

ABSTRACT

Randolph D. Moss

Executive Branch Legal Interpretation: A Perspective From the Office of Legal Counsel

52 Admin. L. Rev. 1303 (2000)

Abstract by Loan Thai Phan

The article explores the role of the lawyer in the Executive Branch from the perspective of the Department of Justice's Office of Legal Counsel lawyers. The author highlights the importance of this issue by putting the role of executive branch and Office of Legal Counsel's legal interpretation into context with judicial interpretation. The piece focuses on the conflict between the extent to which the executive branch lawyer in the Office of Legal Counsel must advocate for the executive branch's political policies and its role as an objective judicial adviser.

The first section of the article analyzes the Neutral Expositor Model of the executive branch lawyer. Under this model, the role of the lawyer at the Office of Legal Counsel is of neutral expounder of the law rather than a political adviser. The author argues that the Office of Legal Counsel's duty is to provide fair, neutral, and well-reasoned opinions that should be quasi-judicial in nature, as opposed to being a legal advocate for the executive. The second section provides arguments against the Neutral Expositor Model by examining the different attributes of an executive branch lawyer. Criticism against the Neutral Expositor Model claim that the executive branch lawyer should merely give advisory opinions; that there is no best view of the law; and that the President and his senior advisors need to have the discretion to interpret the law as desired.

The article concludes that while the role of the executive branch lawyer in the Office of Legal Counsel is distinct because the lawyer is accountable to the executive branch, executive interpretation must be respectful of relevant judicial and non-judicial precedent in lieu of the policy objectives of the administration.