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ANJALI KAMAT: We turn now to the issue of torture. On Monday, Attorney General Eric Holder appointed veteran federal prosecutor John Durham to look into whether CIA interrogators and contractors should be charged for the torture and abuse of foreign prisoners. Durham is already heading a separate probe into whether CIA officials broke the law in destroying videotapes documenting prisoner interrogations. The White House has opposed calls for a torture investigation but says the decision has been Holder's to make.

Former Vice President Dick Cheney criticized the move. Cheney said in a statement that opening an inquiry into CIA interrogation practices was, quote, "a reminder, if any were needed," of why some Americans question the Obama administration's ability to protect the nation.

Holder says he ordered the probe in response to a Justice Department recommendation to reopen nearly a dozen prisoner abuse cases that the Bush administration had closed. Holder says he was further influenced by the 2004 CIA report on the prisoners' torture and abuse, which he released on Monday.

The report provides accounts of interrogators threatening to kill and sexually assault a prisoner's family, staging mock executions, intimidating prisoners with a handgun and a power drill, and blowing smoke on prisoners' faces to make them vomit. One prisoner was grabbed by his carotid artery until he began to faint.

In an apparent response to the report's release, the CIA declassified two memos on apparent intelligence gained from the prisoner interrogations. Cheney had previously claimed the memos

would help vindicate the CIA interrogation methods by showing they yielded important intelligence. But the memos don't describe any specific methods, nor do they assess their results.

AMY GOODMAN: The Obama administration, meanwhile, has confirmed plans to establish a new team of interrogators to question foreign suspects outside the CIA. The High-Value Detainee Interrogation Group, or HIG, will be operated out of the FBI and overseen by the National Security Council.

For more, we're joined by Glenn Greenwald, constitutional law attorney and political and legal blogger for Salon.com, the author of three books. His latest is *Great American Hypocrites: Toppling the Big Myths of Republican Politics*. He's joining us now by *Democracy Now!* video stream.

Glenn, welcome to *Democracy Now!*

GLENN GREENWALD: Good to be here, Amy.

AMY GOODMAN: Your response to these latest really profound developments in the last few days?

GLENN GREENWALD: They are profound. For one thing, I think Eric Holder's announcement that there will be at least some investigation at least takes away the idea that all of this conduct, this torture regime, ought to be immunized from the rule of law and the mere fact that it was done in the name of terrorism means that somehow breaking the law is permissible in a republic that is supposed to live in accordance with the rule of law. So I think that's a positive step.

I think the problem with the announcement, though, and it's a significant problem, is that he has indicated that anybody who complied with the OLC torture memos, the memos that essentially gave permission to the CIA to engage in what was obviously torture, and who did so in good faith will receive immunity from investigations and prosecutions. And what that, I think, is intended to do, and what it almost certainly will accomplish, is to mean that the high-level political officials who actually implemented the torture regime—the Bush officials in the White House, the high-level CIA officials—will never be held to account. And at most what will happen is some low-level sadist in the CIA who went beyond the torture permission slips given by the Justice Department might be held accountable, in the same way that in Abu Ghraib low-level grunts were held accountable for what was clearly the policy of high-level policymakers. And I think that's quite problematic.

ANJALI KAMAT: Glenn Greenwald, talk about the inspector general's torture report. Your [piece](#) in Salon.com is called "What Every American Should Be Made to Learn About the IG Torture Report." What should every American be made to learn about this report, and why?

GLENN GREENWALD: Well, I think the reality of the torture regime is so vastly different from what the media typically depicts. I think if you ask most Americans what the torture regime and what the torture controversy was about, they would say, understandably, that it essentially involved waterboarding, pouring some water down the noses of three al-Qaeda members who were involved in the 9/11 attacks. That's what they understand it to be, because that's what the discussions about are almost always about. The reality, though, is quite different.

This is yet another report that details that the abuses that took place were pervasive and systematic, far more than three people, involving hundreds of people, perhaps thousands, that they involved people who even the CIA report said there was no incredible intelligence to believe that they were involved in terrorism of any kind, meaning that they were completely innocent of any wrongdoing. These were the people to whom we subjected these abuses.

And I think, beyond that, the kinds of techniques, the kinds of tactics that were used, as you indicated in your opening, are incredibly brutal and barbaric, exactly the kinds of methods that

we've long condemned and called for war crimes prosecutions when engaged in by other countries.

And most of all, it involves numerous detainees who weren't just abused and brutalized, but who were murdered, who were killed in detention as a result of these, quote/unquote, "interrogation tactics." The IG report talks about one detainee being beaten to death with a flashlight. And, of course, there are many others, including some that are discussed in the IG report, though those passages were redacted.

And so, my point really is that if Americans want to endorse the idea that torture is permissible as a means of combating terrorism and that that's something that the United States is now going to do and that the people who did it, even though it's clearly a felony and a war crime, should be immunized from prosecution, at the very least they should be made to understand what it is that they're defending. They're not merely defending the use of waterboarding; they're defending the most brutal and horrific tactics that result in severe injury to helpless captives and even death. And if, at the end of the day, America wants to defend and justify that, then at least they will do it with full knowledge and will be making a clearer statement about what the country has become.

