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CIA's use of harsh interrogation went beyond legal authority, Senate report says

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WASHINGTON — A still-secret Senate Intelligence Committee report calls into question the legal foundation of the CIA's use of waterboarding and other harsh interrogation techniques on suspected terrorists, a finding that challenges the key defense on which the agency and the Bush administration relied in arguing that the methods didn't constitute torture.

The report also found that the spy agency failed to keep an accurate account of the number of individuals it held, and that it issued erroneous claims about how many it detained and subjected to the controversial interrogation methods. The CIA has said that about 30 detainees underwent the so-called enhanced interrogation techniques.

The CIA's claim "is BS," said a former U.S. official familiar with evidence underpinning the report, who asked not to be identified because the matter is still classified. "They are trying to minimize the damage. They are trying to say it was a very targeted program, but that's not the case."

The findings are among the report's 20 main conclusions. Taken together, they paint a picture of an intelligence agency that seemed intent on evading or misleading nearly all of its oversight mechanisms throughout the program, which was launched under the Bush administration after the Sept. 11, 2001, attacks and ran until 2006.

Some of the report's other conclusions, which were obtained by McClatchy, include:

- The CIA used interrogation methods that

weren't approved by the Justice Department or CIA headquarters.

• The agency impeded effective White House oversight and decision-making regarding the program.

• The CIA actively evaded or impeded congressional oversight of the program.

• The agency hindered oversight of the program by its own Inspector General's Office.

The 6,300-page report is the culmination of a four-year, $40 million investigation into the detention and interrogation program by the Democrat-led committee. A final draft was approved in December 2012, but it has undergone revisions. The panel voted 11-3 on April 3 to send the report's 480-page executive summary, the findings and conclusions to the executive branch for declassification prior to public release.

Asked to comment on the findings, CIA spokesman Dean Boyd said: "Given the report remains classified, we are unable to comment. As we have stated previously, the CIA, in consultation with other agencies, will carry out an expeditious classification review of those portions of the final SSCI report submitted to the executive branch for review."

Senate Intelligence Committee Chairwoman Dianne Feinstein also declined to comment except to say: "If someone distributed any part of this classified report, they broke the law and should be prosecuted."

The investigation determined that the program produced very little intelligence of value and that the CIA misled the Bush White House, the Congress and the public about the effectiveness of the interrogation techniques, committee members have said.

The techniques included waterboarding, which produces a sensation of drowning, stress positions, sleep deprivation for up to 11 days at a time, confinement in a cramped box, slaps and slamming detainees into walls. The CIA held detainees in secret "black site" prisons overseas and abducted others who it turned over to foreign governments for interrogation.

The CIA, which contends that it gained intelligence from the program that helped identify al Qaida terrorists and averted plots against the United States, agreed with some of the report's findings but disputed other conclusions in an official response sent to the committee in June 2013.

The report has been embroiled in a public furor since Feinstein, D-Calif., took to the Senate floor last month to accuse the CIA of possibly violating the law and the Constitution by monitoring computers used by her staff to assemble the report, and by removing and blocking access to documents.

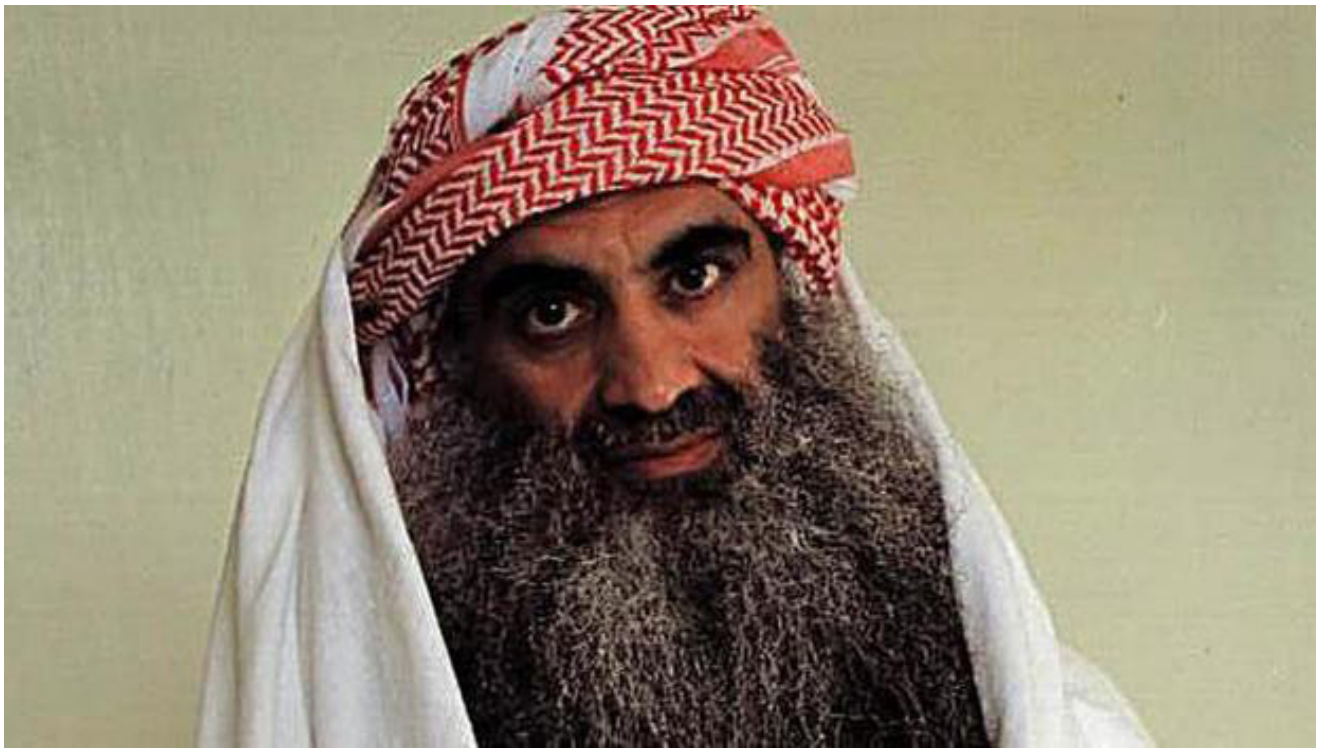
The Justice Department, meanwhile, launched a criminal investigation at the CIA's request into the alleged unauthorized removal of classified documents by Democratic committee staffers from the top-secret facility where they were required to review more than 6 million pages of operational emails and other documents related to the interrogation program.

