

WHY DOES ANTHONY KENNEDY HATE LINDSEY GRAHAM?

This is a rather interesting public statement from the guy who—at least before Elena Kagan and her obscure views on executive power got sworn in—was the swing vote on SCOTUS. (h/t fatster)

“Article III courts are quite capable of trying these terrorist cases,” [Justice Anthony] Kennedy said, agreeing with [an earlier panel that endorsed civilian, rather than military, trials].

[snip]

It was clear, he said, that an “attack on the rule of law has failed,” referring to the use of military tribunals to try terrorist suspects, often before panels in Guantanamo Bay, Cuba.

Mind you, this is not exactly a surprise. Aside from Kennedy’s votes in past terrorism-related cases, his opinion in *Boumediene* was as much a defense of Article III prerogative as it was a defense of habeas per se. Which is why I’m interested in the context of his “attack on the rule of law” quote—because it sure sounds like he’s fed up with efforts on the part of both the Bush and Obama Administrations to usurp the powers of the courts.

And if he feels that way, I hope he nagged those judges in the 9th he was partying with to hurry up and finish their Jeppesen opinion so he can vote to uphold some limits on state secrets...