AMY GOODMAN: Glenn, can you talk about the media coverage of all of this?

GLENN GREENWALD: Well, I think that, you know, one of the things that is most noticeable about what ends up happening with media coverage is that it's immediately framed as being a question of whether this is something we should do to protect ourselves. The chyron on CNN all day and the title of the debate on CNN the entire day after this report was issued was "How far is too far to protect ourselves?" So we've now almost implicitly accepted the Cheneyite premise that the only way that we can stay safe, the only way we can extract information about terrorist plots, is by drowning it out of people or beating it out of people. And so, the discussion becomes simply whether or not Americans are willing to have their government leaders engage in torture in order to stay alive.

And it's a completely distorted way of presenting it for so many reasons, beginning with the fact that all professional interrogators say that by far the most effective means of extracting information is establishing a rapport and using professional interrogation techniques, not coercing and beating it out of people. But what it does, even more than that, is it excludes from the consideration all the costs, the moral costs to society, the reputational damage, the standing—the loss of standing and credibility in the world, by becoming a nation that now tortures systematically, and more than that, becoming a country where we essentially vest our leaders with the power to break the law. We have laws in place, longstanding laws, that say it's a felony to engage in torture. And torture is defined to include even things like threatening imminent death.

And so, if we start ignoring those questions, as the media almost entirely does, essentially what we're becoming is a country that is both authoritarian, a country of torturers, and ones where our leaders have permission to break the law. And I defy anyone to look at network news discussions or cable news discussions and find any real discussion of those most consequential issues.

ANJALI KAMAT: Glenn Greenwald, talk about how these documents came to be released. This was not by an act of Congress or as a result of pressure from the mainstream media.

GLENN GREENWALD: I think that's a really important point. You know, we have these institutions that are intended to exercise oversight, both in general over the executive branch and especially over the intelligence community. I mean, if there's one thing the United States has learned, it's that if the intelligence community is permitted to [no audio]—

AMY GOODMAN: We're talking to Glenn Greenwald actually in Brazil by *Democracy Now!* video stream, so we're going to try to get him out. Glenn is a constitutional law attorney and a political and legal blogger for Salon.com, has written a number of books—his latest, *Great American Hypocrites*

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Glenn, continue with what you were saying. Just a little blip in the video stream there.

GLENN GREENWALD: Can you hear me?

AMY GOODMAN: We can hear you now.

GLENN GREENWALD: OK. So I was saying that, you know, the history of the United States is, you know, extremely clear that if the intelligence community operates without oversight, extreme abuses are inevitable. And, of course, that was the lesson in the mid-1970s, when the intelligence community was investigated and decades of abuses were uncovered. And that was when the oversight regime was created.

And so, we were supposed to have a heavy oversight regime exerted by Congress to ensure that they couldn't operate in secrecy. The media, of course, is supposed to play the role of the fourth estate, the adversarial check on what the intelligence community is doing. And yet, if you [no audio]—

AMY GOODMAN: Just bear with us. What he's saying is very important, and so we're just going to keep on trying to maintain this connection in Brazil. Again, our guest, the Salon.com blogger, constitutional law attorney Glenn Greenwald. Let's see if he's back with us. Glenn?

We're going to try to call him on the telephone, often the best way to communicate with someone.

And we also want to let you know, at the moment of this broadcast, President Obama has yet to

address the nation from Blue Heron Farms, where he's staying in Martha's Vineyard. And we do hope to bring you what he has to say about Senator Kennedy, his life, his legacy, when he does address the nation from Martha's Vineyard.

As we try to reconnect now with Glenn Greenwald, who has been following the torture controversy for as long as it's been going on and also taken the mainstream media to task for its coverage. He's also been looking at the media coverage of the healthcare reform debate, which has been very interesting, and how the media has changed its stance as President Obama changes his stance. Let's see if we've been able to reconnect with Glenn Greenwald. Glenn, we're—

We're going to try to—we're going to try to reconnect with Glenn in just a minute. We're going to go to a musical break, and then we'll come back. This is a show very much produced just in the last hours. What we had originally brought you, of course, we changed, because in the early hours of today it was announced, just before 2:00 this morning Eastern time, that Senator Ted Kennedy had died, known as the "liberal lion" of the Senate, only two other senators who have served longer than he has, Robert Byrd and the late Strom Thurmond, as Senator Kennedy served forty-six years in the Senate. We'll go to a musical break, and then we'll come back. This is *Democracy Now!*, democracynow.org, The War and Peace Report.

[break]

AMY GOODMAN: We've tried to reconnect with Glenn in Brazil. We're going to this time try by old faithful, by the telephone. Glenn Greenwald, the Salon.com blogger, as he talks about the issue of torture and the latest developments, Eric Holder appointing a special counsel to investigate the issue of torture.

But, once again, Glenn, talk about the limits on this investigation and if you think it will prevent future investigations from actually getting to the bottom of what happened and holding those accountable who were responsible for it.

