

GOOD QUESTION. WHAT DID HAPPEN TO THAT PROMISED STATE SECRETS POLICY?

As I mentioned above, I've been prepping for a panel on Saturday on torture. And so I've been reviewing all the things DOJ promised us in mid June or early July that they still haven't delivered on: The OPR Report, the torture investigation, and—as Daphne Eviatar points out—the new State Secrets policy.

As I reported almost two months ago, Holder told the Senate Judiciary Committee on June 17 that he would issue a new policy on when the government will invoke the state secrets privilege to conceal evidence from the public – and even from federal court judges – “in a matter of days.”

Well, it's August, and still nothing. After Ed asked me the question, I followed up with Dean Boyd, spokesman for the Justice Department's national security division, asking him if that policy had ever been issued. After all, maybe we'd just missed it.

Boyd's response: “Not yet; still in the works.”

Presumably, DOJ is trying its luck with some of the State Secrets claims outstanding, such as the Jeppesen claim that the 9th will almost certainly sustain (meaning State Secrets can only be applied to evidence and not information generally).

And presumably DOJ figures that, with SJC occupied until recently with the Sotomayor confirmation, no one would notice.

In case anyone is wondering, Daphne and I have

both officially noticed.