Some current and former U.S. officials and military commanders, numerous experts and foreign governments have condemned the harsh interrogation methods as violations of international and U.S. laws against torture, a charge denied by the CIA and the Bush administration.

They've based their defense on a series of top-secret legal opinions issued by the Justice Department beginning in August 2002. At that time, the agency sought advice on whether using the harsh techniques on Zayn al Abidin Muhammad Husayn, a close aide to Osama bin Laden who went by the nom de guerre Abu Zubaydah, would violate U.S. law against torture.

The Justice Department's Office of Legal Counsel found that the methods wouldn't breach the law because those applying them didn't have the specific intent of inflicting severe pain or suffering.

The Senate report, however, concluded that the



JARRET BRACHMAN /MIAMI HERALD/MCT

Alleged al Qaeda kingpin Khalid Sheik Mohammed in detention at Guantanamo in the first week of July 2009. The International Committee of the Red Cross said it took the picture with Mohammed's permission.

Justice Department's legal analyses were based on flawed information provided by the CIA, which prevented a proper evaluation of the program's legality.

"The CIA repeatedly provided inaccurate information to the Department of Justice, impeding a proper legal analysis of the CIA's Detention and Interrogation Program," the report found.

Several human rights experts said the conclusion called into question the program's legal foundations.

"If the CIA fundamentally misrepresented what it was doing and that was what led (Justice Department) lawyers to conclude that the conduct was legal, then the legal conclusions themselves were inaccurate," said Andrea Prasow, senior national security counsel for Human Rights Watch. "The lawyers making those assessments were relying on the facts that were laid before them."

"This just reinforces the view that everyone who has said the torture program was legal has been selling a bill of goods and it's time to revisit the entire conventional wisdom being pushed by those who support enhanced interrogation that this program was safe, humane and lawful," said Raha Wala, a lawyer with Human Rights First's Law and Public Safety Program.

Among other findings, the report said that CIA personnel used interrogation methods that weren't approved by the Justice Department or their headquarters.

The conclusion that the CIA provided inaccurate information to the Justice Department reflects the findings of a top-secret investigation of the program by the CIA Inspector General's Office that was triggered by allegations of abuse.

The CIA inspector general's May 7, 2004, report, which was declassified, found that in wa-

terboarding Zubaydah and Khalid Sheikh Mohammad, deemed the chief architect of the 9/11 attacks, the CIA went beyond the parameters it outlined to the Justice Department's Office of Legal Counsel, which wrote the legal opinions.

Zubaydah was waterboarded 83 times, while Mohammad underwent the procedure 183 times.

Those cases clashed with the CIA's assertion — outlined in the now-declassified top-secret August 2002 Office of Legal Counsel opinion — that repetition of the methods "will not be substantial because the techniques generally lose their effectiveness after several repetitions."

The Office of Legal Counsel opinion stated that its finding that the harsh interrogation techniques didn't constitute torture was based on facts provided by the CIA, and that "if these facts were to change, this advice would not necessarily apply."

The CIA inspector general's report found that the "continued applicability of the DOJ opinion" was in question because the CIA told the Justice Department that it would use waterboarding in the same way that it was used in training U.S. military personnel to evade capture and resist the enemy. In fact, the inspector general's report continued, the CIA used waterboarding in a "manner different" from U.S. military training.

The CIA also failed to keep track of the number of individuals it captured under the program, the Senate report concluded. Moreover, it said, the agency held people who didn't meet the legal standard for detention. The report puts that number at 26, McClatchy has learned.

"The CIA did not conduct a comprehensive or accurate accounting of the number of individuals it detained and held individuals who did not meet the legal standard for detention," it found. "The CIA's claims about the number of detainees held and subjected to its enhanced interrogation techniques were inaccurate."