

Case law doctrines in the U.S. Federal Court concerning particularity requirement in search and seizure under the Fourth Amendment and its practice: focusing on “permeated with fraud” doctrine

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In large scale and complicated fraud or financial crimes, numerous documents and evidences are searched and seized with warrants at offices and premises related to that crime. The Fourth Amendment of the U.S. Constitution requires that warrants shall particularly describe the place to be searched, and the persons or things to be seized, in order to protect the right of people from unreasonable search and seizure.

In 1927, *Marron v. United States* (275 U.S. 192; 48 S. Ct. 74) provided a strict guideline that “as to what is to be taken, nothing is left to the discretion of the officer executing the warrant.” However, in search and seizure of complicated criminal cases, it is often difficult to foresee what kind of documentary and physical evidence at what places might have evidential value to establish suspected crime. Furthermore, it is also difficult for officers to select out with accuracy such documentary or physical evidence at a particular place within certain limited time of executing the warrant.

Taking account of such reality of search and seizure, later leading cases such as *Andresen v. Maryland* (427 U.S. 463; 96 S. Ct. 2737 (1976)) became

to allow flexible and realistic way in evaluating the requirement of the Fourth Amendment for search and seizure warrants and execution.

In addition, even in such cases as a warrant did not meet the requirement, courts became to establish doctrines for remedy in order not to impose impossible tasks to officials and give them a way to acquire necessary evidence for uncovering aggravated and complicated crimes. “Cure by affidavit doctrine” and “Partial invalidity doctrine” are such effective remedies, and “Leon’s good faith exception” is also applied to cure a defect of particularity requirement of a search warrant. On the other hand, in 1978, *Franks v. Delaware* (438 U.S. 154; 98 S. Ct. 2674) established a remedy for defendants by allowing to contend that a facially valid warrant should be vacated if the affidavit for the warrant contains a false statement.

Furthermore, in 1980, *United States v. Brien* (617 F 2d 299 (1st Cir.)) became a pioneering figure by establishing a new remedy of “Permeated with fraud doctrine” or “All records exception” which allows officials to search and seize all records of an enterprise in the premise by a warrant, where there is a probable cause to find that there exists a pervasive scheme of fraud.

The aim of this article is to introduce (1) particularity requirement of search and seizure warrants and it’s execution under general principle of the Fourth Amendment, (2) above said various remedy doctrines concerning defect of warrants, and (3) the birth and growth of “permeated with fraud doctrine” and it’s contents through analysis of many leading cases of the US Supreme Court, and Federal Circuit and District Courts.

In Japan, there have been a debate over what conditions are required to allow officials to execute catch-all or comprehensive seizure by a warrant. In addition, in criminal investigation, a necessity to reduce dependence on interrogation of the accused and instead to gather objective and scientific

evidences has been predominant, and such trend will continue even in the future.

From this point of view, the birth and growth of various case doctrines in the US Federal Courts for search and seizure, which enable both effective investigation and protection of right of people, might provide us a meaningful suggestion.