

DOJ quietly posts internal legal opinions about immunity from congressional testimony

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(CNN) — The Justice Department on Thursday quietly published on its website some never-before-seen internal legal opinions that could help President Donald Trump block congressional requests as he [faces impeachment by the US House and a trial in the Senate](#).

Eight of the opinions appear to bolster the White House's stonewalling of Congress on witness testimony and document subpoenas. [The opinions date back to the 1970s](#), when President Richard Nixon faced impeachment, and the early 1980s. One from 1982 was written by the former head of the Office of Legal Counsel at the request of Rudy Giuliani, who at the time worked within the Justice Department.

Some of the opinions appear to have been made public before, and some have only been cited by the Justice Department in other legal arguments. Those released Thursday hadn't all been collected before on the Justice Department's central website regarding its internal legal opinions.

A Justice Department official acknowledging the releases said these opinions were cited in the Office of Legal Counsel's more recent opinion that former Trump White House counsel Don McGahn should be immune from subpoenaed congressional testimony. The House has sued for McGahn to testify, winning at the trial court stage, and the Justice Department is appealing. The newly released opinions were requested by the House as part of the McGahn lawsuit, according to the official.

The collection could be a valuable central resource for the President in the coming weeks, fleshing out the authority the executive branch has given itself to ignore congressional requests.

Then-head of [the Office of Legal Counsel Ted Olson wrote](#) in July 1982 that the White House counsel should not submit to a subpoena or request to testify to the Senate, arguing the president's "close advisors are an extension of the President." Just as he cannot "compel congressmen to appear before him," Congress "may not compel him to appear before it," Olson wrote.

Notably, Olson told the deputy attorney general that if the president broke with precedent and submitted to such testimony it would be seen by "many -- including members of Congress who are aware of the historical practice -- as a sign of weakness."

agreeing to this particular Congressional demand to depose one of the highest and most intimate of Presidential advisers will erode a central foundation of executive privilege and severely chill internal deliberations among Executive Branch advisers in the future."

Other early opinions republished Thursday also tout the autonomy of the executive branch, and were written by notable other former Office of Legal Counsel chiefs within Justice, including [William Rehnquist, who became the US chief justice](#) and oversaw the impeachment and trial of President Bill Clinton.

"It is vital that a recommendation that the President assert privilege be a considered one, because the consequences of initially asserting the claim and then receding from it in the face of public criticism are obviously more hurtful than an initial decision not to assert the claim," Rehnquist wrote in 1971.

The Office of Legal Counsel writes binding opinions for the executive branch, but they do not always withstand scrutiny in federal courts.

Currently, appeals courts are weighing the White House's assertions of absolute immunity over its current and former officials and the House's subpoena power.

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