Evidence: The Exclusionary Rule in Civil Administrative Hearings: 
*Turner v. City of Lawton*

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Both of these circuit courts of appeal have required a much higher degree of hostile and abusive behavior than was discussed by the Supreme Court in Meritor. That the perpetrators in these cases were coworkers is significant because similar behavior to that alleged in Rabidue and Scott has been found to sustain a claim for relief under Title VII when a supervisor rather than a coworker was the perpetrator.109 The emphasis these courts have placed on the term "hostile" and the requirement that actual psychological effect be shown indicates, however, that prevailing in a claim for hostile work environment may be more difficult than first expected. These cases also show that many judges still believe that women are just being overly sensitive. These decisions should not discourage women who are subjected to unwelcome sexual advances sufficiently pervasive so as to alter the conditions of their employment. This is the test announced by the Meritor Court, and it is the test that should be applied by the courts.

Conclusion

The Supreme Court has long been concerned with the psychological effect of discriminatory practices on members of a protected class. Its recognition that Title VII was intended to protect women from this form of abuse is significant for several reasons. First, women will no longer be required to quit their jobs in order to escape harassment. This will have the effect of removing them from a role of stereotypical helplessness. Second, because the Supreme Court has declared they have a right to work in an environment free from such abuse, women now have the ammunition needed to prosecute offenders. Third, the problem has acquired needed societal recognition through the media coverage the decision received.

As much as the decision may have been a boost to freeing women from sexually hostile work environments, it does not relieve them of the need to make men aware that advances are unwelcome. The most direct way for women to accomplish this is with a firm "No!" If this fails to thwart the harasser, however, a woman can take her fight to the courts, and the Meritor decision has made that fight easier.

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Evidence: The Exclusionary Rule in Civil
Administrative Hearings: Turner v. City of Lawton

In Turner v. City of Lawton, the Oklahoma Supreme Court held that article 2, section 30 of the Oklahoma constitution grants an individual absolute

security against unlawful search or seizure regardless of whether the proceeding is civil or criminal in nature.¹ Turner represents the first time the court has addressed the applicability of the exclusionary rule to a civil proceeding in Oklahoma.² The court's holding signifies a blanket exclusion of all illegally obtained evidence in all civil proceedings in Oklahoma no matter what the circumstances.

This note examines the long-range implications of the Turner holding as well as the legal underpinnings of the decision. This note also reviews the formulation and modification of the exclusionary rule by the United States Supreme Court and the adoption and extension of the rule by the Oklahoma Supreme Court.

The central thesis of the note is that the rule should not be considered a constitutional right in Oklahoma, and even if it is, that it should not be extended to civil administrative proceedings. The fatal policy weaknesses in Turner demonstrate the need for a different approach to the problems associated with the extension of the exclusionary rule to civil administrative hearings. Finally, the note suggests a better approach to the problem involving a balancing of the potential deterrent effect of applying the rule in a given situation with the countervailing public interest in having the evidence admitted.

Turner v. City of Lawton

Leonard Carl Turner was employed by the city of Lawton as a fireman. On September 16, 1982, Turner was charged with possession of cocaine with an intent to distribute. This charge was based on cocaine found in Turner's house under a search warrant that was later determined to be defective because of an inadequate affidavit. Turner was dismissed from his duties when the City Manager learned of Turner's alleged criminal act. While the criminal charges were pending, Turner appealed his dismissal to the city's Personnel Board and was given a full hearing. The city presented evidence of the cocaine taken from Turner's house under the search warrant. The Board then affirmed the termination of his employment.

Subsequently, in the criminal case, the trial court held the affidavit was insufficient. The search warrant was set aside, the evidence suppressed, and the criminal charges dismissed. Turner then sought an order from the district court requiring that the city reinstate him, contending that his dismissal was based on evidence obtained by an illegal search that violated his constitutional rights. The district court agreed, finding his dismissal improper.

The court of appeals reversed, holding that the deterrent effect upon police officers contemplated by the exclusionary rule is outweighed by the benefit to

². Hess v. State, 84 Okla. 73, 202 P. 310 (1921) (Oklahoma Supreme Court adopted the rule and applied it in a criminal situation).
society in maintaining the integrity and fitness of firefighters. The court concluded that the primary analysis was whether the use of the illegally seized evidence in the subsequent proceedings provided an incentive for the illegal search. The court indicated that this could be determined by focusing on whether the official responsibilities and personal interests of the seizing officer are at all related to the subsequent proceedings. The court found personnel termination proceedings too remote from the primary interests of the police officers who made the seizure of the drugs in Turner’s home. Thus, the introduction of the evidence in the termination hearing was deemed not to be a motivating factor. The court found no evidence of collusion between the police who seized the drugs and the city officials who terminated Turner’s employment. The court, therefore, concluded that the deterrent purpose of the exclusionary rule would not have been served by suppressing the evidence seized in personnel proceedings.

