

WAR ON FOX COMMISSIONS

I've been complaining of late that the LAT's stupid Republican blogger, Andrew Malcom, is so bad that he must get tons of links making the LAT think he's great for traffic.

So I wanted to be sure to link to Fox legal analyst Andrew Napolitano's good discussion of the problems with military commissions—so the LAT gets rewarded for something besides Malcom's idiocy.

Start with this description of the problem with everyone's unshakeable faith in the value and legitimacy of military commissions.

The casual use of the word "war" has lead to a mentality among the public and even in the government that the rules of war could apply to those held at Guantanamo. But the rules of war apply only to those involved in a lawfully *declared* war, and not to something that the government merely *calls* a war. Only Congress can declare war – and thus trigger the panoply of the government's military powers that come with that declaration. Among those powers is the ability to use military tribunals to try those who have caused us harm by violating the rules of war.

[snip]

Think about it: If the president could declare war on any person or entity or group simply by calling his pursuit of them a "war," there would be no limit to the government's ability to use the tools of war to achieve its ends. We have a "war" on drugs; can drug dealers be tried before military tribunals? We have a "war" on the Mafia; can mobsters be sent to Gitmo and tried there? The Obama administration has arguably

declared “war” on Fox News. Are Glenn Beck, Bill O’Reilly and I and my other colleagues in danger of losing our constitutional rights to a government hostile to our opinions?

Maybe that will get the fearmongerers to start demanding War on _____ Commissions?

There’s more—and actual conservative legal argument against the military commissions. But since I’m trying to reward the LAT for something other than that loathsome Malcom, click through to read that.