

**Senator Dianne Feinstein
Questions for the Record
Sally Quillian Yates
Nominee to be United States Deputy Attorney General**

- 1. On September 23, 2009, the Attorney General issued a memorandum establishing new policies and procedures governing the Department of Justice's invocation of the state secrets privilege.**

The Attorney General's memorandum states that the "Department is adopting these policies and procedures to strengthen public confidence that the U.S. Government will invoke the privilege in court only when genuine and significant harm to national defense or foreign relations is at stake and only to the extent necessary to safeguard those interests."

As an accountability mechanism, the memorandum includes the following congressional reporting requirement: "The Department will provide periodic reports to appropriate oversight committees of Congress with respect to all cases in which the Department invokes the privilege on behalf of departments or agencies in litigation, explaining the basis for invoking the privilege."

On April 29, 2011, the Department issued its first periodic state secrets privilege report. That report discussed the two cases in which the privilege had been invoked under the new policy, but those are no longer the only two cases. A second periodic state secrets privilege report has not been issued.

When I asked Loretta Lynch at her hearing to provide the appropriate oversight committees with the second periodic report, she testified: "I certainly commit to you that I will do my best to ensure that the department lives up to its obligations that it has set forth."

I do not understand the significant delay in producing the second periodic report to the appropriate oversight committees of Congress. The Department, which invokes the state secrets privilege in litigation, has the information needed to provide to Congress, so there is no apparent reason for delay.

In your role as Acting Deputy Attorney General, will you commit to me that this report will be released by April 29, 2015, four years after the first periodic report was provided?

RESPONSE: I recognize your interest in this issue, and assure you that the Department is actively working to finalize this report. We are working to release the report before April 29, 2015, or as soon thereafter as is practicable.