Establishing the Gold Standard For Presidential Impeachments: Peter Rodino’s Leadership of the House Judiciary Committee 1973-1974

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This year is the fiftieth anniversary of the House Judiciary Committee’s adoption of three articles of impeachment against President Richard M. Nixon. As Congress engages in the fourth such undertaking since 1974, it is instructive to mark this occasion by reviewing the seminal work of the committee and its chairman, Peter W. Rodino Jr. A close examination of these events confirms that it was no accident that what they accomplished together is still regarded decades later as the ‘gold standard’ of presidential impeachments.1

Peter Rodino was a reluctant participant in the effort to take the momentous step of impeaching a president for the first time in more than a century. The burglary of the Democratic National Headquarters at the Watergate office building and the coverup efforts at the Nixon White House dramatically revealed during televised Senate hearings in the summer of 1973 had sparked the first calls for an impeachment inquiry.2 Rodino recalled that “at the time, I could not understand what the total significance, what the total outcome of this might be.”3

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3 Peter W. Rodino, Jr., Rep, Yale University Oral History Transcript 2 (Apr. 22, 1975) [on file with the Rodino Law Library, Seton Hall University School of Law] [hereinafter Yale Oral Transcript].
Although members of Congress were increasingly besieged with letters and petitions calling for President Nixon’s removal from office, Rodino rebuffed all attempts even to discuss the future possibility of impeachment and his innate caution was shared by Speaker of the House Carl Albert.\footnote{Petition to the House of Representatives To Impeach Richard Nixon, (January 1973) [on file with the Carl Albert Congressional Research and Studies Center, University of Oklahoma] [hereinafter Albert Papers]; Letter from Carl Albert to Philip Isaacs (May 10, 1973) [on file with the Carl Albert Congressional Research and Studies Center, University of Oklahoma]; Letter from John McLees to Carl Albert (May 1, 1973) (on file with the Carl Albert Congressional Research and Studies Center, University of Oklahoma); Spencer Rich & Richard L. Lyons, Democrats Consider Talk of Impeachment Premature, WASH. POST (May 24, 1973).}

However, as new revelations about the Watergate coverup emerged, Rodino recognized that he could no longer ignore the issue. He decided to expand his limited knowledge of the subject and asked his staff to prepare a bibliography of relevant scholarship. The United States Constitution mentions impeachment only four times and the framers provided few details to guide the process. Under the article establishing the legislative branch, the power to impeach or level accusations of wrongdoing against federal government officials, including the president, was vested in the House of Representatives.\footnote{U.S. CONST. art I, § 2, cl. 5.} Impeachable charges were defined as bribery, treason, or other high crimes and misdemeanors. Responsibility for conducting the trial that followed was given to the Senate and a person found guilty by at least two-thirds of the senators was removed from office.\footnote{Id. § 3, cl. 6.} Congress had invoked this provision just twelve times prior to 1973 and it was primarily used against federal judges.\footnote{STAFF OF H. COMM. ON THE JUDICIARY, 93d CONG., IMPEACHMENT: SELECTED MATERIALS 125–203 (Comm. Print 1973).} The sole presidential impeachment of Andrew Johnson in 1868 was a highly partisan proceeding and historians largely dismissed it as an unworthy precedent.\footnote{See STAFF OF H. COMM. ON THE JUDICIARY, 93d CONG., IMPEACHMENT: SELECTED MATERIALS (Comm. Print 1973); Brenda Wineapple, The Impeachment of Andrew Johnson and the Dream of a Just Nation (2019); Jeffrey A. Engel, Jon Meacham, Timothy Naftali & Peter Baker, IMPEACHMENT: AN AMERICAN HISTORY (2008).} Rodino began what he regarded as a purely academic inquiry and deliberately kept his research activities confidential. When a seatmate on a shuttle flight to New Jersey commented on the fact that Rodino was intently reading a book about the Johnson impeachment,
the chairman began wrapping his reading material in plain brown congressional envelopes.9