The Oklahoma Supreme Court vacated the decision of the court of appeals. In reaching its decision, the Oklahoma Supreme Court made a radical departure from the exclusionary rule principles developed by the United States Supreme Court. The most significant departure is that the exclusion of evidence acquired by an unconstitutional search and seizure was held to be a fundamental right under the Oklahoma constitution, independent of either the fourth or fourteenth amendments to the United States Constitution. This view sharply contrasts with the view taken by the United States Supreme Court that the rule is not an absolute right, but rather a judicially created remedy designed to safeguard fourth amendment rights through its deterrent effect.

The court found that the rationale of the United States Supreme Court cases on the issue are factually and conceptually distinguishable. The approach was also deemed too restrictive for application under Oklahoma’s fundamental law since the new version of the exclusionary rule is merely a federal rule of evidence.

4. 56 OKLA. B.J. at 538.
5. Id.
6. Id.
7. Id.
8. Id.
11. 733 P.2d at 381.
13. 733 P.2d at 379.
14. Id. at 380.
In an attempt to justify its decision, the court pointed out that the supremacy clause of the United States Constitution was only pertinent if state constitutions afford their citizens lesser rights and protections. The court believed that the Oklahoma constitution’s search and seizure provision provides Oklahoma citizens with greater protection than does the corresponding provision of the United States Constitution. This greater protection was provided by “small, but significant differences between the language of the Fourth Amendment and art. 2, § 30.” The court believed that “the Oklahoma Constitutional prohibition is broader in scope than its federal counterpart, forbidding any unreasonable search or seizure and requiring that the place to be searched be described with greater particularity than does the federal constitution.” Thus, the majority justified its dramatic divergence from the United States Supreme Court cases based on the fact that the rule is a fundamental right under Oklahoma law.

In her concurring opinion, Justice Wilson said that relevant evidence should not be ipso facto excluded from admission in any and all subsequent proceedings of a civil nature merely because it was improperly obtained. Instead, the court should balance the interests of the individual and of the public; however, in this case she felt the balance favored exclusion. Justice Wilson, unlike the majority, does not believe that the exclusionary rule is a fundamental constitutional right. Instead, she has adopted the approach of the United States Supreme Court and treated the rule as a judicially created remedy designed to safeguard fourth amendment rights through its deterrent effect.

Chief Justice Simms wrote a dissenting opinion in which Justices Hodges and Summers joined. He adopted the approach of the United States Supreme Court and said that the interests should be balanced and the motivation of the officers who seized the evidence should be examined to see if their interests are related to the civil proceeding. The dissent concluded that there was no close relationship between the search by the police and the subsequent use of the evidence by the city and the Personnel Board and that the evidence should, therefore, not be excluded. Thus, the dissent also believed that the exclusionary rule was not a fundamental constitutional right but rather a supervisory device as pronounced by the United States Supreme Court.

Implications of the Decision

The Oklahoma Supreme Court’s dogmatic view of the applicability of the exclusionary rule to civil proceedings has some negative long-term implica-

15. Id.
16. Id. (These differences are really illusory. See discussion infra accompanying notes 26-29).
17. Id. (emphasis supplied by court). See discussion infra accompanying notes 26-29 for comparison of the two provisions.
18. Id. at 383 (Wilson, J., concurring).
19. Id.
20. Id. at 383 (Simms, C.J., dissenting).
21. Id.
tions. The most important of these arises from the court's holding that illegally obtained evidence is ipso facto excluded from admission in any and all subsequent proceedings.22 This means that no matter what the circumstances, improperly obtained evidence will not be admitted in any kind of proceeding regardless of how slight the infraction on the individual's rights or how great the public interest in having the evidence admitted. One writer has stated:

[W]hen exclusion of relevant evidence is unlikely to have an appreciable deterrent effect, or when there are strong countervailing reasons for admitting such evidence because of the importance of the private interests at stake, integrity of the legal system may demand more than an easy answer [i.e., blanket exclusion]. Since the harm done to private law by a blanket constitutional exclusion may be a greater evil than the admission of unconstitutionally seized evidence, the better approach will, initially at least, permit needed privacy safeguards to be established within the confines of the policies of the private law system.23

Many examples come to mind where the public interest is so great that society demands that illegally obtained evidence be admissible in certain non-criminal hearings even if the rule is a constitutional right in criminal proceedings. For example, evidence of a sixth-grade teacher's act of oral copulation in a doorless toilet stall in a public restroom at a downtown department store should be admissible at his dismissal proceeding.24 Also, it seems just as sensible that evidence of drug use by someone such as an air traffic controller, who has the safety of many persons in his hands every day, should be admissible in a termination proceeding. The public interest in having the evidence admitted in these situations is so strong that it easily outweighs any potential harm caused by the admission of the evidence. Yet, under the approach adopted by the Oklahoma Supreme Court, the evidence would not be admissible in either of these situations or any others that can as easily come to mind where the public interest overwhelmingly demands admission. Even if the exclusionary rule is constitutionally based, that does not necessarily mean that it should be blindly extended to noncriminal hearings where the public interest overwhelmingly demands admittance.

