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**From:** David\_G\_Leitch@who.eop.gov  
**Sent:** Tuesday, July 06, 2004 11:43 AM  
**o:** Goldsmith, Jack  
**Subject:** RE: Safire in NYT -- Attacks Judge and Ashcroft, Praises Rumsfeld

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-----Original Message-----

**From:** Jack.Goldsmith@usdoj.gov [mailto:Jack.Goldsmith@usdoj.gov]  
**Sent:** Tuesday, July 06, 2004 6:53 AM  
**To:** Leitch, David G.  
**Subject:** RE: Safire in NYT -- Attacks Judge and Ashcroft, Praises Rumsfeld



-----Original Message-----

**From:** David\_G\_Leitch@who.eop.gov [mailto:David\_G\_Leitch@who.eop.gov]  
**Sent:** Monday, July 05, 2004 11:50 AM  
**To:** Goldsmith, Jack  
**Subject:** FW: Safire in NYT -- Attacks Judge and Ashcroft, Praises Rumsfeld

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-----Original Message-----


**From:** Bartlett, Daniel J.  
**Sent:** Monday, July 05, 2004 11:49 AM  
**To:** Leitch, David G.  
**Subject:** Re: Safire in NYT -- Attacks Judge and Ashcroft, Praises Rumsfeld

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-----Original Message-----

**From:** Leitch, David G. <David\_G\_Leitch@who.eop.gov>  
**To:** Bartlett, Daniel J. <Daniel\_J\_Bartlett@who.eop.gov>  
**Sent:** Mon Jul 05 10:40:11 2004  
**Subject:** RE: Safire in NYT -- Attacks Judge and Ashcroft, Praises Rumsfeld



-----Original Message-----

**From:** Bartlett, Daniel J.  
**Sent:** Monday, July 05, 2004 10:38 AM  
**To:** Leitch, David G.  
**Subject:** RE: Safire in NYT -- Attacks Judge and Ashcroft, Praises

Rumsfeld

-----Original Message-----

From: Leitch, David G.  
Sent: Monday, July 05, 2004 8:00 AM  
To: Bartlett, Daniel J.  
Subject: Fw: Safire in NYT -- Attacks Judge and Ashcroft, Praises Rumsfeld

-----Original Message-----

From: Brown, Reginald J. <Reginald\_J.\_Brown@who.eop.gov>  
To: Gonzales, Alberto R. <Alberto\_R.\_Gonzales@who.eop.gov>; Leitch, David G. <David\_G.\_Leitch@who.eop.gov>  
Sent: Mon Jul 05 07:56:23 2004  
Subject: FW: Safire in NYT -- Attacks Judge and Ashcroft, Praises Rumsfeld

-----Original Message-----

From: Reg Brown [mailto: ]  
Sent: Monday, July 05, 2004 6:53 AM  
To: Brown, Reginald J.  
Subject: Safire in NYT -- Attacks Judge, Praises Rumsfeld

HARPERS FERRY, W.Va. - "Misadvised by a frustrated and panic-stricken attorney general, a president of the United States has just assumed what amounts to dictatorial power to jail or execute aliens."

So wrote a purpling libertarian kook on Nov. 15, 2001, the day after President Bush issued an executive order cracking down on suspected terrorist captives. "At a time when even liberals are debating the ethics of torture of suspects," this soft-on-terror wimp went on, "weighing the distaste for barbarism against the need to save innocent lives - it's time for conservative iconoclasts and card-carrying hard-liners to stand up for American values."

They did not, of course; hard-line commentators dismissed the wimp as a "professional hysteric" akin to "antebellum Southern belles suffering the vapors." Attorney General John Ashcroft said such diatribes "aid terrorists."

At the same time, most liberals - supposed advocates of the rights of the accused - did not want to appear to be insufficiently outraged at terrorists. Only two months after the shock of 9/11, with polls showing strong public approval of Bush's harsh measures to protect us, these liberals turned out to be civil liberty's summer soldiers. No senator from Massachusetts rose promptly to challenge Bush's draconian order, thereby to etch a profile in courage.

But one cabinet member reacted curiously. Despite the

White House order to give enemy combatants no legal rights in what the vamping wimp sniffled were "kangaroo courts," Defense Secretary Donald Rumsfeld convened a panel of serious outside lawyers aware of the wartime mistakes of Lincoln, Wilson and F.D.R. They reshaped the Bush order to give accused noncitizens before military tribunals the rights to counsel, public trial, appellate review and other protections in the Uniform Code of Military Justice.

Then Ashcroft Justice dug in its heels and the system stalled for years. Military tribunals of aliens captured in Afghanistan were placed in abeyance while Justice claimed in court that the president has the authority to impose open-ended detention on citizens and noncitizens alike. Such wholesale denial of due process is what the soft-on-terror professional hysteric had called "the seizure of dictatorial power."

Last week the Supreme Court that helped put Bush in office intervened to prevent his abuse of it. "The very core of liberty secured by our Anglo-Saxon system of separated powers," wrote Justice Antonin Scalia in agreement with the majority, "has been freedom from indefinite imprisonment at the will of the executive."

The right of a prisoner - even a noncitizen suspected of plotting to blow up a city - to take his case before some sort of judge has been reaffirmed. The panicked Ashcroft and the hapless White House counsel, Alberto Gonzales, clearly misadvised the president; both should depart in a second term. Separation of powers lives, and we should extend habeas corpus to all four corners of the earth.

Though coverage of the Supreme Court's rulings led with "a state of war is not a blank check for the president," its decisions were also deferential. Provided that an accused combatant has a chance to rebut, there should be "a presumption in favor of the government's evidence"; hearsay might be allowed. With military tribunals now tilted toward the prosecution, we should stop delaying and start prosecuting.

Liberals, in the aftermath of Abu Ghraib and now with Supreme Court restraints on executive power, are piling on. It's safe; civil liberty is suddenly in vogue, at least until the next terror strike. That's why the bosoms of Bush critics are now heaving in hypocritical hyperventilation. But where were they on Nov. 15, 2001, when due process needed them? In spider holes all their own.

There's a lesson, too, for conservatives and other hard-liners: Libertarians are not to be despised even when infuriatingly contrarian. Remember our Jeremiah-like presence in your ranks on the privacy issue when you demand a national ID, or when you hamstring embryonic stem-cell research, or when you make a show of festooning the Constitution with a marriage amendment.

Why do I fear no libel suit from that wimpish professional hysteric, that antebellum Southern belle offering the vapors, that aider of terrorists? Because I'm him. (It's uncool to say I told you so, but I have not had many chances to say it lately.)

