RES. Q. 623, 632 (2001); Johnson & Songer, *supra* note 2, at 671; Massie et al., *supra* note 66, at 147.

68. Giles et al., *supra* note 67, at 627–28, 638.

69. *See* Carol T. Kulik et al., *Here Comes the Judge: The Influence of Judge Personal Characteristics on Federal Sexual Harassment Case Outcomes*, 27 LAW & HUMAN BEHAV. 69, 72–75, 80–84 (2003); Stidham & Carp, *supra* note 1, at 399–403; Stidham et al., *supra* note 2 at 554–58; Stidham et al., *supra* note 65, 17–20 (1996).

70. *Id.*

Stidham, Carp, and Rowland of nearly 30,000 federal district court opinions by nearly 1,000 federal judges appointed between 1933 and 1977 concluded that voting patterns were very reflective of political affiliation.[71] Federal judges appointed by Woodrow Wilson (i.e., judges assumed a liberal stance in 51% of the cases) and Lyndon B. Johnson (51%) revealed the most liberal voting output of any other presidential appointment cohort.[72] A subsequent analysis by Stidham and Carp found federal district judges appointed by Reagan were especially unsympathetic to policy issues surrounding disadvantaged minorities and civil liberty matters.[73] Carter appointees consistently supported disadvantaged minority policies and civil liberty concerns to a much greater degree (i.e., 57% and 52% respectively for two cohorts analyzed between 1977-85 and 1981-85) than Reagan appointees during the two periods (i.e., 25% and 31% respectively).[74] In a study by Kulik, Perry, and Pepper examining the influence of personal characteristics of federal judges on judicial voting in cases involving sexual harassment (i.e., hostile environment), the data revealed that political affiliation and the age of the judge significantly predicted how cases were decided.[75] As the findings tell, federal judges younger in age and those appointed by a Democratic president ruled in favor of the victims of sexual harassment to a significantly greater extent than Republican appointed federal judges (i.e., 29% and 28% differences, respectively).[76] Taking a slightly different approach to assessing political influence, a study by Johnson and Songer analyzed the comparative influence of U.S. senatorial versus presidential preferences on federal district judge voting patterns.[77] The researchers hypothesized that if U.S. senators had proven to be influential in home state affairs, they might be equally influential in affecting federal judge voting outcomes. The study found, however, that presidential appointments were twice as influential as home state senatorial preferences overall on case

71. Stidham et al, *supra* note 2, at 554–58.
72. *Id. at 555.*
73. Stidham & Carp, *supra* note 1, at 402.
74. *Id,* at 399–400.
75. Kulik et al., *supra* note 69, at 69.
76. *Id.* at 80.
77. Johnson & Songer, *supra* note 2, at 660–62.

outcomes relating to labor and criminal cases. [78]

IV. RESEARCH QUESTIONS

Despite three Supreme Court rulings, unresolved issues remain. None of the rulings provided an all-encompassing framework from which to distinguish appropriate from inappropriate searches by the severity of the offense, nor did any provide added guidance on conducting searches of groups or classes of individuals outside random drug testing. In light of compelling evidence that federal judges are prone to political influence, particularly in the area of civil liberties, the evidence calls into question whether a lack of clarity in each of the Supreme Court rulings would permit greater political discretion in Fourth Amendment interpretation. Thus, if conservative judges are less sympathetic, as the research indicates, then case outcomes would tend to reflect a partisanship by search and seizure attributes as presented in Table 1.

Table 1
Hypothesized Political Stances on Fourth Amendment Issues

	Republican	Democrat
Rule against student when crime is serious	Favor	Opposed
More intrusive searches	Favor	Opposed
Greater number of searches	Favor	Opposed
Non-individualized suspicion	Favor	Opposed

This study examines whether the political party of the nominating president influences case outcomes using the following research questions:

(a) Is there a relationship between whether a student won a case, the seriousness of the offense, and the political party of

78. *Id.* at 671–72.

the president that appointed the federal court judge who wrote the opinion?

(b) Is there a relationship between whether a student won a case, the intrusiveness of the search, and the political party of the president that appointed the federal court judge who wrote the opinion?

