

Staff Memo Hints Impoundment May Not Be Impeachable Offense

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WASHINGTON, July 29 (AP) — President Nixon may not have committed an impeachable offense by impounding funds appropriated by Congress, even though the courts have deemed some impoundments illegal, the impeachment inquiry staff has suggested.

The suggestion, short of a conclusion, is contained in one of three bulky staff memorandums made public today.

The other memos deal with the bombing of Cambodia and expenditure of public funds on Mr. Nixon's properties in San Clemente, Calif., and Key Biscayne, Fla.

Current indications are that the House Judiciary Committee will not vote impeachable articles based on any of these three issues, although some committee members may propose an article that combines Mr. Nixon's property improvements and his underpayment of income taxes.

The memorandums are compilations of facts and legal considerations. Only the one on impoundment contains a summary.

In this, the staff notes that "a substantial majority of the courts which have considered the Administration's arguments in defense of executive impoundments have concluded that the impoundments involved were unlawful."

"It does not follow that the impoundments necessarily constitute grounds for impeachment of the President ...

"A practical construction of the Constitution may contemplate that from time to time, each of three branches of our Government will attempt to exercise constitutional power to its fullest extent, and in doing so may temporarily abrade the powers or prerogatives of another branch.

"Not every abrasion—if history is to serve as a guide, not even so serious an intrusion as the Presidential seizure of the steel mills in 1952 — need lead to the impeachment of a President.

"The committee will have in mind that the legal questions presented by impoundment have been dealt with by the judicial system, and that the Administration has obeyed final court decrees directing the release of impounded funds.

"In addition ... there appear to be alternative legislative remedies for impoundment within the competence and powers of Congress ..."

The summary cited legislation requiring reporting of impoundments, the possibility of explaining mandatory spending language in appropriations and the impoundment-limiting provisions of the new Congressional budget act.