A few weeks later, Rodino was finally compelled to break his silence on the subject. Father Robert Drinan, a liberal Democratic congressman from Massachusetts, introduced the first House impeachment resolution on July 31 following revelations that President Nixon had ordered the secret bombing of Cambodia as part of the Vietnam war effort. Drinan’s brief resolution called for impeaching Richard M. Nixon, President of the United States, of high crimes and misdemeanors, and it was referred to the House Judiciary Committee. Although Drinan was a member of the panel, he received little support from his fellow Democrats, and both Speaker Albert and Majority Leader Thomas P. “Tip” O’Neill considered his action ill-timed.10 Receiving no advance warning of the introduction of the resolution, Rodino viewed it as part of Drinan’s ongoing anti-war activism and his initial reaction was to ignore it.11 But strong interest from the press made this impossible and the following day Rodino issued a public statement. In announcing that the committee would take no formal action on the Drinan proposal “at this time,” Rodino stressed the gravity of the subject and the need for careful deliberation, two themes he would consistently echo in the future:

Removal from office of the President, or any other federal official, is an extraordinary remedy. Extraordinary remedies are applied only under extraordinary circumstances. As legal historians have noted, impeachment must be viewed as ‘a sword of Goliath’ which ought not be brandished lightly. As a result, only the most careful, the most sensitive, and the most thoughtful deliberation will precede any action taken by the Committee on the Judiciary.12

9 Yale Oral Transcript, supra note 3, at 2–5.
11 Peter W. Rodino, Rep., Transcript of Oral History Interview 80–81 (transcript on file with Columbia Center for Oral History Archives, Rare Book & Manuscript Library) [hereinafter Columbia Oral Transcript].
Although reaffirming this position a month later when he appeared on the CBS news program *Face The Nation*, he prudently decided to accelerate the pace of his impeachment research.\(^\text{13}\)

The threshold that Rodino established for launching any congressional action was reached on October 20 when President Nixon fired Watergate Special Prosecutor Archibald Cox, prompting several top Justice Department officials to resign in what became known as the Saturday Night Massacre.\(^\text{14}\) Three days later, Speaker Albert authorized the House Judiciary Committee to begin a formal impeachment inquiry.\(^\text{15}\) Speaking to reporters, a somber Rodino acknowledged that the “events of the past few days leave us little choice at this time but to move forward…the President has precipitated a grave crisis that raises the most serious questions about the integrity of the government and the administration of justice.”\(^\text{16}\) Within hours of the announcement, over two dozen impeachment resolutions were introduced and referred to the committee for further consideration.\(^\text{17}\)

At the outset, success seemed far from certain and the initial reaction to Rodino’s selection to lead the impeachment inquiry was not encouraging. He had only assumed the committee’s chairmanship a year earlier after quietly toiling in the legislative shadows for over two decades. He was relatively unknown outside of his home state of New Jersey and he represented the city of Newark, a place recently tarnished by political corruption. Some House members suggested bypassing Rodino and creating a special committee, an idea Speaker Albert immediately rejected.\(^\text{18}\) Highlighting Rodino’s inexperience, the *Miami Herald* lamented that selecting him to direct the impeachment inquiry

\(^\text{13}\) *Face The Nation*, CBS News, (Sep. 30, 1973) (transcript on file with the Rodino Law Library, Seton Hall University School of Law).


\(^\text{18}\) Columbia Oral Transcript, *supra* note 11, at 82-83, 97-99, RA; Carl Albert, “Interview 3,” Joe Foote Collection, Audio Recordings, Carl Albert Center Congressional and Political Collection, University of Oklahoma, Norman, Oklahoma [hereinafter Foote Collection].
was “a little like calling on the bullpen rookie for his first pitch with the bases loaded.”\(^{19}\)

But Rodino was a seasoned legislator and could draw upon a lifetime of relevant experience as he confronted this momentous challenge. The son of poor Italian immigrants, he toiled at a series of menial jobs for over a decade to earn the money to attend law school at night, acquiring both the patience and doggedness that shaped his leadership style. Prior to the Judiciary Committee's first meeting on impeachment, Rodino made several important decisions that governed his conduct in the months ahead. The first was to emulate the spirit of bipartisanship he had experienced two decades earlier as a member of a special subcommittee investigating Truman administration appointees at the Justice Department.\(^{20}\) Rodino considered the panel's chairman, Frank Chelf, an exemplary model of fairness and believed the decision to work cooperatively with the Republican minority was the primary reason for the panel's success in reaching a unanimous agreement.\(^{21}\) This approach stood in sharp contrast to the pervasive partisanship of the Andrew Johnson impeachment which continued to undermine its legitimacy and tarnish its legacy.\(^{22}\)

Consequently, Rodino refused to accept the presumption of guilt embodied in the impeachment resolutions referred to the committee. The possibility of removing a President of the United States from office, especially one recently reelected in a landslide, filled him with dread.\(^{23}\) He was not willing to conclude at the commencement of the inquiry that impeachment was either the certain or even likely outcome.\(^{24}\) Rodino's research into British and American legal precedents and knowledge of constitutional law persuaded him that there should be a very high bar


\(^{21}\) Yale Oral Transcript, supra note 3, at 33.

