Subject: Re: McCain and Miranda
Posted by elektratig on Sun, 18 Dec 2005 10:40:15 GMT
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MB,On the school case, you're right! The decision is cited below. Don't be misled, however. I guarantee that the Judge Kaye could have written a decision coming out the other way that would have been every bit as convincing.On the torture issue, I guess where I am is here. It's very nice to say that "torture" is bad. It soothes the conscience to say that we should never, ever "torture" "suspects". But are the advocates of that position really prepared to stand by what they say? And, if so, is that position really morally defensible?First, there are suspects and there are suspects. Is a "suspect" who is caught planting an IED, and who had probably just finished planting a number of others, really a "suspect"? Will Zarqawi, when caught, really be only a "suspect"?Are the proponents of the no-"torture"-ever position prepared to face the victims and relatives of victims maimed and killed by, say, an IED explosion that could have been prevented and explain to them why their lives and bodies were not worth the moral cost of "torturing"? Not John McCain, apparently. He's been quoted as saying, "You do what you have to do. But you take responsibility for it." If he's saying that the "torturer" should go to jail for doing something she was morally justified to do, I respectfully dissent. He wants to have his moral cake and eat it too, without being held responsible for any outcome. As Andrew McCarthy has observed regarding McCain's position:"On one hand, it conveys the nod-and-a-wink message that the law is not serious: If the circumstances seem grim enough, go ahead and abuse the captive and we're likely to look the other way. It announces that the president, because he wields ultimate prosecutorial authority, is effectively above the law — precisely the notion Congress is supposed to be defeating when it enacts behavioral standards for executive-branch agencies. "On the other hand, it is craven. It leaves the decision whether to violate a foolish proscription that cannot be justified in a crisis to the judgment of a lowly, young interrogator. "Our lives are in your hands, son, so do what you think is right — and, if things work out well, maybe, just maybe, we'll let you slide" — at least if you're lucky enough to have your actions come to light on that rare day when we're feeling feisty enough to face down Amnesty International, Human Rights Watch, the ACLU, the New York Times and that pesky Arab Street."Most of all, though, McCain's answer is perverse. It would be reprehensible to convert into an illegality something any responsible, good-faith government official would do — viz., try to coerce information from a morally guilty person in a real emergency with thousands of lives on the line. However noble the driving impulse, it would be a law designed to protect the physical comfort of a morally culpable person at the expense of the lives of countless innocent people whose deaths might be avoidable. That's not what we have a government for."As for judging whether and under what circumstances, "torture" may be morally appropriate, I like this analysis by Jonah Goldberg:"I haven't worked out all the answers for myself, but it seems to me that a great clarifier in this area is to substitute "torture" with "deadly force." Surely, there's nothing wrong with shooting a terrorist in the head before he can push the button that blows up New York. Surely, there's everything wrong with shooting an innocent person for no reason whatsoever. The only way it's different for torture is if you believe torture is worse than killing. We should greet assertions along these lines cautiously. The ten commandments don't say "thou shalt not torture." That doesn't mean we get a free pass on torture, but it seems odd to think that murder is a lesser sin than torture and yet torture gets left off the list of the major dos and don'ts. "Killing solely for fun, profit, revenge etc is merely murder and is already quite illegal. Torturing for any of these reasons is depraved assault and is also quite illegal. In situations where the lives of innocents aren't at stake, killing even those who deserve death is illegal without

due process of some kind. The only place where killing is permitted without due process is in situations of self-defense or the defense of others. Is it really so absurd to think of torture in the same light?"
People v. Robbins
