Editorial: End the tortured logic

Published 12:00 am PDT Sunday, May 4, 2008

When it comes to torturing detainees, the president can ignore or override any law or treaty. Or at least that's what Bush administration lawyers believe, as outlined in the infamous 2002 torture memos and reiterated in a March 5 Justice Department letter.

That letter, released last week by Sen. Ron Wyden of the Senate Intelligence Committee, asserts that interrogation techniques banned under the Geneva Conventions are allowed – depending on circumstances. Gone is this country's absolute ban on torture. In its place we have a Bush administration rule that if you have good intentions, torture is OK; if not, it's bad.

Some standard. If the president's intention is "to prevent a threatened terrorist attack," torture is hunky-dory, regardless of laws and treaties.

The Justice Department letter reprises a 2006 exchange between John Yoo, who penned the torture memos when he worked in the Office of Legal Counsel, and Douglas Cassel, a Notre Dame law professor.

Cassel: "If the president deems that he's got to torture somebody, including by crushing the testicles of the person's child, there's no law that can stop him?"

Yoo: "No treaty."

Cassel: "Also no law of Congress. That is what you wrote in the August 2002 memo."

Yoo: "I think it depends on why the president thinks he can do that."

That's clearly stated, if not clearly thought out. Anything goes if the president approves it. There is no law beyond the whim of the president.

It is clear that Congress will have to act to restore some semblance of U.S. values. Sen. Dianne Feinstein has two amendments that would be a start. One requires all U.S. agencies, including the CIA, to follow rules of interrogation in the U.S. Army Field Manual. This forbids the use of waterboarding (controlled drowning), induced hypothermia and other techniques.

Gen. Jeff Kimmons, the senior intelligence officer in the U.S. Army, has explained why: "No good intelligence is going to come from abusive practices. I think history tells us that. I think the empirical evidence of the last five years, hard years, tells us that."

Another Feinstein amendment bans outsourcing of interrogations to contractors. The Senate Intelligence Committee approved both amendments last Tuesday.

A bill by Sen. Christopher Dodd also is important. It makes clear that presidential authority to interpret the Geneva Conventions and other treaties is subject to congressional oversight and judicial review.

By passing these pieces of legislation, and overriding a sure Bush veto, Congress would be making what shouldnt be a controversial statement: The President of the United States is subject to the law of the land.