\(^{22}\) Rodino Pledges Probe Won’t Be A Witch Hunt, NEWARK STAR LEDGER, Feb. 6, 1952; H.R.No. 83-1079, supra note 22, at 1–3 (1953); Yale Oral Transcript, supra note 3, at 33.


for defining what might warrant impeachment. “From the very beginning,” he later reflected, “it began to take shape as something that had to be so unusual, so extraordinary an offense, that it left a great question in the minds of the people, as to whether or not the person who had committed that impeachable offense should continue in that office.”

Rodino believed this necessitated a sober and deliberative undertaking that provided for the careful presentation and examination of all the relevant information before reaching any final judgment. Considering what was at stake and Rodino’s instinctive caution, he decided that it was important to spend the necessary time to consider these questions carefully without prejudging the answers. Regardless of any external criticism or pressure, he would adhere to this precept and not be rushed.

With these benchmarks as his guide, Rodino entered the Judiciary Committee’s hearing room on October 30, 1973, to begin the first presidential impeachment inquiry in 105 years. The representatives that gathered that day reflected a mix of geography, ideology, and personality that was far more complex than suggested by the simple ratio of twenty-one Democrats to seventeen Republicans that divided the committee. A third of the members were freshmen and adding the sophomores to this total meant that close to half of the panel had served less than four years in Congress. The Democrats included many of the chamber’s leading liberal activists as well as several southern conservatives from districts that voted overwhelmingly for Richard Nixon in 1972. On the other side of the committee’s dais, most of the Republicans were from the party’s conservative wing and predisposed to support the president.

Rodino proceeded slowly in the following weeks, sparking complaints, and confirming Tip O’Neill’s accurate assessment that Peter Rodino “doesn’t like to move until he knows where he’s going, and he takes nothing for granted.” His first major decision came in December.

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27 O’NEILL, supra note 10, at 251–53.
when he selected John Doar to direct the impeachment inquiry. Rodino had concluded that to bolster bipartisanship, he needed to go outside the regular committee staff and hire a special counsel. He planned to delegate considerable responsibility to the person he selected, expecting them to recruit a staff, supervise all aspects of the investigation and guide the committee in defining and determining the constitutionally appropriate basis for a presidential impeachment. It was a position, he recollected, “that I felt was central to the success or the failure of the outcome of our inquiry.” Rodino conducted an extensive search for someone with outstanding legal credentials, no predetermined opinion on President Nixon’s innocence or guilt, and a commitment to the goal of conducting a non-partisan inquiry. He found all these attributes in Doar, a Republican, who was directing an anti-poverty initiative in New York City after holding several senior positions at the Justice Department. Rodino immediately instructed Doar to hire a professional staff and begin securing and analyzing all the material uncovered by the array of Watergate investigations.

To strengthen his position in any future negotiations with the White House over process or evidence, Rodino decided that the committee needed the support of the entire House of Representatives. He introduced a resolution formally authorizing the inquiry and affirming the panel’s existing power to issue subpoenas to officials in the executive branch, including the president. Rodino reassured his colleagues that he would exercise this responsibility with care so that

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28 Columbia Oral Transcript, supra note 11, at 120–23; Yale Transcript, supra note 3, at 14–16.  
34 Columbia Oral Transcript, supra note 11, at 107–10; Joe McCaffrey, notes on Rodino meeting, 262, 9, in O’Neill Papers, supra note 15; Memorandum Regarding Authority of the Committee on the Judiciary to Conduct Impeachment Investigation and Subpoenas, LG184, 1, in Albert Papers, supra note 4.  
“[w]hatever the result, whatever we learn or conclude, let us now proceed with such care and decency and thoroughness and honor that the vast majority of the American people, and their children after them, will say: ‘That was the right course. There was no other way.’”\footnote{120 Cong Rec. 2349–50, 2351–63 (1974) (Rep. Peter Rodino speaking on impeachment).} The resolution was approved by a resounding 410–4 vote of bipartisan confidence in the chairman and his committee.\footnote{H.R. Res. 803, 93d Cong. (1974) (authorizing the House Committee of the Judiciary to investigate whether to impeach President Nixon).}