(c) Is there a relationship between whether a student won a case, the level of suspicion employed, and the political party of the president that appointed the federal court judge who wrote the opinion?

V. METHODOLOGY

A. Data

For the analysis, a non-probability sample (i.e., purposive) of every published and non-published search and seizure case heard in a federal district and circuit court (n=66) occurring between the *T.L.O.* ruling on January 15, 1985 and December 31, 2002 was gathered. After each federal case was carefully screened, seven of the sixty-six cases were eliminated from the analysis due to reasons ranging from rulings unaccompanied by written opinions to cases not involving searches on an individual.[79] Federal court cases were collected using two prominent legal research databases (i.e., Lexis and Westlaw research services) and subsequently shepardized (i.e., a process checking whether cases were applied in rulings that followed). Information regarding the nominating political party of the federal judge writing the majority opinion was retrieved via

79. Some of the rulings were issued without a published opinion or were handed down as *per curiam* opinions. In such cases, the author of the opinion could not be clearly identified. Memorandum opinions were also discarded when the political affiliation of the judges participating in the opinion differed (e.g., two Republican and one Democratic judge), but were included in the analysis if they were affiliated with the same political party. Two cases were removed because students were never subjected to search. One case, *Wallace ex rel Wallace v. Batavia School District 101*, 68 F.3d 1010 (7th Cir. 1995), was eliminated because it only involved a seizure (i.e., a young lady being escorted by force outside a classroom), while another involved an allegation that the failure to search students constituted negligence. *Murray v. Bryant*, No. 01A01-9704-CV-00146, 1997 WL 607518 (Tenn. Ct. App. Oct. 3, 1997). Therefore, no search occurred in either case. One ruling issued by a federal magistrate judge, *Anders ex rel. Anders v. Fort Wayne Community Schools*, 124 F. Supp. 2d 618 (N.D. Ind. 2000), was eliminated because such judicial appointments are neither lifetime terms, nor does the president nominate them.

The Federal Judges Biographical Database through the Federal Judiciary Center. Each of these cases was then sorted and coded into five variables: a) case outcomes, b) severity of the student offense, c) intrusiveness of the offense, d) number of separate searches, and e) level of suspicion.

B. Data Reliability

Several inter-rater reliability analyses were conducted prior to the start of data collection, which resulted in revisions to the coding sheet. To maximize reliability, the same cases were assigned to a fixed number of law students. Coding difficulties or concerns expressed in this initial phase of the process led to modifications to the coding scheme. In phase two, a second set of cases was assigned to the same students for coding, which again resulted in further adjustments to the coding document. A set of rules was created to minimize coding discrepancies. Table 2 includes rules clarifying how the "intrusiveness of the search" variable should be interpreted and coded.

Table 2
Coding Rules

Variable	Name and Definition of Rule
Type of Search (purses, book bags, automobiles)	If the object of the search lies within a purse, book bag, or automobile, subsequent searches within the purse or book bag are considered one search only if the object of the search remains the same.
Type of Search (bodies)	If the searcher grabs or touches the body (e.g., pulling underwear), it is considered a separate search.

In terms of question-for-question reliability, 79 out of a possible 112 questions met 100% reliability, while the remaining 33 scored between 96.35% and 99.75%. In the case-by-case reliability tests, 36 of the 44 cases met 100% reliability, while the remaining scored between 97.67% and 99.76%. Overall, the coding sheet was found to be considerably reliable with an inter-rater reliability score on the agreement index of 99.72%.

