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## Senate Report Finds Rumsfeld Directly Responsible for US Torture of Prisoners

A bipartisan Senate report has accused former Defense Secretary Donald Rumsfeld and other top Bush administration officials of being directly responsible for the abuse and torture of prisoners at Guantanamo and other US prisons. We speak with the man who sued Donald Rumsfeld in Berlin, German, attorney Wolfgang Kaleck. [includes rush transcript]



Guest:

**Wolfgang Kaleck**, General Secretary of the European Center for Constitutional and Human Rights. He brought a war crimes suit against former Defense Secretary Donald Rumsfeld.

### RUSH TRANSCRIPT

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**AMY GOODMAN:** That's Bertolt Brecht's *Threepenny Opera*, "Mack the Knife." I'm Amy Goodman. We're broadcasting from Berlin, from East Berlin, that is. In fact, right around the corner is the theater where this is performed, the Bertolt Brecht Theatre.

We're joined right now by a longtime German attorney to talk about a bipartisan Senate report that was released on Thursday that accused former Defense Secretary Donald Rumsfeld and other top Bush administration officials of being directly responsible for the abuse and torture of prisoners at Guantanamo and other US prisons.

The report stated, "The abuse of detainees in U.S. custody cannot simply be attributed to the actions of 'a few bad apples' acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees."

The report was released by Democratic Senator Carl Levin and Republican John McCain of the Senate Armed Forces Committee. It was based on a nearly two year Senate investigation. The report was issued as speculation is running high in Washington over whether President Bush will issue blanket pardons of officials involved in some of the administration's more controversial counterterrorism

programs.

I'm joined here in Berlin by human rights attorney Wolfgang Kaleck. He is the General Secretary of the European Center of Constitutional and Human Rights. He has twice filed war crimes suits against Donald Rumsfeld in Germany.

Welcome to *Democracy Now!*, Wolfgang.

**WOLFGANG KALECK:** Hi, Amy.

**AMY GOODMAN:** It's good to have you with us. Let's start off by talking about the significance of this US Senate report. It's interesting that it's not only the Democrat Carl Levin but the former Republican presidential candidate John McCain.

**WOLFGANG KALECK:** Well, the report is fine, as many other reports which have been released during the last four years, but, one has to say, it only confirms the information which was already on the table. We had a lot of revelations by colleagues of yours, by Jane Mayer, by other investigative journalists. We had the book of Philippe Sands. And it's the last report in a row. So what we are interested in is the consequences of all this. You know, where does it lead to? When does the new administration take the necessary measure to deal with these crimes? And they were crimes.

**AMY GOODMAN:** Do we see any move in that direction with the Barack Obama—just what is being put out now, his selections for his cabinet? Of course, he's not in power yet.

**WOLFGANG KALECK:** Yeah, we follow a vivid discussion right now in the US. Some people demand at least—and this is the minimum—some kind of truth commission with subpoena powers. But this is the absolute minimum. Yeah, and others, like Michael Ratner from the Center for Constitutional Rights, demand strongly prosecution in the US. And we from Europe follow this process very carefully, because if nothing happens in the US or if Bush files preemptive pardon, we know it's our turn again here in Europe.

**AMY GOODMAN:** Talk about these lawsuits that you have filed against Donald Rumsfeld and also what most surprised you in the, I mean, US Senate report. You've been researching this for a long time, but it's different when a body like the Senate says things like you have been saying.

**WOLFGANG KALECK:** No, actually, I'm very happy with the report. It's another confirmation. And also, you know, it's not only about dealing with these persons who are—some of them already left the administration. I'm not really interested in these persons, as such. I'm interested in a change of the attitude of the US military's and the US Secret Service's, and, of course, I'm interested in a restoration of the rule of law, and that requires investigation and prosecution. And we are very reluctant to have any firm opinion yet on that, because we have to wait for the 20th of January. But we will very carefully follow the first steps of the Obama administration.

**AMY GOODMAN:** And what most—what you think is most significant in the Senate report?

**WOLFGANG KALECK:** Well, there are strong conclusions, you know, like saying what we always were saying, that the US military and the CIA were using the methods of the old enemies in the Cold War, like waterboarding, which was used by North Korea, by North Vietnam and by China and the Soviet Union. So, this was already on the table. This is like ridiculous. But it's good that it's now being said by a congressional report, of course.