One early topic of discussion between Rodino and Doar was whether or not the impeachment inquiry should be conducted in public, a decision the chairman would have to make before the start of the proceedings.\footnote{Audio recording: Rodino Personal Recordings (Jul. 13, 1999) transcript at 3–4, 8–10, (on file with the Rodino Law Library, Seton Hall University School of Law) [hereinafter Oral Transcript].} Outside organizations, like Common Cause, were demanding full transparency, and their allies on the committee, primarily the pro-impeachment Democrats, pressed for nationally televised hearings, similar to those held by the Senate Watergate Committee, to provide a platform for making the case against Nixon.\footnote{Letter from John Gardner to Peter Rodino (January 22, 1974) (on file with Thomas F. Railshack Collection, Malpass Library, Western Illinois University).}

Rodino was reluctant to emulate what he considered an inappropriate model for a solemn constitutional undertaking.\footnote{Letter from Peter Rodino to John Gardner (February 1, 1974) (on file with Thomas F. Railshack Collection, Malpass Library, Western Illinois University).} He concluded that to ensure fairness and non-partisanship, Doar and his staff should provide briefings and evidentiary material to the committee without a public audience until the investigation was completed and the facts ready for presentation. “I foreswore that all of our deliberations would be behind closed doors,” he noted, “in order to assure that we would not be feeding to the public frenzied kinds of facts that may not have amounted to anything.”\footnote{Oral Transcript, supra note 38, at 8–10; Columbia Oral Transcript, supra note 11, at 142–44.}

To address the public demand for information, Rodino and Doar agreed to meet with reporters after each executive session to provide a summary of the discussions.

The decision to proceed in executive session did not include any decision-making business meetings or hearings which remained open under the rules of the House of Representatives. In fact, Rodino was planning to begin the inquiry with a public hearing on the constitutional grounds for impeachment, hoping to provide a foundation and
framework for the forthcoming deliberations. When nervous Republicans balked at the prospect of revealing their position on this highly charged topic, the chairman agreed to cancel the hearing and instructed Doar to prepare his research for publication. The staff report on the Constitutional Grounds For Presidential Impeachment released on February 21, 1974, concluded that “a requirement of criminality” in establishing a threshold for impeachment “would be incompatible with the intent of the framers,” a view Rodino shared and one that garnered extensive news coverage.

On May 9, the committee began a series of closed-door briefings on the evidence acquired and evaluated for the past five months by John Doar and his staff. Months earlier, Rodino and Doar had concluded that to ensure a fair and bipartisan process these sessions should be similar to a grand jury presentation of evidence. They settled on a format and structure where, according to Rodino’s mandate, “a deliberate and scrupulous abstention from conclusions, even by implication, was observed” and members were provided ample opportunity to reach their own conclusions. Working without any respite since January, the inquiry staff developed 650 of these information statements. The statements were arranged in thirty-six separate notebooks, cross-referenced to the nineteen tape recordings of secret White House conversations that were in the committee’s possession and over seven thousand pages of supporting material. The volumes were organized to reflect the specific areas of possible impeachable offenses investigated at the committee’s behest. Anticipating the presentation phase of the impeachment inquiry, Rodino had ordered the wiring of the Judiciary Committee’s hearing


45 Oral Transcript, supra note 38, at 8–10; Columbia Oral Transcript, supra note 11, at 142–44.

46 Doar Interview, supra note 33, at 56, 34–39.

room to allow each member to listen to tape-recorded conversations through individual headphones.\textsuperscript{48}

When the briefing sessions concluded in July, Rodino proposed that the committee publish the statements of information before the committee began the formal debate on impeachment. With bipartisan approval, thousands of pages of thematically organized material were released, including newly corrected transcripts of recorded White House conversations.\textsuperscript{49} This unprecedented distribution of documents offered tangible examples of the committee’s thoroughness and careful deliberations behind closed doors. Rodino’s cautious approach, once questioned, was now praised. “Chairman Rodino, his colleagues and the committee’s legal staff have thus far conducted this extraordinary assignment, on which they had few modern precedents or guidelines, with fairness, diligence and good judgement,” a \textit{New York Times} editorial proclaimed. “The country can rightly feel that a thorough, conscientious and non-partisan job has been done.”\textsuperscript{50}

