Worth fighting for

by the St. Louis Post-Dispatch

More than a year ago, The New York Times first revealed that the Bush administration had authorized intelligence agencies to bypass Congress and the courts by eavesdropping on U.S. citizens without first obtaining permission from the courts.

As 2005 turned into 2006, further disclosures followed: The administration had whisked terrorism suspects into secret CIA prisons overseas. The National Security Agency, with the cooperation of telecommunications companies, was "data mining" international phone calls and e-mail. In signing bills into law, President George W. Bush had appended "signing statements" challenging 800 provisions, defining which ones he would obey and which he would ignore.

In all, 2006 was a grand year for the "unified executive theory," so beloved of Vice President Dick Cheney, which claims that the Constitution gives the president powers that cannot be challenged by either the Congress or the courts.

As 2006 turned into 2007, the theory still was getting a workout. The president appended a signing statement to a Postal Service bill asserting that the government could open first-class mail without first getting court permission in "exigent circumstances." Heretofore, it had been understood that postal authorities could open a package if they thought there was a bomb inside. Bush says he can open your mail if the authorities think it's an emergency - and he defines when it's an emergency.

Just last weekend, Cheney said the Pentagon (part of the Defense Department and therefore part of the Unified Executive) has the right to issue national security letters seeking confidential information about private citizens from financial institutions, credit bureaus and telecommunications companies. Cheney acted surprised that anyone would question that.

"It's a perfectly legitimate activity," the vice president said. "There's nothing wrong with it or illegal. It doesn't violate anyone's civil rights. And if an institution that receives one of these national security letters disagrees with it, they're free to go to court to try to stop its execution."

The arrogance of this claim is as breathtaking as its breadth. No judicial warrant would be involved. There would be no check and no balance on executive power, except if a federally regulated institution had the nerve to challenge the government. This sense of imperial entitlement runs deep. This month, a deputy assistant secretary of defense - not the secretary or even an assistant secretary, but a deputy assistant secretary named Charles Stimson - told a Washington, D.C., radio show that American corporations should stop doing business with law firms that represent detainees at the Pentagon's internment camp at Guantanamo Bay, Cuba. Some of the nation's most prestigious law firms are providing free representation to detainees. They do this acting upon the bedrock belief that in America, everyone accused of a crime (and in Guantanamo, everyone not formally accused of a crime) is entitled to a lawyer. This apparently chafes the Unified Executive.

During the first six years of Bush's presidency, the Republican-controlled Congress casually bowed to Bush's and Cheney's broad claims, seeking "compromises" that were nothing more than capitulation. Now the Democrats are in charge, but they seem wary, too wary, of being called soft on terrorism.

We're all for prosecuting terrorists to the full extent of the law, assuming real terrorists can be separated from the unfortunate souls dragooned into Guantanamo by mistake.

We're all for bipartisanship, too.

But Congress must remember that some things are worth fighting for.

The Constitution is one of them.

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