

Cheney's secret CIA counterterror program causes uproar ... but was it illegal?

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Congressional Democrats are in an uproar over revelations that former [Vice President Cheney](#) hid a secret, mysterious [CIA](#) counterterror program from [Capitol Hill](#) leaders. And Obama's own attorney general is weighing charges in the alleged CIA-led torture of terror suspects.

Senate [Democratic Whip Dick Durbin](#), Obama's [Illinois](#) mentor, said Congress "absolutely" should probe the CIA program, which was concealed for years on Cheney's orders, lawmakers confirmed Sunday. "A massive program that is concealed from the leaders in Congress is not only inappropriate, it could be illegal," Durbin said on ABC's "This Week." "This is a big problem, because the law is very clear," [Senate Intelligence Committee](#) Chairman [Dianne Feinstein \(D-Calif.\)](#) told [Fox News](#) Sunday. "We were kept in the dark." The Executive Branch by law must inform Congress of covert actions.

There is legal wiggle room if programs are "not fully operational," such as the one [CIA Director Leon Panetta](#) cancelled last month after his spies told him about Cheney's role, an official told the Daily News. "Its loss was not mourned," said the official. The source added the scuttled activity had nothing to do with detention, interrogation or domestic operations, and noted that no lawmaker has claimed it was illegal.

Meanwhile, intelligence sources reacted angrily to weekend disclosures that [Attorney General Eric Holder](#) is leaning toward charging alleged torturers. Obama officials downplayed the news reports, insisting again that no one who took orders based on Bush lawyers' legal guidance will be investigated. "We have made no decisions on investigations or prosecutions, including whether to appoint a prosecutor to conduct further inquiry," said Holder's spokesman, [Matthew Miller](#). "As the Attorney General has made clear, it would be unfair to prosecute any official who acted in good faith based on legal guidance from the [Justice Department](#)." But those perceived as acting outside that legal guidance by using brutality - mostly contract interrogators, The News has learned - might be in hot water, administration sources conceded.

CIA spokesman [Paul Gimigliano](#) said the facts have long been before federal prosecutors, who since 2001 have only tried and convicted one contractor for abuses. "The Department of Justice knows - and has known for years - the details of CIA's past interrogation practices," Gimigliano said. "Based on that knowledge, Justice decided when to prosecute and when not to prosecute."

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