

Senate Judiciary Committee Hearings for Supreme Court Nominations: Historical Overview and Data

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After a President submits a Supreme Court nomination to the Senate, the Judiciary Committee assumes the principal responsibility for investigating the background and qualifications of each Supreme Court nominee. Since the late 1960s, the Judiciary Committee's consideration of a Supreme Court nomination typically has consisted of three distinct stages—(1) a pre-hearing investigative stage, followed by (2) public hearings, and concluding with (3) a committee decision as to whether to recommend approval of the nomination by the full Senate. This CRS Insight provides an historical overview of the second stage of this process—public hearings on nominations submitted to the Senate.

As of this writing, Senate debate about Merrick Garland's nomination to the Supreme Court has focused, in part, on whether to hold committee hearings for the nomination. Note that this Insight does not take a position related to this ongoing debate.

Supreme Court Nominations Prior to 1949

Prior to 1916, the Judiciary Committee considered Supreme Court nominations behind closed doors. In 1916, for the first time, the committee held open confirmation hearings on a Supreme Court nomination—that of [Louis D. Brandeis](#) to be an Associate Justice—at which outside witnesses (but not the nominee) testified. The Brandeis hearings, however, did not set immediately into place a new policy of open confirmation hearings for Supreme Court nominations, since each of the next six nominations (from 1916 to 1923) was either considered directly by the Senate, without referral to the Judiciary Committee, or was acted on by the committee without the holding of confirmation hearings.

From 1925 to 1946, public confirmation hearings for Supreme Court nominations became the more common practice of the Judiciary Committee. In 1925, [Harlan F. Stone](#) became the first Supreme Court nominee to appear in person and testify at his confirmation hearings. During this period, the Stone nomination was one of 11 Court nominations that received public confirmation hearings (while 5, prior to Senate approval, did not receive such hearings).

Supreme Court Nominations After 1949

Supreme Court nominations from 1949 to 2010 routinely received public confirmation hearings before either the Senate Judiciary Committee or a Judiciary subcommittee. Specifically, from the nomination of [Tom Clark](#) in 1949 through the

nomination of [Elena Kagan](#) in 2010 (the most recent Justice confirmed to the Court), 33 of 36 Supreme Court nominations (or 92%) received such hearings.

Of the 33 nominations that received hearings, 28 were approved by the Senate, 3 were rejected in up-or-down votes by the Senate, and 2 were later withdrawn by the President (with one of the two being withdrawn after the Senate failed to invoke cloture on the nomination).

During this same period, as shown by [Table 1](#), there were three nominations that did not receive hearings before the Senate Judiciary Committee. One nomination did not receive a hearing because it was made for the first time by a President less than a month before the final adjournment of the 83rd Congress (the Harlan nomination). Mr. Harlan was renominated at the beginning of the 84th Congress and hearings were held on that nomination.

Another two nominations did not receive hearings because they were withdrawn by the President himself prior to the scheduled start of confirmation hearings (the Roberts and Miers nominations). Mr. Roberts, however, was renominated for the Chief Justice position and received hearings for that nomination.

Table 1. Supreme Court Nominations That Did Not Receive a Judiciary Committee Hearing

(1949-2010)

Nominee	Nomination Date	Were Hearings Scheduled? What Was Outcome of the Nomination?
John Harlan	11/9/1954	Hearings not scheduled. Nomination not acted upon by the Senate within the 23 days from the nomination being made by President Eisenhower to the adjournment of the 83 rd Congress. ^a
John Roberts, Jr.	7/29/2005	Hearings scheduled to begin 9/6/2005. Nomination withdrawn by President G.W. Bush on 9/6/2005. ^b
Harriet Miers	10/7/2005	Hearings scheduled to begin 11/7/2005. Nomination withdrawn by President G.W. Bush on 10/28/2005.

Source: Congressional Research Service

Notes: On March 16, 2016, President Obama nominated Merrick B. Garland to the vacancy created by the death of Antonin Scalia. As of this writing, committee hearings on the nomination have not been scheduled.

a. Mr. Harlan was renominated by President Eisenhower during the 84th Congress on January 10, 1955. For Mr. Harlan's second nomination, he received hearings on February 24-25, 1955. Mr. Harlan was later confirmed.

b. Following the death of Chief Justice Rehnquist on September 3, 2005, Mr. Roberts's nomination for the O'Connor seat was withdrawn and he was renominated on September 6, 2005, for the vacant Chief Justice position. For that particular nomination, hearings began on September 12, 2005. Mr. Roberts was later confirmed.

