

By Ronald J. Ostrow
Los Angeles Times

The Ford administration has reasserted that federal agents have the right to break into a citizen's home without a warrant and to search for items that might be used in foreign espionage or intelligence cases.

Watergate special prosecutor Henry S. Ruth Jr., splitting with the Justice Department on the issue, said in a brief that such power would conflict with American constitutional history.

The dispute surfaced in a two-page letter that the Justice Department filed with the U.S. Court of Appeals here in the appeal of John D. Ehrlichman and three other persons from their convictions in the 1971 break-in of the office of Daniel Ellsberg's psychiatrists.

The letter, signed by John C. Keeney, acting assistant attorney general for the department's Criminal Division, was dated May 9.

A department spokesman said Saturday that the position had been cleared by Attorney General Edward H. Levi and Solicitor General Robert H. Bork, the department's chief advocate before the Supreme Court. It thus represents administration policy.

Searches without a judge's approval "must be very carefully controlled," Keeney said. "There must be solid reason to believe that foreign espionage or intelligence is involved."

Before agents can conduct a warrantless search, Keeney said, the operation must be authorized by the President or the attorney general.

"The intrusion into any zone of expected privacy must be kept to the minimum," he said.

The Fourth Amendment protects citizens from "unreasonable searches and seizures."

"The history of the Fourth Amendment and the 200 years of precedent interpreting and shaping the Fourth Amendment do not cast any doubt on the principle that a warrant must be obtained in all cases for the physical search of a citizen's home or office and the seizure of his confidential papers," Ruth said in his brief opposing Ehrlichman's appeal.

Ehrlichman, G. Gordon Liddy, Bernard Barker and Eugenio Martinez were convicted in July of conspiring to violate the civil rights of Dr.

Lewis J. Fielding in a search of his Beverly Hills, Calif., office in 1971 for material on Ellsberg, who had leaked the Pentagon Papers.

During the trial last July, U.S. District Court Judge Gerhard A. Gesell rejected the grounds of national security as a defense in the search of Fielding's office.

"There is no evidence that the President authorized such a search, and as a matter of law neither he nor any official nor any agency such as the FBI or the CIA had the authority to order it," Gesell instructed the jury.

An answer to a defendant's appeal usually is left to the special prosecutor's office, but the Justice Department letter by Keeney was submitted because of Ruth's argument that such searches are "a core violation of the Fourth Amendment a physical break-in by the government to rummage through an individual's papers and effects."

Ruth's position "raises questions, which, in our view, are not presented by this case," Keeney said.

The break-in at Fielding's office was "plainly unlawful," Keeney said. "The search was not controlled, as we have suggested it must be, there was no proper authorization, there was no delegation to a proper officer and there was no sufficient predicate for the choice of the particular premises invaded."

But the Justice Department likened a search of a citizen's property without a warrant to wiretapping without a warrant when foreign espionage or intelligence are involved.

"It is and has long been the department's view that warrantless searches involving physical entries into private premises are justified under the proper circumstances when related to foreign espionage or intelligence," Keeney wrote.

Ruth disagreed, asserting that "invasion of a person's home or office to seize his papers always has been treated as far more serious than tapping into the wires of a public utility or other eavesdropping."

The special prosecutor conceded that former attorneys general have permitted "a technical trespass" but only for the purpose of placing an electronic bug and not for a physical search.

U.S. Reasserts Warrantless Search Rights