C. Data Coding and Recoding

Several of the variables were recoded into binary format to permit a categorical analysis. For the variable "intrusiveness of the search," more than twenty-five different types of searches were recorded. Each fell at a point along a continuum from less to more intrusive. As Gluckman[80] and O'Hara[81] suggest, the type of search should in some way correlate to the level of suspicion and the severity of the suspected offense. Gluckman categorized vehicle and locker searches as less intrusive.[82] O'Hara associated less intrusive searches with low threats of danger.[83] Gluckman classified searches such as purses, pockets, or strip searches as generally more intrusive,[84] while O'Hara suggested that more intrusive searches should typically be imposed if the end goal is criminal prosecution.[85] Using this framework, searches were classified as either less intrusive or more intrusive depending on the severity of the search. Any search involving bodies and purses or wallets was assigned to the more intrusive category. All others were assigned to the less intrusive category. The variable "number of separate searches" represents a second indicator of intrusiveness in that a search of a student(s) can range from one to multiple searches. Any search consisting of an individual search was treated as less intrusive (=0) while any search consisting of two or more was categorized as more intrusive (=1).

The variable "level of suspicion" was recoded in binary form to reflect the scope of population subjected to a search. Level of suspicion generally refers to a person or persons who are subject to a search based on a given set of information. When the suspicion is isolated to one or two individuals, the search is considered to be "individualized" or less pervasive (=0). Searches of students greater than two are considered more pervasive and are usually conducted in small groups, entire classes, multiple classes, entire schools, student athlete populations, and extracurricular populations (=1).

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80. Gluckman, *supra* note 25, at 204–05.
81. O'Hara, *supra* note 26, at 4–5.
82. Gluckman, *supra* note 25, at 206.
83. O'Hara, *supra* note 26, at 4.
84. Gluckman, *supra* note 25, at 206.
85. O'Hara, *supra* note 26, at 4.

The variable "severity of the student offense" was also recoded in binary form. Searches initiated by possession of illegal drugs and weapons were designated as more serious offenses (=1). All other offenses, albeit still serious but not illegal, were labeled less serious offenses, which included offenses such as minor policy infractions, legal drug (including cigarettes and alcohol) possession, and minor theft offenses not reported to the police (=0).

D. Data Analysis

Three-way contingency tables assess observed frequencies in relation to expected frequencies using factors to distinguish the varying influence of independent variables on the dependent variable. This form of analysis is particularly useful in identifying possible confounding variables that would otherwise not be observed in a standard *x, y* (i.e., 2x2) contingency format.[86] Partial tables test the influence of a controlling variable (*z*) on the relationship between the dependent (*y*) and independent variable (*x*).[87] This analysis relies on the Cochran statistic to assess the conditional independence of odds ratios between *x* and *y*, testing whether ratios are equal to 1. The Breslow-Day statistic was also employed to assess homogeneity of all partial tables' odds ratios.[88] The odds ratio served as an indicator to measure the ratio between successes and failures in a 2x2 contingency format using the following formula:

$\theta = \text{odds}_1 / \text{odds}_2 = \pi_1 / (1 - \pi_1) \div \pi_2 / (1 - \pi_2)$

Using the political party as the controlling variable (*z*), each of the following associations was examined:

Independent variable (*x*): "The seriousness of the offense"
Dependent variable (*y*): "Did the student win the case?"
Independent variable (*x*): "The intrusiveness of the search"
Dependent variable (*y*): "Did the student win the case?"
Independent variable (*x*): "The level of suspicion"
Dependent variable (*y*): "Did the student win the case?"

86. ALAN AGRESTI, CATEGORICAL DATA ANALYSIS (2d ed., 2002).
87. *Id.*
88. *Id.*

E. Limitations

There are several shortcomings to the study. First, the sample size invariably created low frequency counts in a 2x2x2 analytical cell format. For example, some of the proportional descriptions were based on five total cases. In light of this, a few of the descriptive findings in the following section should be interpreted with caution. Second, the cases gathered for the analysis likely fell short of representing the entire universe of cases the federal court system considers. For instance, as Ashenfelter, Eisenberg, and Schwab contend, a portion of cases at the federal level are settled out of court and are thus never accompanied by a written or published opinion, which could indirectly permit more political leverage for judges.[89] They further posit that political discretion may be easier to exercise in some legal domains than others (e.g., contract versus civil liberty areas).[90] Third and last, analyzing ruling outcomes alone overlooks the critical substance within the legal reasoning for each case.[91] While this study relies completely on quantitative measures to examine the politics/ruling linkage, future research may explore the idiosyncrasies of individual rulings and their relationship to political philosophy using a richer, more descriptive case study approach.