Time from Nomination to Committee Hearings

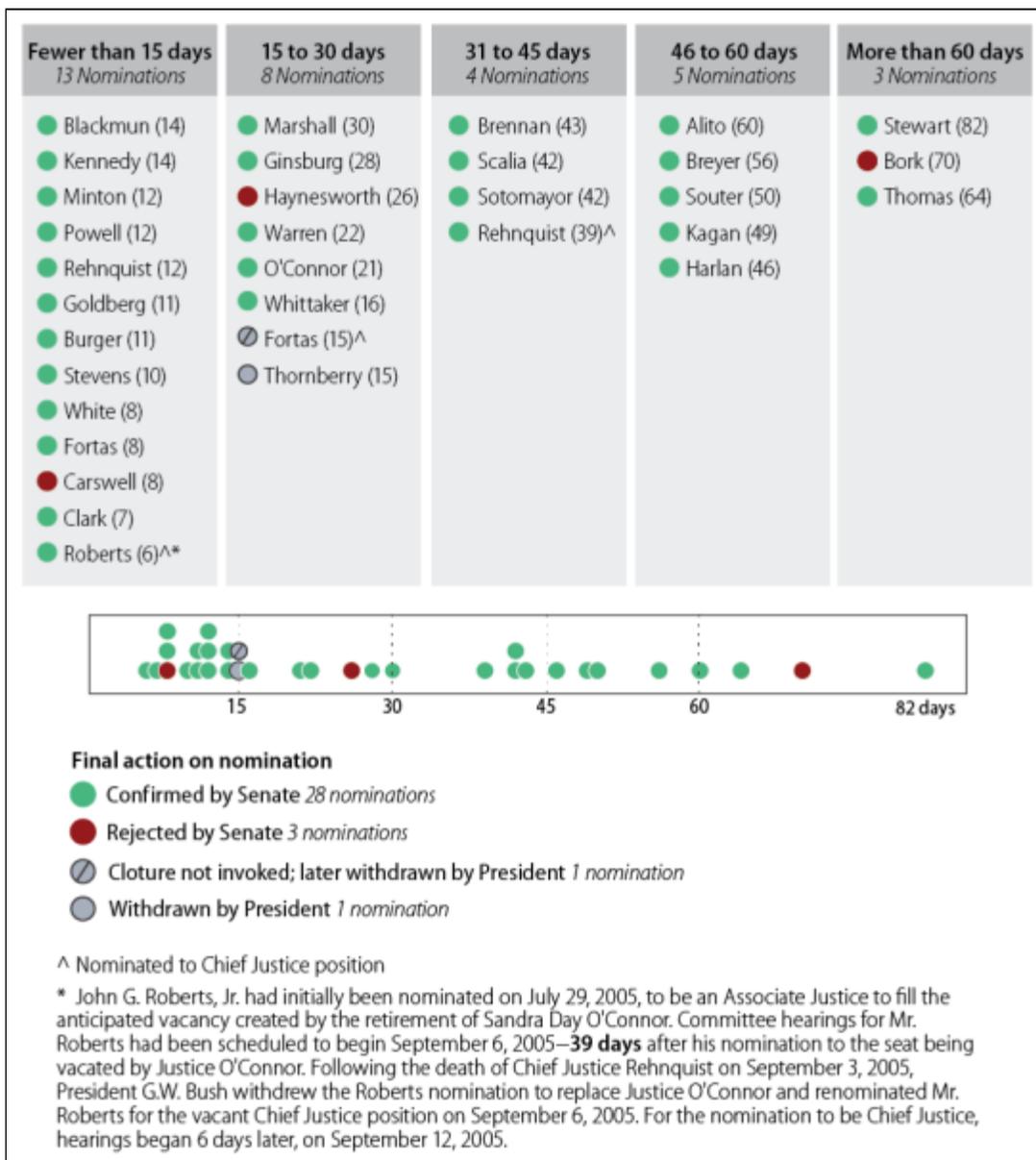
Overall, for the 33 Supreme Court nominations from 1949 through 2010 that received a committee hearing, the average number of days from nomination by a President to the commencement of hearings by the Judiciary Committee was 28.8 days. In more recent decades, however, the average has been longer—specifically, since 1975, [the average number of days from nomination to the start of hearings was 39 days](#).

While the average was 28.8 days, there has been variation in the number of days from when a nomination was made by a President to when the Judiciary Committee held hearings on the nomination. Specifically, from 1949 to 2010, the number of days from nomination to the first day of committee hearings ranged from a minimum of 6 days to a maximum of 82 days.

As shown by [Figure 1](#), 13 nominations during this period (or 39%) received a committee hearing within two weeks of being made by a President. Another 8 nominations (24%) received a committee hearing from 15 to 30 days of being made by a President.

Figure 1. Number of Days from Date of Nomination to Date of First Committee Hearing

(1949-2010)



Source: Congressional Research Service

Note: On March 16, 2016, President Obama nominated Merrick B. Garland to the vacancy created by the death of Antonin Scalia. As of this writing, committee hearings on the nomination have not been scheduled.

Of the remaining nominations, 4 (12%) received hearings 31 to 45 days after being made by a President; 5 (15%) had hearings 46 to 60 days after being made; and 3 (9%) nominations had hearings more than 60 days after being made by a President.