**AMY GOODMAN:** Your lawsuits that you've brought against Donald Rumsfeld—

**WOLFGANG KALECK:** Yeah.

**AMY GOODMAN:** —together with the Center for Constitutional Rights—

**WOLFGANG KALECK:** Yeah.

**AMY GOODMAN:** —explain what they are and where they've gone and why you, as a German attorney, are involved with this at all.

**WOLFGANG KALECK:** The Center approached us in Germany four years ago, when there was nearly total impunity in the US and no attempts at all to be seen that any other than the "rotten apples," the twelve persons from the night shift in Abu Ghraib, should be sued for what happened in Abu Ghraib. And so, in 2004, we filed the first lawsuit here in Germany. Actually, it was linked with what you have been discussing right now, because many of the mother units of the acting persons in Abu Ghraib were stationed in Germany, so there was even a territorial connection. Four of the twelve persons—other than Rumsfeld, four of the twelve persons were stationed in Germany. So Germany—in our opinion, Germany had the obligation to pursue this. And against Rumsfeld, our complaint was based on the universal jurisdiction laws in Germany. So that was 2004.

**AMY GOODMAN:** Explain universal jurisdiction.

**WOLFGANG KALECK:** Universal jurisdiction is when there is, yeah, no territorial link or no person, no citizen from the country, neither as an actor nor as a victim, as someone involved in the crime. So when there is no connection at all to the country, many countries in the world now have so-called universal jurisdiction laws, which allow them to investigate and prosecute if the state where the crime occurred and if the International Criminal Court won't take the case. So—but this is only one side of the game.

The other side is what we always said. Yeah, we tried to blame Rumsfeld for—and others, of course, especially the lawyers—for what they've done in conducting the torture program, but we don't have to forget that—and this is not about universal jurisdiction. This is about territorial jurisdiction and about personal jurisdiction. We have many, many European countries right now with pending lawsuits because of their involvement in the US torture program. So we have ongoing trials in Italy, in Spain. We have—even now in Bosnia, in Poland, we have brave prosecutors who are investigating against their own officials. We have parliamentary inquiries. We have criminal investigations in Denmark, in Holland, in many other countries.

**AMY GOODMAN:** Can you explain a few of these?

**WOLFGANG KALECK:** Yeah.

**AMY GOODMAN:** Because I think there's very little sense in the United States of what goes on outside of the United States.

**WOLFGANG KALECK:** You know that the CIA rendition program was called by one investigator of the Council of Europe a "spider's web." So, this is to demonstrate the power of the CIA, like covering the whole world with their stations and using air bases all over the world to kidnap people, to torture them and to bring them anywhere.

**AMY GOODMAN:** By rendition. You're referring to extraordinary rendition.

**WOLFGANG KALECK:** By rendition, yeah. I'm referring to the CIA extraordinary rendition program. So, on one hand, this really seems like a very powerful demonstration. On the other hand, they leave traces. Everywhere they act, there is jurisdiction on their actions. So they acted in Italy, for example. They kidnapped a Muslim cleric, Abu Omar, and brought him to Egypt, where he was really brutally tortured. And a brave prosecutor in Italy investigated the case and now is standing on trial against not only CIA agents, but also against the heads of the Italian secret service who helped the CIA.

**AMY GOODMAN:** But the CIA agents, of course, are not there. They're being tried *in absentia*.

**WOLFGANG KALECK:** Yeah, yeah.

**AMY GOODMAN:** So, what does it mean? It means they can never return to Italy?

**WOLFGANG KALECK:** They can never return. There are arrest warrants, like there are arrest warrants in Germany against twelve CIA agents. So—

**AMY GOODMAN:** What happened here in Germany?

**WOLFGANG KALECK:** In Germany, it's all because of the case of Khalid El-Masri, a German citizen who was kidnapped in Macedonia and then brought to Afghanistan and then returned to Germany. You know what? But what this means is, four years ago, everybody said suing—a lawsuit against US CIA agents, against US militarists, never brings you anywhere. And four years later, we find ourselves in a situation where we have to say, this is, of course, not enough, but this is more than nothing. A lot has been happening. So, many, many lawyers, many prosecutors, many judges in several European countries took action, and I think there is more to come up. And it depends very much—there is much hope on the Obama administration, but it will depend very much if there is really something going on in the US. If not, I guess there will be more and more lawsuits here in Europe.

