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A President Who Tortured

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Waterboarding will leave an indelible stain on the legacy of George W. Bush.

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"We do not torture."

-- [President Bush](#), Nov. 7, 2005

" Waterboarding has been used on only three detainees. . . . We used it against these three high-value detainees because of the circumstances of the time."

-- [CIA Director Michael V. Hayden](#),

Feb. 5, 2008

THE ADMISSION this week by CIA Director Michael V. Hayden that three terrorism suspects were subjected to waterboarding in 2002 and 2003 puts to rest any doubt about whether President Bush authorized torture.

For centuries, civilized countries have considered waterboarding, or simulated drowning, to be torture. The United States rightly condemned as war criminals Japanese soldiers who employed the technique against U.S. personnel during World War II. It prosecuted [U.S. military](#) officers who waterboarded prisoners at the turn of the 20th century. The practice, which causes its victims to feel that they are about to die, is unquestionably cruel. Every administration prior to this one has judged it to be prohibited by U.S. law and treaty obligations. It is incontestably a blot on the reputation of this country and a breach of the very values we claim to want to export to the rest of the world.

The administration says it has not used the technique for five years and claims to have used it only on Sept. 11 mastermind [Khalid Sheikh Mohammed](#) and [al-Qaeda](#) operatives [Abu Zubaida](#) and Abd al-Rahim al-Nashiri. The acknowledgment is, at least, a change from the administration's previous refusal to answer questions about the practice; it should end contentions by senior officials that they cannot disclose which interrogation techniques are used. Yet in coming clean about its practices, the administration continues to bob and weave to justify the past -- and possibly future -- legality of waterboarding. [Director of National Intelligence Michael McConnell](#), testifying alongside Gen.

Hayden before the Senate intelligence committee, declared waterboarding "a legal technique used in a specific set of circumstances. You have to know the circumstances to be able to make the judgment."

Mr. McConnell's statement echoed that of [Attorney General Michael B. Mukasey](#), who told the [Senate Judiciary Committee](#) last week that in deciding whether waterboarding is legal, the administration has to weigh "the heinousness of doing it, the cruelty of doing it balanced against the value . . . of what information you might get." Both men are wrong, as any federal court that considered waterboarding would be likely to rule. The legality of abusive treatment depends on "the circumstances" only if the treatment falls short of torture, which is illegal in all instances. Waterboarding is, and always has been, torture.

Gen. Hayden, who in 2006 prohibited waterboarding by [CIA](#) agents, seemed to distance himself from the administration's defense of the technique by suggesting that laws passed since 2005 raise doubts about its legality. But even this falls far short of an assurance against future use. Congress must act now to put an end to the continued twisting of the law and fundamental American values. Lawmakers can do so by passing legislation requiring all U.S. interrogators to abide by the techniques authorized in the Army Field Manual, which military officials have said allows them the flexibility they need to gather intelligence. The administration has balked at this restriction, and President Bush may well veto it. If he does, it will be but another stain on his legacy.

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