V. RESULTS

A. The Seriousness of the Offense (N=48)

As the marginal table in Table 3 reveals, federal judges, regardless of political party, ruled against students in nearly 58% of the cases involving less serious offenses and 64% of cases involving more serious offenses—a difference of 6% according to case outcomes. With political party assigned as the control variable, judges appointed by Democratic presidents ruled against students in less serious offenses 30% more than Republican appointed judges. Inversely, Republican appointed judges ruled against students 34% more than Democratic

89. Orley Ashenfelter et al., *Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes*, 24 J. LEGAL STUD. 257, 264 (1995).

90. *Id.* at 264.

91. *Id.* at 263–64.

appointed judges in cases involving more serious offenses. For Democratic appointed judges involved in cases regarding more serious offenses, the odds of a "no" ruling against the student were 5.6 times greater than a "yes" ruling. Republican appointed judges, on the other hand, were more likely to rule against the student when the offense was more serious by four times the odds of a less serious offense.

No relationship among the odds ratios was identified through the Cochran statistic when accounting for political party. Because the Cochran statistic functions best when the odds ratios are consistently either positive or negative among all partial tables and the sample size is large enough to approach a chi-square distribution,[92] this finding was not surprising given the opposite directional nature of the associations and the smaller sample size. The findings did reveal, according to the Breslow-Day test of homogeneity, that the odds ratios for both partial tables controlling for political party were significantly different (χ^2= 4.506, p=.034). In other words, federal judges appointed by Democratic presidents appeared to rule against the student to a much greater extent in searches involving less serious offenses while Republicans were less sympathetic to students in cases concerning more serious offenses.

Table 3
Ruling by Seriousness of the Offense and Political Party of Federal Judge Writing the Majority Opinion

Political Party	Seriousness of the offense	Was ruling in favor of student?		Percentage no	Odds ratio
		No	Yes		
Democrat	Less serious	4	1	80	5.6
	More serious	5	7	41.7	.18
Republican	Less serious	3	4	42.9	.25
	More serious	18	6	75	4
Total	Less serious	7	5	58.3	.79
	More serious	23	13	63.9	1.26

92. Agresti, *supra* note 86.

B. Intrusiveness of the Search (N=51)

As the marginal table indicates in Table 4, 59% of the federal judges ruled against the student in more intrusive searches and 71% of the time against students when the search was less intrusive. Republican appointed judges ruled against the student nearly 15% more than Democratic appointed judges regardless of the intrusiveness of the search. As the Breslow-Day homogeneity test conveys (χ^2=.048, p=.827), odds ratios for partial tables differed minimally between political parties. The Cochran independence test (χ^2=.420, p=.517) also revealed that the political party was non-influential.

Table 4
Ruling by Intrusiveness of the Search and Political Party of Federal Judge Writing the Majority Opinion

Political Party	Intrusiveness of the search	Was ruling in favor of student?		Percentage no	Odds ratio
		No	Yes		
Democrat	More intrusive	7	7	50	.50
	Less intrusive	2	1	66.7	2
Republican	More intrusive	15	8	65.2	.70
	Less intrusive	8	3	72.7	1.42
Total	More intrusive	22	15	59.4	.59
	Less intrusive	10	4	71.4	1.70

As for "number of searches," the second variable representing intrusiveness, federal judges ruled against the student in nearly 67% of the cases involving more than one search and 60% of the cases where only one search occurred (see Table 5). Federal judges nominated by a Republican president ruled against the student nearly 11% more than

Democrats in single search cases and 15% more than Democrats in cases involving more than one search. However, the Cochran independence indicator (χ^2=.302, p=.583) again revealed no strong political influence regarding search intrusiveness. The Breslow-Day homogeneity statistic (χ^2=.013, p=.910) also indicated that the odds ratios did not vary significantly.