Evolution of the Exclusionary Rule

The exclusionary rule is a judicially created remedy to help safeguard the fourth amendment through its deterrent effect.25 The fourth amendment provides:

22. Id. at 381.
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.\(^{26}\)

The Oklahoma provision in article 2, section 30 of the Oklahoma constitution is virtually identical to the fourth amendment and was closely patterned after it. The Oklahoma section states:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized.\(^{27}\)

The only real differences in the two provisions are emphasized. If anything, the Oklahoma provision appears to be more permissive than the fourth amendment since it modifies the particularity with which a warrant must describe the place to be searched or the person or thing to be seized by introducing a factor of reasonableness with the phrase “as particularly as may be.”\(^{28}\) Since a state constitutional provision cannot give less protection than a similar federal amendment, the provisions should be read as if identical. The court in *Turner*, however, held that the above difference made the Oklahoma provision more restrictive.\(^{29}\)

Although these provisions have been in place since the adoption of the respective constitutions, the exclusionary rule did not arise until 1914.\(^{30}\) At common law, the rule was that evidence obtained illegally was admissible in all actions whether criminal or civil.\(^{31}\) The policy behind the rule allowing admission was that the ultimate result of getting the truth justified the means of

\(^{26}\) U.S. CONST. amend. IV (emphasis added).

\(^{27}\) OKLA. CONST. art. 2, § 30 (emphasis added).

\(^{28}\) There is also a difference in the two provisions in that the fourth amendment protects against “unreasonable searches and seizures” while the Oklahoma provision protects against “unreasonable searches or seizures.” However, for purposes of the exclusionary rule this difference cannot be considered significant because there must be an improper seizure before the admissibility of the seized evidence and the exclusionary rule can become an issue. Also, the United States Supreme Court has read the “and” such that it is an “or” in cases involving the exclusionary rule. See, e.g., Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).


illegally seizing the evidence. The court would not look into the collateral issue of whether the evidence was obtained in violation of the law.  

In the landmark case of *Weeks v. United States*, the United States Supreme Court held that evidence obtained in violation of the fourth amendment is not admissible in federal criminal trials. The Court, in discarding the common law rule, reasoned that if illegally seized evidence could be used against a citizen accused of an offense, the protection of the fourth amendment declaring his right to be secure from such searches and seizures would be of no value. Thus, the exclusionary rule was born.

Since that time the rule has gone through an evolutionary process. Shortly after *Weeks*, as dicta in another case involving the admission of illegally obtained evidence in a criminal trial, the Court said that improperly obtained evidence "shall not be used at all." Next, the Court extended the rule to forfeiture proceedings. In doing so, the Court reasoned that forfeiture proceedings were quasi-criminal because their purpose was to penalize the commission of an offense against the law. Hence, the Court expanded the scope of the exclusionary rule.

Then, in *United States v. Calandra*, the Supreme Court made a major change in its approach toward the exclusionary rule by devising a balancing test to determine whether to extend the rule to a particular noncriminal proceeding. Thus, a test was devised that would determine whether the exclusionary rule should be applied to such proceedings as grand jury hearings, as was the case in *Calandra*, and civil termination hearings, as was the case in *Turner*. The Court held that the interest of the public in having the evidence heard must be balanced with the potential deterrent benefits of applying the rule to determine whether the rule should be applied in a given situation.

The Court declared the exclusionary rule to be a judicially created remedy designed to safeguard fourth amendment rights through its deterrent effect rather than a personal constitutional right of the aggrieved party. This meant that the application of the rule should be restricted to only those areas where its remedial objectives are thought most effectively served. Hence, in

33. 232 U.S. 383 (1914) (police officers searched defendant's room without a warrant and took possession of certain incriminating papers that prosecution later introduced at trial over defendant's objections).
34. Id. at 393.
35. The exclusionary rule was then extended to the states through the due process clause of the fourteenth amendment in *Mapp v. Ohio*, 367 U.S. 643 (1961).
36. Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920) (This is the language the *Turner* court seized upon in reaching its decision.).
37. 414 U.S. 398, 347-48 (1974) (Court applied balancing test to determine the exclusionary rule would not apply to grand jury hearings).
38. Id.
39. Id. at 349.
Calandra the Supreme Court declared that the exclusionary rule is not a constitutional right but a supervisory device. This result contrasts sharply with the Oklahoma Supreme Court's holding in Turner.43

Furthermore, the United States Supreme Court stated in Calandra that the rule does not apply in all situations against all persons.44 This makes it clear that the rule would not be applied in all situations as the dicta in some earlier cases seemed to imply. Also, the Court stated that the prime purpose of the rule is to deter future unlawful police conduct and not to redress a wrong against the injured party.45 Thus, the Court identified deterrence as the key policy factor underlying the fourth amendment upon which it would focus in applying the exclusionary rule.

