Subject: Re: McCain and Miranda
Posted by elektratig on Sat, 17 Dec 2005 10:57:26 GMT
View Forum Message <> Reply to Message

MB,Although written words are more precise than conversational language, even the simplest sentences can be ambiguous. For example, I was reading the other day about a court decision interpreting a statute criminalizing activity that took place within 1,000 feet of a school. The question that arose was, how is that 1,000 feet measured? As the crow flies? Or by the distance you would cover when walking from the school to the spot where the conduct occured (which would be longer given the intervention of buildings, gates, etc.)? Which would you choose?Interpretation of something like the McCain Amendment is more complex because there are multiple layers of analysis and the controversial and value-laden nature of the subject matter makes it likely that the judge will, consciously or unconsciously, filter her analysis through her preexisting perceptions, views, etc. concerning torture, national security, etc. In short, it is impossible to predict how it will be interpreted.Since it is difficult enough (or impossible) to be totally precise even when you try to put in words what you mean to say, you are really treading on thin ice when you put into words something you DON'T mean to say. Senator McCain has been quoted as saying, or at least strongly implying, that he understands that interrogators might have to go beyond the limits in eggregious situations. But the problem is that, if the exception isn't there, who's going to put it there? In effect, he's saying, "I expect a judge to read appropriate exceptions or limitations into the language, even though the language doesn't support them." That is an unfair burden to place on a judge (although legislators do it all the time). This is why you see so many instances of judges getting criticized (although there are many other reasons, including many stupid judges). Either they read the language the way it was written (in which case they are criticized for failing to use common sense and reaching ridiculous results). Or they read unwritten exceptions into the language (in which case they are criticized for "making law" and "judicial activism").Conversely, you are asking alot of the potential defendant (here the interrogator). If confronted with an eggregious situation, she will be asked to (or feel morally bound to) violate the apparent meaning of the law in the hope that a judge will later read an exception into it. But whether a judge will do so will be unknown (and unknowable) at the time the interrogator must make her decision.Tell me which way you'd rule on the school case, and why, and I'll point you to the decision. It's fairly short, and a great illustration of the problems courts confront with even simple language.