

## An expansion of our question to the candidates: “Should interrogation techniques that some consider torture, such as waterboarding, be a legal option?”

We have provided some contextual information on waterboarding and its history in United States civilian and military courts, as well as international courts participated in by the United States.



Woodcut illustrating waterboarding during the Spanish Inquisition. Original image in J. Damhoudt's *Praxis Criminalium*, 1556.

The following seven cases show that in the past the United States has considered waterboarding to be criminal, and in some cases, torture.

Some of these cases also show that convictions based on confessions that were coerced through the use of waterboarding have been overturned on appeal.

In the seven examples below different terms are used including waterboarding, water cure, water torture, and water treatment.

There are various forms of waterboarding but they all are a variation on a practice whereby a victim is immobilized and water is poured into their breathing passages to simulate drowning.

The use of waterboarding has been documented as far back as the late 1300s, making the practice over 600 years old.

Waterboarding became a popular interrogation technique during the Spanish Inquisition beginning in the 15<sup>th</sup> century.



Photograph of U.S. soldiers participating in the waterboarding of a Philippino prisoner. Photo taken by Corporal George J. Vennage, *May*, 1901.



Photograph of U.S. soldier participating in the waterboarding of a Vietnamese prisoner. *Washington Post*, *Jan. 21*, 1968.

### Past Waterboarding Cases

### Outcome of Case

#### 1. Spanish American War (Apr. 25, 1898 – Aug. 12, 1898):

During the fighting in the Philippines, United States troops used waterboarding against Philippino insurgents. After the conclusion of fighting, Major Edwin Glenn and Lieutenant Edwin Hickman were tried for “conduct to the prejudice of good order and military discipline” by courts martial in Catlalogan, Samar in May, 1902 based upon infliction of the “water cure.” The defense was military necessity. Hickman was acquitted and Glenn was convicted.

One witness, Private Edward Norton described the “water cure” as follows: “The man’s mouth was forced open with a stick and the water poured down his throat. The effect of the treatment was temporary strangulation” (case name not found).

**Major Edwin Glenn was convicted and Lieutenant Edwin Hickman was acquitted**

**Sources:**

- Wallach, Evan. "Drop By Drop: Forgetting The History of Water Torture In U.S. Courts," *The Columbia Journal of Transnational Law*, 2007.
- Wallach, Evan. "Waterboarding used to be a Crime," *Washington Post*, Nov. 4, 2007.

**2. Murder Conviction Overturned on Appeal (1922):**

After being convicted of murder in the state of Mississippi and sentenced to death, defendant Gerrard White appealed his murder conviction based upon arguments that his original confession was coerced through the use of the "water cure." White won his appeal.

Judge Holden wrote the following description of how the "water cure" was administered in the Supreme Court of Mississippi appeals court ruling: "[T]he hands of appellant were tied behind him, he was laid upon the floor upon his back, and while some of the men stood upon his feet...upon appellant's breast and...upon his neck. While in that position what is described as the 'water cure' was administered to him in an effort to extort a confession...

**Gerrard White had his murder conviction overturned because his confession was coerced through the use of the water cure.**  
**[\(White v. State\)](#)**

The 'water cure' appears to have consisted of pouring water from a dipper into the nose of appellant, so as to strangle him, thus causing pain and horror, for the purpose of forcing a confession."

**Sources:**

- Apr. 7, 2008 e-mail to ProCon.org from Peter Miller, research assistant to Darius Rejali, author of *Torture and Democracy*.
- *White v. State*, 129 Miss. 182; 91 So. 903 (1922)

**3. Murder Conviction Overturned on Appeal (1926):**

In 1926, John Fisher, a man convicted of murder in Clarksdale Mississippi, had his murder conviction overturned on appeal due to the fact that his original confession had been coerced through the use of the "water cure."

In the appellate court ruling, the Sheriff is referenced as testifying "that he was sent for one night to come and receive a confession of the appellant in the jail; that he went there for that purpose; that when he reached the jail he found a number of parties in the jail; that they had the appellant down upon the floor, tied, and were administering the water cure, a species of torture well known to the bench and bar of the country...Several persons were introduced by the appellant who testified as to the presence of the parties in the jail and the administering of the water cure to Fisher and others jointly charged with the offense with him."

**John Fisher had his murder conviction overturned because his confession was coerced through the use of the water cure.**  
**[\(Fisher v. State\)](#)**

**Sources:**

- Rejali, Darius. *Torture and Democracy*, Princeton University Press, 2007.
- *Fisher v. State*, 145 Miss. 116; 110 So. 361 (1926).

**4. World War II (Sep. 1, 1939 – Sep. 2, 1945):**

The United States, acting alone before domestic courts, commissions and courts-martial, and as a participant in the international community, condemned and prosecuted the use of waterboarding by the Japanese against United States troops. In US military commissions, and as a participant in the International Tribunal for the Far East (based upon Nuremberg procedures), a number of Japanese troops and officials were convicted of torture for the use of waterboarding.