Then, in United States v. Janis, the Court was given a chance to examine the exclusionary rule in the context of a civil proceeding. In this case the Court held, after applying the balancing test, that the rule should not be extended where the evidence is sought to be used in a civil proceeding of a sovereign different from the one whose agent illegally seized the evidence.46 In reaching its decision, the Court reasoned that the duty and concern of police officers is the criminal enforcement process and when evidence is excluded from this process it is not necessary to impose any other sanctions against the officer to achieve the desired deterrent effect.47

The Court also stated in Janis that it had never applied the rule to exclude evidence from a state or federal civil proceeding48 and that it would take special circumstances for the rule to be so applied. Finally, Janis mandates that exclusion be shown to have a sufficient likelihood of deterring unlawful police conduct so that it outweighs the social costs imposed by exclusion before the rule is extended to a particular situation.49

In United States v. Leon,50 the Supreme Court modified the exclusionary rule even more dramatically. Leon held that if the exclusionary rule did not result in appreciable deterrence in a particular situation then its use in that situation was unwarranted—even if the proceeding was criminal.51 Following this principle, the Court created a broad good faith exception to the exclusionary rule. The Court then held that evidence was admissible in a criminal trial where it was obtained by police officers acting in good faith on a warrant that later turned out to be defective.52

43. See discussion supra accompanying notes 1 and 9-12.
44. 414 U.S. at 348.
45. Id. at 347.
46. 428 U.S. 433 (1976) (state police officer illegally seized evidence that was subsequently denied admission in a state criminal proceeding, but the evidence was then used by the IRS to assess additional taxes on the defendant).
47. Id. at 448.
48. Id. at 447.
49. Id. at 454.
51. Id. at 916.
52. Id. at 922.
In reaching its decision in *Leon*, the Court held that the use of the fruits of a past unlawful search worked no new fourth amendment wrong and that the fourth amendment had never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings against all persons.\(^5\) The question of whether the exclusionary rule is to be applied is a separate issue from whether the fourth amendment rights of the party seeking to invoke the exclusion were violated.\(^4\) Thus, the Court applied the balancing test it had devised in *United States v. Calandra*\(^5\) and created a good faith exception to the exclusionary rule.\(^6\) This is the current state of the exclusionary rule under the Supreme Court decisions.

**The Exclusionary Rule in Oklahoma**

Under the Oklahoma decisions, the exclusionary rule underwent a similar evolutionary process closely following the United States Supreme Court decisions. Then, abruptly in *Turner*, the Oklahoma Supreme Court decided to diverge dramatically from the course set by the Supreme Court.

Oklahoma adopted the exclusionary rule in *Hess v. State*.\(^5\) *Hess* involved an action to recover illegally seized property that the state was holding as evidence for a criminal proceeding. Prior to *Hess*, the common law rule was that all evidence was admissible no matter how it was obtained.\(^4\) The *Hess* court, in abandoning the common law rule, relied on the United States Supreme Court cases adopting the exclusionary rule and cases in other jurisdictions following the Supreme Court decisions.\(^5\) Thus, the Oklahoma Supreme Court adopted the exclusionary rule based on the United States Supreme Court and other jurisdictions' interpretations of the fourth amendment. The Oklahoma court did not adopt the rule as a totally separate matter arising from article 2, section 30 of the Oklahoma constitution. The implicit reasoning was that the Oklahoma provision and the fourth amendment were virtually identical and, therefore, Oklahoma should follow the lead of the United States Supreme Court.\(^6\)

Next, in *Gore v. State* the Criminal Court of Appeals of Oklahoma adopted the exclusionary rule for criminal proceedings.\(^5\) In adopting the rule this court stated:

53. *Id.* at 900, 904.
54. *Id.* at 904.
57. 84 Okla. 73, 202 P. 310 (1921) (action to recover illegally seized property that state was holding as evidence).
59. 84 Okla. 73, 202 P. at 313-15 (citing *Amos v. United States*, 255 U.S. 313 (1921); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920); *Weeks v. United States*, 232 U.S. 383 (1914); *Boyd v. United States*, 116 U.S. 616 (1886); *State v. Sheridan*, 121 Iowa 101, 96 N.W. 730 (1903); *Youman v. Commonwealth of Kentucky*, 189 Ky. 291, 224 S.W. 860 (1920); *People v. Marxhausen*, 204 Mich. 559, 171 N.W. 557 (1919)).
60. The court in *Turner* held just the opposite. See discussion *supra* accompanying note 29.
Therefore if it appears that the highest court of the land has definitely fixed a rule applying to the introduction of evidence obtained by illegal seizure, it follows without argument that the rule of evidence in the state courts, where like facts and principles of law are involved, should conform to that settled by the court having supreme prestige and authority. This is further emphasized by the decisions of the Supreme Court of Oklahoma . . . in Hess v. State following the construction given by the federal Supreme Court.  

Then, like the United States Supreme Court, the Oklahoma Supreme Court applied the exclusionary rule in a forfeiture proceeding. Although in this instance the court applied the exclusionary rule to a forfeiture proceeding before the Supreme Court had ruled on the issue, in doing so it relied on the decisions of several federal circuit courts of appeal. In developing the exclusionary rule, the Oklahoma courts continued to follow the lead of other courts' decisions under the fourth amendment.