The formal consideration of impeachment resolutions presented to the Judiciary Committee began on the evening of July 24 in a nationally televised session. Previously unknown representatives, most notably Texan Barbara Jordan, delivered often eloquent opening statements and used this opportunity in the spotlight to underscore the gravity of their task, sharing their sense of personal anguish in bearing this responsibility.\textsuperscript{51} Two days later, six Republicans joined with the Democrats, and by a vote of 27-11, the committee approved an article of impeachment charging President Nixon with obstruction of justice.\textsuperscript{52} A somber Rodino turned away from the handshakes and a mob of reporters to retire alone to his small office behind the hearing room. Closing the door, he picked up the phone and called his wife. “I started


\textsuperscript{49} \textit{Impeachment Inquiry: Hearings Before the H. Comm. on the Judiciary, 93d Cong. (1974). Material on Cambodia and selective names requested by the FBI, CIA and other agencies were excluded. House Committee Issues The Voluminous Evidence From Watergate Inquiry, N.Y. Times, July 12, 1974.

\textsuperscript{50} \textit{Impeachable Offenses, N.Y. Times, July 14, 1974, at A16.


\textsuperscript{52} \textit{Debate on Article of Impeachment: Hearings of the H. Comm. on the Judiciary, 93d Cong. (1974); R.W. Apple, A Historic Charge, N.Y. Times, July 28, 1974.}
to sob,” he acknowledged, “and I’m not at all embarrassed to say it.”

Two more impeachment articles were approved with bipartisan support and the panel’s deliberations concluded the following week.

Before the House of Representatives could begin debating the three articles of impeachment, President Nixon was forced by the Supreme Court to release White House tape recordings that revealed his early involvement in the Watergate coverup. The clear evidence of wrongdoing sparked an uproar on Capitol Hill and every Republican on the Judiciary Committee announced they planned to vote for impeachment. Abandoned by his allies and with prospects for a Senate acquittal dwindling, Nixon announced his resignation on August 8.

Twelve days later, Rodino stood on the House floor to request approval of the committee’s final impeachment report. For the chairman, the highlight of this detailed document was the unanimous support of the panel’s thirty-eight members for the first impeachment article citing obstruction of justice, enshrining Rodino’s goal of securing bipartisan unity forever.

While the Nixon impeachment transformed Peter Rodino into a national hero, he refused to capitalize on the experience by writing a book or joining the paid lecture circuit. He remained a public servant for the next fifteen years and continued to chair the Judiciary Committee until his retirement in 1988. A decade later, Rodino was unexpectedly thrust back into the national spotlight when Independent Counsel Kenneth Starr submitted his report on the Monica Lewinsky scandal and recommended that the House Judiciary Committee consider impeaching President Bill Clinton. Several committee members traveled to Newark to seek Rodino’s confidential advice, including Republican Deputy Whip

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James Rogan, sent by Speaker Newt Gingrich, who confessed he was "spellbound" during his three-hour meeting with the former chairman.\(^{57}\)

During the deliberations that followed, Rodino was a frequent point of reference for both sides in the acrimonious debate. Chairman Henry Hyde, who had served with Rodino, claimed that the scope and deliberative process his predecessor had established, which he called ‘Rodino rules,’ provided the basis for a broad and unrestricted inquiry into Clinton’s actions. Democrats disagreed and instead recalled Rodino’s fairness and bipartisanship in their criticism of Hyde’s leadership style. “The name falls from their lips with uncharacteristic reverence, like ball players conjuring up Joe DiMaggio in Yankee Stadium,” the New York Times wryly observed of the repeated Rodino citations, and with his portrait looming over the committee room, it was hard to ignore his shadow.\(^{58}\) When the committee approved articles of impeachment in December on a strict party-line vote, Rodino was highly critical of the committee’s actions. He revisited the issue six months after the Senate acquitted President Clinton on all charges in a New York Times op-ed marking the twenty-fifth anniversary of the Nixon impeachment. Unfavorably comparing the recent proceedings with the one he led, he presciently warned that those “who drove the Clinton impeachment have cast down a gauntlet of partisanship that future majorities will feel inspired, if not obligated, to pick up.”\(^{59}\) When Peter Rodino died in 2005, he was lauded for his fair and steady leadership during a time of national crisis and for setting a high bar for the conduct of presidential impeachments, one that remains a model to consider and emulate.

\(^{57}\) Kathy Kiely, *Ex-Chairman Advises from the Sidelines*, USA Today, Nov. 27, 1998; Oral Transcript, supra note 38.