One witness, Captain Nielsen, described waterboarding as follows: "I was put on my back on the floor with my arms and legs stretched out, one guard holding each

limb. The towel was wrapped around my face and put across my face and water poured on. They poured water on this towel until I was almost unconscious..." The specific quote is from *United States v. Sawada*.

Another example can be found in the case against Yukio Asano and his three co-defendants. During their trial one witness, Thomas B. Armitage stated the following: "[T]hey laid me out on a stretcher and strapped me on. The stretcher was then stood on end with my head almost touching the floor and my feet in the air....They then began pouring water over my face and at times it was almost impossible for me to breath without sucking in water."

In US military commissions, and in the International Tribunal for the Far East, a number of Japanese troops and officials were convicted for the use of waterboarding. (See: [United States of America v. Hideji Nakamura, Yukio Asano, Seitara Hata, and Takeo Kita](#))

**Sources:**

- Wallach, Evan. "Drop By Drop: Forgetting The History of Water Torture In U.S. Courts," *The Columbia Journal of Transnational Law*, 2007.
- Wallach, Evan. "Waterboarding used to be a Crime," *Washington Post*, Nov. 4, 2007.

## 5. Court-Martial of US Soldier in Vietnam (1968):

In 1968, a US soldier from the 1<sup>st</sup> Cavalry Division was documented as having waterboarded a Vietnamese soldier under interrogation. The event was photographed and appeared on the front page of the *Washington Post* on Jan. 21, 1968. The article stated that waterboarding "induces a fleeting sense of suffocation and drowning which is calculated to make a suspect talk...The water technique is said to be in fairly common use among Allied troops in Vietnam."

US soldier in Vietnam court-martial for waterboarding. Outcome of case was conviction (case name unknown)

The Soldier (name unavailable) was court-martialed on Feb. 28, 1968. The outcome of the court-martial was a conviction.

**Sources:**

- "Interrogation," *Washington Post*, Jan. 21, 1968.
- Weiner, Eric. "Waterboarding: A Tortured History," NPR, Nov. 3, 2007.
- Rejali, Darius. *Torture and Democracy*, Princeton University Press, 2007.

## 6. Texas Sheriff Convicted of Torture (1983):

In 1983, James Parker (Texas Sheriff for San Jacinto County) and three of his deputies were charged by the Department of Justice with committing torture because of their use of water torture on prisoners. The four were convicted of "water torture," which was upheld on appeal. They were sentenced to 10 years each. The case name was *United States v. Parker et al*.

Sheriff Parker & three deputies were convicted of "water torture." The conviction was upheld on appeal ([United States of America, Plaintiff-Appellee, v. Carl Lee, Defendant-Appellant](#))

In the indictment the officers were charged with subjecting prisoners to "a suffocating 'water torture' ordeal in order to coerce confessions. This generally included placement of a towel over the nose and mouth of the prisoner and the pouring of water in the towel until the prisoner began to move, jerk, or otherwise indicate that he was suffocating and/or drowning."

**Sources:**

- "Around The Nation; Texas Sheriff Is Guilty of Torturing Prisoners," *The New York Times*, Mar. 20, 1983.
- Wallach, Evan. "Drop By Drop: Forgetting The History of Water Torture In U.S. Courts," *The Columbia Journal of Transnational Law*, 2007.
- Wallach, Evan. "Waterboarding used to be a Crime," *Washington Post*, Nov. 4, 2007.

## 7. US Trials Against Marcos Dictatorship in Philippines (1986-Present):

Beginning in Mar. 1986 civil lawsuits were filed in US courts alleging that Philippino opposition activists were the victims of water torture by the Marcos Dictatorship. In an initial class action civil suit filed in Hawaii under the US alien tort claims act the case was dismissed. On appeal, in 1996 the US Court of Appeals for the Ninth Circuit found the Marcos Estate guilty of human rights violations, including the use of the "water cure." The plaintiffs, of whom there were nearly 10,000, were awarded \$766 million in compensatory damages and \$1.2 billion in exemplary damages. Specific Case information: re Ferdinand E. Marcos Human Rights Litigation, 25 F.3d 1467 (9th Cir. 1994); 103 F.3d 767 (9th Cir. 1996).

The court found that "plaintiffs experienced human rights violations including, but not limited too...[t]he 'water cure', where a cloth was placed over the detainee's mouth and nose, and water producing a drowning sensation."

**In 1996 the US Court of Appeals for the Ninth Circuit found the Marcos Estate liable for instances of torture committed under the Marcos Government.**  
**(Maximo Hilao, Class Plaintiffs, Plaintiff-Appellee, v. Estate Of Ferdinand Marcos, Defendant-Appellant)**

### Sources:

- Wallach, Evan. "Drop By Drop: Forgetting The History of Water Torture In U.S. Courts," *The Columbia Journal of Transnational Law*, 2007.
- Wallach, Evan. "Waterboarding used to be a Crime," *Washington Post*, Nov. 4, 2007.