Table 5
Ruling by Number of Searches and Political Party of Federal Judge Writing the Majority Opinion

Political Party	Number of Searches	Was ruling in favor of student?		Percentage no	Odds ratio
		No	Yes		
Democrat	More than one search	6	4	60	1.5
	One search	4	4	50	.67
Republican	More than one search	12	5	70.6	1.31
	One search	11	6	64.7	.76
Total	More than one search	18	9	66.7	1.33
	One search	15	10	60	.75

C. Level of Suspicion (N=52)

Overall, federal judges ruled for the student in 19% more cases involving searches of groups than cases based on individualized suspicion (see Table 6). Controlling for political party, Republican appointed judges ruled against students subject to group and individualized searches by an average of 6% and 16% more than Democratic appointed judges, respectively. Despite differences in percentages, the Cochran independence test (χ^2=1.918, p=.166) revealed no variation in ruling outcomes when controlling for political party. The Breslow-Day homogeneity test (χ^2=.160, p=.689) also failed to identify significant variation among the partial tables.

Table 6
Ruling by Level of Suspicion and Political Party of Federal Judge Writing the Majority Opinion

Political Party	Level of Suspicion	Was ruling in favor of student?		Percentage no	Odds ratio
		No	Yes		
Democrat	Groups and up	5	5	50	.60
	Individualized	5	3	62.5	1.67
Republican	Groups and up	9	7	56.3	.37
	Individualized	14	4	78.8	2.72
Total	Groups and up	14	12	53.8	.43
	Individualized	19	7	73.1	2.32

VI. DISCUSSION

This study examined politics of the judgeship and the Fourth Amendment. Taken as a whole, the nominating political party of the judge writing the majority opinion bore no statistically significant influence on federal court rulings (as the Cochran statistics indicate). Interestingly enough, however, the finding that Democratic appointed judges were likely to rule against the student implicated in less serious charges, while Republican appointed judges were more likely to rule against the student facing more serious charges seemed to connote that Republican nominated judges are taking a tougher stance on criminal activity–a posture very much reflective of Reagan's pre-*T.L.O.* rhetoric. This finding also supports McKinney's "post-hoc" ruling notion that, in some instances, students are considered guilty prior to any judicial determination of reasonableness.[93] Thus, as the findings convey, Republican appointed federal judges could be more disposed to upholding whatever discretion is necessary to thwart crime.

93. *See* Joseph R. McKinney, *The Fourth Amendment and the Public Schools: Reasonable Suspicion in the 1990s*, 91 ED. LAW REP. 455, 459–63 (1994).

While scholars have long alluded to the effect of political linkages,[94] federal court rulings pertaining to student searches do not appear to be overly susceptible to politics. The discovery that the presidential political party bore little to no influence on how federal judges addressed critical search attributes in the context of public schools adds a new dimension to the much discussed law and politics linkage.[95] While studies have routinely proven political influence, the findings of this study suggest that students' Fourth Amendment rights are not nearly as impacted by political ideology as are other civil liberty domains.

Although this analysis fell short of ascertaining the exact interpretation of the law, the findings do hint that judges are issuing rulings more so by the particulars of each case and not according to political loyalty or patronage. As scholars have noted, lower courts are ordinarily incapable of freely departing from the facts of the case at hand and established precedent.[96] The ability of federal judges to improvise is clearly limited and constrained by precedent.[97]

As for the information deficits in *T.L.O.*, *Vernonia*, and *Earls* (e.g., appropriate searches, the exclusionary rule, etc.), the researchers fully anticipated that conservative appointed judges would be more inclined to favor greater administrative discretion in such cases. Although many scholars have called attention to the adverse effect of narrow and vague rulings,[98]

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94. *See* SHELDON GOLDMAN & THOMAS P. JAHNIGE, THE FEDERAL COURTS AS A POLITICAL SYSTEM 3–6 (2d ed. 1985); JOHNSON & CANON, *supra* note 1, at 48–56; Epstein & Knight, *supra* note 1, at 215–16; Herbert Jacob, *Policy Making and Norm Enforcement*, *in* CONSTITUTIONAL LAW AND JUDICIAL POLICY MAKING 26 (Joel B. Grossman & Richard S. Wells eds., 1972); Mark V. Tushnet, *The Politics of Constitutional Law*, *in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 219 (David Kairys ed., 1990); Baum, *What Judges Want*, *supra* note 1, at 753–54.