Later, the Court of Criminal Appeals of Oklahoma declared that the exclusionary rule is a part of a constitutional right and not merely a rule of evidence adopted in the exercise of supervisory power. Once again, the court looked to a federal circuit court decision for authority for this proposition. Also, the court, in reaching its decision, did not even mention the provision in article 2, section 30 of the Oklahoma constitution. Instead, the court relied solely on the fourth amendment.

Therefore, Oklahoma courts, in adopting and modifying the exclusionary rule, have closely followed federal precedent in their interpretations of the fourth amendment without relying on article 2, section 30 of the Oklahoma constitution. Focusing exclusively on the fourth amendment, the Oklahoma courts have treated it as identical to the corresponding provision in the Oklahoma constitution. However, in the case of Turner v. City of Lawton, this pattern came to an abrupt and illogical end. The Oklahoma courts had not dealt with the extension of the rule to a purely civil hearing until Turner.

62. Id. at 547-48.
64. Id. at 1109 (citing Kelly v. United States, 61 F.2d 843 (8th Cir. 1932)); Alvau v. United States, 33 F.2d 467 (9th Cir. 1929)).
65. Michaud v. State, 505 P.2d 1399, 1403 (Okla. Crim. App. 1973) (Involved extension of exclusionary rule to a hearing to revoke a suspended sentence. Court denied admission on the basis that a suspended sentence could only be revoked based on competent evidence, and evidence obtained through an unlawful search and seizure is not competent evidence.).
66. Id. (citing Verdugo v. United States, 402 F.2d 599, 610-11 (9th Cir. 1968)). Verdugo has since been overruled on this point by United States v. Clandana. See discussion supra accompanying notes 39-45.
67. Michaud, 505 P.2d at 1403.
Constitutional Right or Judicially Created Remedy?

The premise upon which Turner is based is the Oklahoma Supreme Court’s determination that the exclusionary rule is a constitutional right under the Oklahoma constitution. As such, it applies to civil as well as criminal proceedings. The first problem with this premise is that the Oklahoma provision does not provide that illegally obtained evidence shall not be used once it is seized. The provision merely states that the right of the people to be secure from unreasonable searches and seizures shall not be violated and that “no warrant shall issue but upon probable cause.” 69 Nowhere is the exclusion of evidence in subsequent proceedings mentioned or mandated. 70

The United States Supreme Court decided the exclusionary rule was not a constitutional right on this basis. The Supreme Court has held that the rule is a judicially created remedy designed to safeguard fourth amendment rights and is not a constitutional right. 71 The Court has interpreted the rule this way because it realized that the exclusionary rule “is not a command of the Fourth Amendment but is a judicially created rule of evidence which Congress might negate.” 72 Also, the Court has commented that “the Fourth Amendment does not itself contain any provision expressly precluding the use of such [illegally obtained] evidence, and . . . [it is] extremely doubtful that such a provision could properly be inferred from nothing more than the basic command against unreasonable searches and seizures.” 73

This same reasoning applies to the Oklahoma provision as well because it is so similar to the fourth amendment. However, the Oklahoma Supreme Court refused to recognize this reasoning and did not address it in its decision. The state supreme court by its decision has, in effect, legislated that the exclusionary rule is a constitutional right. There is nothing in article 2, section 30 of the Oklahoma constitution that even remotely supports the proposition that illegally obtained evidence may not be admitted in any action, whether criminal or civil.

A second problem with the Oklahoma Supreme Court’s premise that the exclusionary rule is a constitutional right is that it is based upon authority that is now out of date. The court cited an Oklahoma Court of Appeals case in support of the proposition. 74 However, in reaching its decision, the court of appeals held the exclusionary rule to be a constitutional right based upon two now outdated United States Supreme Court cases—Weeks v. United States and Silverthorne Lumber Co. v. United States. 75

70. The exclusionary rule was not adopted in Oklahoma until 1921. See discussion supra accompanying notes 57-60.
73. Id. at 661-62.
75. Id. (citing Simmons v. State, 277 P.2d 196, 198 (Okla. Crim. App. 1954)).
An additional problem with the *Turner* court's holding is the sudden shift in approach by the Oklahoma Supreme Court. After basing adoption of the rule and all extensions and modifications thereof on United States Supreme Court doctrine and other decisions interpreting the fourth amendment, the Oklahoma Supreme Court has suddenly diverged from the weight of authority interpreting the fourth amendment. The Oklahoma Supreme Court has now decided that the exclusionary rule arises independent of the fourth amendment as a matter of right from seemingly just discovered "different" provisions of article 2, section 30 of the Oklahoma constitution. Yet, all of the court's cited authority is based on the United States Supreme Court's decisions under the fourth amendment.

The Oklahoma Supreme Court justified its divergence from the approach taken by the United States Supreme Court to a large extent on what the court perceived to be "small, but significant" differences in the fourth amendment and the corresponding Oklahoma provision.76 Close inspection of the two provisions, however, reveals that any difference in the two provisions is illusory. If anything, the Oklahoma provision would seem to be more permissive than its federal counterpart because it requires the place to be described "as particularly as may be," while the federal provision requires the place to be searched to be particularly described.77 Therefore, this basis for the court's holding that the exclusionary rule is a constitutional right cannot be supported.