GLENN GREENWALD: Right. Well, that actually relates to the point that I was making when the forces of technology intervened in our discussion, which is, unfortunately, almost all of the significant revelations have occurred, not as a result of Congress or the media or even the Justice Department, but as a result of human rights organizations, and especially the ACLU, tenaciously litigating against the government, filling in the gap, the void, of oversight and disclosure that these institutions have failed to perform. And that's why the public record has become so enormous, almost unavoidable for the Justice Department to take action. And I think that's why the pressure has built up on Eric Holder to do something.

And the question now is, what is it that he—what is it that he'll do? Will this be a whitewash investigation where a few low-level sacrificial lambs are held up? Or will the truly responsible and culpable parties, the high-level Bush officials in the White House, including the President, who knowingly instituted an illegal torture regime—will they be held responsible?

And if you look at what the Attorney General said in how he defined the scope of the investigation and who it is who would receive legal immunity, he said that anybody who complied with the OLC memos, meaning only engaged in the torture the Justice Department said you could engage in, and did so in good faith, meaning with a genuine belief that they were acting legally, would be immunized. And presumably, the converse of that is that anybody who acted in bad faith, even if they did nothing other than what the Justice Department said, could still be subject to prosecution.

There's ample evidence to show that all these OLC memos were were designed to be legal cover to enable the President and other officials to do what they knew was illegal. So the mere fact that these memos exist and say that these techniques, these torture techniques, are legal does not in any way mean that what was done was in good faith. In fact, there's evidence that demonstrates repeatedly that many of these decisions were made before these memos were issued and these memos were issued retroactively to provide legal cover—the very definition of bad faith.

And so, if you look at what Holder said technically, it still leaves open the possibility that even the President and the Vice President and the Attorney General, the Secretary of Defense,

high-level CIA officials could still be held to account under the law. As a practical reality, though, it seems as though they're clearly structuring their investigation to target these extra-sadistic interrogators who went beyond the memos and to say that anybody who worked within the memos will be protected. And if they do that, I think it would actually subvert the rule of law rather than bolster it, by saying that high-level officials yet again are immunized and only low-level law breakers will be held accountable.

ANJALI KAMAT: Glenn Greenwald, this week President Obama also announced the creation of a new White House-supervised interrogation unit. It's being known as HIG. Can you talk about what this is and what its relationship with the CIA will be?

GLENN GREENWALD: Sure. I mean, the principal idea behind it is that the CIA was never really intended to be an agency that engages in law enforcement investigations, detention and interrogation. They're really there to gather intelligence. And so, it's really always been the FBI who are the professional interrogators. And what this really is about is taking away responsibility from the CIA and making the FBI—returning primary responsibility for interrogation to the FBI and ostensibly providing more oversight and more limitations on what it is that can be done.

The central requirement is that there will be no interrogation methods authorized, at least for now, beyond the Army Field Manual, which, although it contains a lot of techniques that are highly controversial and coercive and that some people consider torture, certainly is much more restrictive than the interrogation regime implemented by the CIA during the Bush years.

And so, in a sense, you could say that you'd rather have the FBI overseeing interrogations than the CIA. Certainly, the FBI's record was infinitely better than the CIA's, where many FBI agents refused to participate in these enhanced interrogation techniques. They filed reports saying that what was being done was illegal and was torture. They were probably responsible for some of the earliest leaks to the public about the abuses that were taking place. And so, the FBI's record is better than the CIA's.

The real question, though, is, is this just bureaucratic shifting to enable a better face to be put

on what will still be a coercive interrogation regime, or is the administration serious about abiding by the law? And if they're serious, will that even withstand future terrorist threats or even a terrorist attack? And I think all of that remains to be seen. All things being equal, I'd rather have the FBI as the primary agency. I think it's a good step, in that regard. But how much this matters, I think, well, only time will tell.

AMY GOODMAN: Finally, on a wholly different issue, Glenn, you've been writing about the changing media coverage of the health insurance reform debate. Just quickly go through that with us in the last less than a minute we have.

GLENN GREENWALD: Well, the debate has—the division has become one not between Democrats and Republicans, but within the Democratic Party, between the forces that typically serve industry interests, like the Blue Dogs and the centrists who want to mandate that people buy health insurance products but without a public option to keep costs low, which would be a huge bailout to industry, versus the Progressive Caucus, who usually loses, but it seems to be, at least for now, standing up for ordinary Americans by saying only a public option will keep costs low.

And the media is depicting this battle, yet again, as being the progressives who are impeding real healthcare reform and obstructing getting things done, as though the only responsible thing to do is to give in to industry and to force progressives to give up on their belief in a public option, which Obama ran on and won on, rather than the Blue Dogs giving up on their servitude to industry. And it just shows how the media is never a neutral arbiter in these debates [inaudible]—

AMY GOODMAN: Glenn Greenwald, we're going to leave it there. Thanks so much for being with us, blogger at Salon.com.

Glenn Greenwald is a constitutional law attorney and political and legal blogger for Salon.com. He is the author of three books. His latest is *Toppling the Big Myths of Republican Politics* and *Great American Hypocrites: The Double Standards of American Politics*.