**AMY GOODMAN:** Wolfgang Kaleck, your first lawsuit against Rumsfeld in 2004, that was thrown out by the German government.

**WOLFGANG KALECK:** Yeah, that was a nice one, because we filed the lawsuit in late 2004, and they were somehow revising our complaint, because it was a very strong, long complaint. And Rumsfeld announced at a certain point that he wouldn't come to Germany because of that pending lawsuit. And he wanted to come to the Munich Security Conference on 11th of February in 2005, and so the German prosecutor filed the dismissal on the 10th of February, 2005, one day before, so that Rumsfeld could attend the Munich Security Conference, which he did. So, that was—

**AMY GOODMAN:** Was the US bringing a lot of pressure to throw this out?

**WOLFGANG KALECK:** Yeah, it seems so. It seems so, because there were also upcoming visits of Condoleezza Rice and re-elected President George Bush by that time.

This attitude of the Germans, which was obviously politically motivated, gave us a fair chance to file a new lawsuit in 2006, where actually not only the Center for Constitutional Rights and we, the Germans, filed the case, but fifty organizations all over the world backed the case. And so, yeah, you know that the case gained a lot of public attention and also initiated a discussion that international justice has to be more than special justice for fallen dictators from Southern countries or special tribunals for Africa. If international justice wants to be taken serious in the future, it has to go after the powerful perpetrators also of the West and the North.

**AMY GOODMAN:** Wolfgang Kaleck, we're sitting here in a studio in Berlin, East Berlin, to be exact. For those who are listening on radio, you can go to our website at [democracynow.org](http://democracynow.org). You'll see the backdrop of this broadcast, significant buildings and monuments in Berlin. Can you talk about your concern—against the backdrop of this history, give us a quick one-minute tour of Berlin and its significant places. Even in the break, we were playing Bertolt Brecht's *Threepenny Opera*, "Mack the Knife." The significance of Bertolt Brecht here, a theater right around the corner.

**WOLFGANG KALECK:** Yeah. You know, we're facing the Victory Column, where Barack Obama gave his speech in July. And this was actually a demonstration of war, because Germany was leading many wars in the past.

**AMY GOODMAN:** And we're showing that backdrop right now.

**WOLFGANG KALECK:** Yeah, yeah.

**AMY GOODMAN:** This was where—the significance of that place, where Barack

Obama spoke?

**WOLFGANG KALECK:** Yeah, yeah. Berlin is full of monuments of war. And the Brandenburg Gate was the place, just where we're sitting here—that was the first demonstration of Adolf Hitler when he was elected as a chancellor. So we have dealt a lot with impunity. And actually, you know, the Nazi—the whole chapter of the Nazi crimes was never, never really challenged by German justice. So, maybe we the Germans are not the best persons to tell others how to tackle impunity, but some of us learned a lot during the last years.

**AMY GOODMAN:** And the significance of the wall coming down that divides where we are in East Berlin from West Berlin, that many people don't even refer to east and west anymore, thinking of it as one united city now, the government back here at the Reichstag?

**WOLFGANG KALECK:** Now, that's—the interesting thing for us with the fall of the wall is that it showed that history is open, and sometimes things may happen that you haven't expected in years before. And that's, you know, what we are also experiencing with our work against impunity in Southern America, because we deal with cases against Chilean and Argentinean military officers, where, thirty years after the crimes during the dictatorships in the '70s, these people now find themselves on trial. And so, this is our hope, that the continuous work of human rights organizations, of lawyers and organizations all over the world will at some point result in investigation and prosecution against US torturers.

**AMY GOODMAN:** Well, I want to thank you very much for being with us today. Wolfgang Kaleck is the General Secretary of the European Center of Constitutional and Human Rights, as we wrap up our trip through Sweden and Germany. We'll be back in New York on Monday, and we'll be dealing with the issue of extraordinary rendition there, as well.



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