By calling the rule a constitutional right, the Oklahoma court has allowed itself to avoid approaching the problem of admissibility of evidence through a balancing test. As discussed above, this pronouncement by the state court is supported by neither the express wording of the state constitution nor independent authority. It is, in essence, an example of an overstepping of judicial authority.

*Extension of the Exclusionary Rule*

Another problem with the court's decision in *Turner* is that even if the exclusionary rule were a constitutional right in Oklahoma for *criminal* and

76. Id. at 380.

77. Article 2, section 30 of the Oklahoma constitution states:

The right of people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized.

(Emphasis added).

78. The fourth amendment to the United States Constitution states:

The right of persons to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

(Emphasis added.)
quasi-criminal proceedings, it does not necessarily follow that it is or should be for civil proceedings. There are many examples where the Constitution and the law give criminal defendants greater protection than civil defendants.\textsuperscript{79} This is primarily because criminal defendants invariably face imprisonment while civil defendants only face pecuniary loss. This difference in potential penalties makes it necessary for the law to give the criminal defendant much greater protection than the civil defendant. Therefore, even if the exclusionary rule is a constitutional right of criminal defendants, it does not necessarily follow that it is a right of civil defendants.

The Oklahoma Supreme Court also appears to have ignored some significant policy considerations in extending the exclusionary rule to civil administrative hearings. The primary oversight is the policy behind the fourth amendment and the comparable Oklahoma provision. The purpose of these provisions is to protect persons against unreasonable searches and seizures. The drafters of the Bill of Rights considered this protection necessary in light of the infamous Writ of Assistance, which allowed British officials to enter colonial homes and buildings and conduct searches under various pretenses.\textsuperscript{80} Thus, the fourth amendment was drafted to abolish the abuses colonists suffered under the Writ of Assistance. The amendment accomplished this goal by requiring probable cause before a search warrant could be issued.\textsuperscript{81}

Later, the Supreme Court developed the exclusionary rule to effectuate the policy underlying the fourth amendment: deterrence of unreasonable searches and seizures.\textsuperscript{82} The rule was extended to situations where the Court felt it would be effective in deterring future illegal searches and seizures.\textsuperscript{83} Therefore, deterrence is the primary consideration in applying the rule whether the rule is a constitutional right or a supervisory device. Hence, if the policy underlying the fourth amendment is to be served, the exclusionary rule should only be applied in situations where it will deter future unreasonable searches and seizures.

In a civil case, like Turner, it is difficult to see how extension of the rule can deter future unlawful conduct. Police officers are a part of the criminal justice system. As such, their duty is to enforce the criminal laws and arrest and charge people with crimes. What goes on in the civil arena and with the civil law is totally outside of the scope of a police officer's interest. The deterrent effect in criminal situations is generally substantial.\textsuperscript{84} However, in the civil arena, police officers are not interested in whether evidence is ad-

\textsuperscript{79} For example, the burden of proof differs, as does the number of concurring jurors it requires to obtain a verdict.

\textsuperscript{80} See W. Lafave, Search and Seizure, A Treatise on the Fourth Amendment § 1.1 (1978).

\textsuperscript{81} U.S. Const. amend. IV.

\textsuperscript{82} See Weeks v. United States, 232 U.S. 383 (1914).


\textsuperscript{84} See, however, United States v. Leon, 468 U.S. 897 (1984) (Supreme Court held deterrent purpose not met in criminal action where police relied on warrant in good faith that later turned out to be defective).
missible. If evidence is excluded from a civil trial, police officers are unlikely to know about it, much less understand why the evidence was excluded. Therefore, it is unlikely that applying the exclusionary rule to civil proceedings would have any appreciable impact on future police activities. As a result, the underlying deterrent purpose of the fourth amendment would not be served.

There are, however, cases where there can be a deterrent effect from applying the rule in a civil proceeding. These cases arise when the primary motivation of the search is not criminal prosecution but some outside purpose, such as getting an employee dismissed from his job. In these cases deterrence is possible, and the rule should be applied where the potential deterrent value of applying the rule outweighs the public interest in having the evidence admitted.

*Turner*, however, is not this type of case. In *Turner* the search was motivated entirely by a desire for criminal prosecution. The dismissal occurred only after the City Manager learned of the charges against Turner. The opinion was totally devoid of any evidence that the police were motivated by anything other than a desire to collect evidence for the criminal prosecution of Turner. Therefore, the deterrent value of applying the exclusionary rule in *Turner* was minimal.

Another policy consideration the court ignored in extending the exclusionary rule to the proceeding in *Turner* is that an administrative termination hearing differs significantly from a criminal or civil trial. Constitutional protections are not as great in an administrative termination hearing. For example, the evidentiary and procedural rules are less stringent in administrative hearings than in other actions. Thus, evidence that is inadmissible in other actions may be admissible in an administrative hearing.