95. Baum, *Recruitment*, *supra* note 1, at 201–05; Baum, *What Judges Want*, *supra* note 1, at 750–55.

96. *See* JOHNSON & CANON *supra* note 1, at 48–71; Scott Barclay & Thomas Birkland, *Law, Policymaking, and the Policy Process: Closing the Gap*, 26 POL'Y STUD. J. 227, 234–35 (1998).

97. *See* Traciel V. Reid, *Judicial Policy-Making and Implementation: An Empirical Examination*, 41 W. POL. Q. 509, 510–13 (1988); Donald R. Songer, *Alternative Approaches to the Study of Judicial Impact*-Miranda *in 5 State Courts*, 16 AMER. POL. Q. 425, 425–30 (1988).

98. *See* GOLDMAN & JAHNIGE, *supra* note 94, at 258–64; JOHNSON & CANON, *supra* note 1, at 48–71; PELTASON, *supra* note 61, at 13; James P. Levine & Theodore L. Becker, *Toward and Beyond a Theory of Supreme Court Impact*, *in* THE IMPACT OF SUPREME COURT DECISIONS 230, 231–33 (Theodore L. Becker & Malcolm M. Feeley

the findings of this study at least demonstrate that rulings in the period examined (i.e., 1985-2002) were less partisan. The findings suggest as well that Republican appointed judges are no less sympathetic than Democratic appointed judges overall, as far as the Fourth Amendment in schools is concerned. In this area, however, future research may better control for the specific nominating president. As one article reports,[99] the nominating process for federal judges in the Reagan administration was characteristically more systematic and rigid as far as identifying potential judges that met strict ideological criteria. Differences in recruitment philosophy and procedure could indeed impact case outcomes.

An issue deserving greater attention is the inherently less controversial topic of searches in schools. Unlike other civil liberty arenas, search and seizure in schools captures less attention than legal domains such as racial discrimination and religion. Because alleged search violations typically involve a set of facts and hence may be less subjective, opportunities for political discretion may be far less frequent than in other legal areas–a consideration alluded to by Ashenfelter, Eisenberg, and Schwab.[100] Additionally, recent acts of violence (e.g., Columbine and 9/11) have also justified the use of greater discretion in schools in the war on crime and violence, which tends to depreciate students' privacy expectations.

In the end, the findings support that partisan ideologies relating to civil liberty issues are not as divisive as once believed. In addition, the assumption that federal judges show unwavering allegiance to one political standpoint has been rebuffed on numerous occasions (e.g., Justice Sandra Day O'Connor, a Reagan appointment, has often been regarded as the swing vote). In the end, the Reagan posture in the 1980s seemed to have a very limited bearing on case outcomes overall. Although the *T.L.O.* case has evolved into a case of broad political magnitude, its effect on federal court outcomes seems to be only negligible.

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eds., 2d ed., 1973); Stephen L. Wasby, *Toward Impact Theory: An Inventory of Hypotheses, in* THE IMPACT OF SUPREME COURT DECISIONS, *supra*, at 214–17.

99. Aric Press & Ann McDaniel, *Judging the Judges*, NEWSWEEK, Oct. 14, 1985, at 73–74.

100. Ashenfelter, *supra* note 89, at 281.

VII. CONCLUSION

Contrary to prior research on the politics of the federal judgeship, student Fourth Amendment civil liberties appear less vulnerable than other civil liberty arenas. In view of this, school district governing bodies should be more fully aware of the limitations of Fourth Amendment case law. Even though public schools enjoy substantial support, this support can oftentimes give school officials a false sense of authority or control, which can subsequently lead to abuses of power. While resources and political pressures may necessitate tougher approaches to student discipline or police involvement, school boards and district administrators have an obligation to adhere to rulings (e.g., reasonableness of the search). Whether it calls for a constant monitoring of changes in education law, being more mindful of administrative discretion, or even establishing clearly articulated policies, district governing bodies have the primary responsibility of overseeing its implementation.