Additionally, the purpose of a hearing such as the one in *Turner* is to determine whether the city had, at most, “good cause” for firing the employee. The emphasis is not on proving that the employee actually did the thing for which he was fired but whether his employer acted properly in firing him. An employee who has been fired is only entitled to minimal due process protections and a “rational explanation” for his termination. The scope of review of such a termination is the court’s determination of whether the decision of the agency was so irrational as to render the decision arbitrary and capricious. The review does not extend to a review of the factual basis for the determination. These differences indicate substantial dissimilarity

86. Umholtz v. City of Tulsa, 565 P.2d 15, 24 (Okla. 1977) (court held city employee had property right in his job that was limited and defined by the procedural language of the city ordinances and that employee was not entitled to full protection of the due process clause of the fourteenth amendment).
87. Id. at 25.
88. Id.
89. Id.
between civil administrative hearings and the types of proceedings in which the exclusionary rule has been traditionally imposed. Imposing the exclusionary rule in a civil administrative hearing will only decrease the effectiveness of the hearing and will require that the tribunal make rulings on issues outside of its expertise.

Another policy factor the court did not consider in extending the exclusionary rule stems from the fact that the evidence was not declared to be inadmissible in the criminal action until after the post-termination hearing. Hence, the hearing board reached its decision on what was then thought to be competent evidence. If a termination board must wait until after the criminal action against an individual is complete to make sure none of the evidence it is presented was illegally obtained, there could be a delay of several years in the post-termination hearing. This would render the hearing virtually worthless. The employee will be suspended pending the outcome of the hearing and the city will have to wait an inordinate amount of time to hire a replacement. Then, if the city loses, it may even have to pay a large amount of accrued wages and benefits. Such a result does not make sense economically or otherwise.

Also, it has been said that if the primary purpose of an administrative proceeding is to enforce an independent regulatory program, a balancing test should be used to determine the applicability of the exclusionary rule even though the program may have penal attributes. The rationale is that if a blanket exclusion is applied without any balancing of respective interests, the whole purpose of the regulatory program will be defeated. The rigid application of the exclusionary rule to the city's termination hearing in Turner has totally defeated the city's ability to administer its independent employee regulatory program.

The Better Approach

Clearly, there is a better approach than the absolute rule stated and applied by the Oklahoma Supreme Court. An equitable rule that balances all of the critical interests can easily be extracted from the recent federal Supreme Court cases and Tirado v. Commissioner. This is essentially the balancing approach adopted by the Oklahoma Court of Appeals and the dissent in Turner v. City of Lawton. This balancing approach can be applied even if the exclusionary rule is considered a constitutional right in Oklahoma. It allows a court to focus on the critical policy factor of deterrence, which is the underlying basis for the fourth amendment and the creation of the exclusionary rule.

90. Note, supra note 85, at 359.
92. Tirado v. Commissioner, 689 F.2d 307 (2d Cir. 1982).
The approach consists of balancing the public interest in having the evidence heard with the possible deterrent effect of excluding the evidence. The analysis should focus on whether the official responsibilities and personal interests of the seizing officer are at all related to the subsequent proceedings. Then it can be determined whether the use of the illegally seized evidence in a civil proceeding provided an incentive for the illegal search. In addition, the court should look for any evidence of bad faith or collusion on the part of the seizing official.

This approach recognizes that there are competing interests and weighs them accordingly. It also recognizes that there is nothing in either the fourth amendment or article 2, section 30 specifically prohibiting the use of illegally obtained evidence in a subsequent proceeding. The approach recognizes that deterrence is the primary purpose of the exclusionary rule and the primary policy underlying the fourth amendment. When the possible deterrent value of applying the rule to a particular situation is not strong enough, the interest of the public in having the evidence heard may be important enough to allow inclusion. This approach avoids ipso facto rules and, therefore, is more equitable in considering all of the circumstances of a particular situation.

If the court in Turner had adopted this balancing test, the outcome of the case would probably have been very different. The deterrent value, if any, of applying the exclusionary rule in this case is marginal. There was no close relationship between the illegal search and the subsequent use of the evidence in the personnel board hearing. The purposes of the original search and the termination hearing were totally different.

The motivation for the original search was to gather evidence against Turner for criminal prosecution. The purpose of the hearing was to determine whether the City Manager acted properly in terminating Turner upon learning of the drugs being found in his house. The drugs were only introduced in the termination hearing to show that the City Manager did, in fact, have legitimate grounds for terminating Turner’s employment. The police have no motivating interest in assisting the city in determining hiring and firing of employees. They are interested only in providing evidence for the conviction of criminals.

The California Court of Appeals recognized this when it stated: “The police in making investigations of suspected criminal activity are . . . generally completely unaware of any consequences of success in their investigative efforts other than the subsequent criminal prosecution of the suspected offender.”

96. See, e.g., Tirado v. Commissioner, 689 F.2d 307, 310 (2d Cir. 1982). See also United States v. Leon, 468 U.S. 897 (1984) (evidence is admissible in criminal action where police officer seizes evidence in good faith reliance on a warrant that later turns out to be defective).
97. See Tirado, 689 F.2d at 311, 312.
98. Id. at 312. See also United States v. Leon, 468 U.S. 897 (1984).
Additionally, there was no evidence of collusion between the police and the city officials who fired Turner. If anything, the evidence indicates that there was a minor defect in the search warrant in the form of an insufficient affidavit that did not appear until after the criminal action subsequent to the termination hearing.\(^{100}\) At the time of the termination hearing, the warrant appeared to be valid and the city officials on the Personnel Board certainly could not be expected to rule on the adequacy of the search warrant, an endeavor clearly outside of the scope of their expertise. Therefore, it is readily apparent that any deterrent value gained from applying the exclusionary rule in this situation is negligible.\(^{101}\)

Also, the police were adequately deterred by the later exclusion of the evidence in the criminal action. As discussed before, the criminal action is the primary, if not exclusive, concern of the police. Once the evidence is excluded from the criminal action, the deterrent value of excluding the evidence from a civil termination hearing is almost nonexistent.

The Oklahoma statutes and tort law in general provide an additional source of deterrence where evidence is illegally obtained. The statutes make it a misdemeanor to maliciously and without probable cause procure a search warrant to be issued and executed.\(^{102}\) Additionally, someone who has suffered an illegal search or seizure may have a tort action against those responsible. The United States Supreme Court has held that the victim of an illegal search and seizure has a federal cause of action under the fourth amendment for damages incurred as a result of the violation of the amendment.\(^{103}\) These remedies serve not only to deter but also give the person whose rights have been violated a possible route for seeking vindication.

Given the slight deterrent value to be gained from extending the exclusionary rule to this situation, the evidence should be admitted if there is any substantial public interest in having the evidence heard. The interest of the public in having the evidence heard in Turner is substantial. First, there is the general interest of society in having the truth revealed in all judicial hearings. Society wants decisions in all proceedings to be based upon all of the facts. Second, there is strong citizen interest in municipal firefighters not becoming involved in criminality and/or drugs. The public relies heavily on the fire department to protect its health and safety. A fireman has the responsibility of protecting the lives and property of the community on a daily basis.

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Rptr. 724, 726 (1974). See also United States v. Janis, 428 U.S. 433, 448 (1976) (duty and concern of police officers is the criminal enforcement process and when evidence is excluded from this process it is not necessary to impose any other sanctions against the officer).

100. Turner is very similar to Leon in that the evidence was seized in good faith reliance on a warrant that later was declared invalid because of an inadequate affidavit. However, in Leon the United States Supreme Court held the illegally seized evidence to be admissible in the criminal action. The Turner court refused to even consider Leon.


Thus, it appears that the public interest in having the evidence heard clearly outweighs any possible deterrent effect of excluding the evidence. Admission of the evidence certainly would not have the effect of making all city employees the targets of illegal searches and seizures, as suggested by the majority in Turner. Even if the police were interested in persecuting city workers, as the court has suggested, any evidence obtained under this course of action would not be admissible under the balancing test because the police would no longer be acting in good faith, and deterrence would again be a factor.

Conclusion

The pronouncement of the Oklahoma Supreme Court in Turner v. City of Lawton that illegally obtained evidence is ipso facto inadmissible in any subsequent proceeding is misguided and shortsighted. The court has decided that the exclusionary rule is a constitutional right in Oklahoma. This pronouncement is not supported by the Oklahoma search and seizure provision, the policy underlying the prohibition of illegal searches and seizures, or the decisions of the United States Supreme Court in point. Although the recent Supreme Court cases on the exclusionary rule are not binding on the Oklahoma Supreme Court, they should be very persuasive. This is especially true considering that the fourth amendment and article 2, section 30 of the Oklahoma constitution are virtually identical and that Oklahoma adopted the exclusionary rule initially and developed it following United States Supreme Court precedent. The court's pronouncement in Turner that the exclusionary rule is a constitutional right in Oklahoma thus appears to be based on faulty reasoning.

Even if the exclusionary rule were a constitutional right in Oklahoma, that does not necessarily mean that it should have been extended to a civil administrative hearing. The primary policy underlying both the fourth amendment and the exclusionary rule itself is deterrence. If the goal cannot be furthered by extending the rule to a particular proceeding, then a court should take cognizance of the countervailing public interest in having the evidence heard and allow it to be admitted. If something is a constitutional right for criminal actions, it does not necessarily follow that it also is for civil actions.

The balancing approach suggested by the United States Supreme Court and elaborated on in this discussion is preferable to the hard-line approach of the Oklahoma Supreme Court. By balancing the possible deterrent effects of extending the rule to a particular situation with the public's interest in having the evidence heard in that situation, the court can reach a more equitable result that ensures that the interests of all parties receive proper consideration and attention. The Oklahoma Supreme Court should reexamine its pronouncements in Turner and carefully consider adopting the balancing approach that has been suggested.

Scott Meacham

104. 733 P.2d at 379.