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Supreme Court Nominations, 1789 - 2005: Actions by the Senate, the Judiciary Committee, and the President

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Summary

The process of appointing Supreme Court Justices has undergone changes over two centuries, but its most basic feature — the sharing of power between the President and Senate — has remained unchanged. To receive a lifetime appointment to the Court, a candidate must first be nominated by the President and then confirmed by the Senate. An important role also has come to be played midway in the process (after the President selects, but before the Senate considers) by the Senate Judiciary Committee.

Table 1 of this report lists and describes actions taken by the Senate, the Senate Judiciary Committee, and the President on all Supreme Court nominations, from 1789 to the present. The table provides the name of each person nominated to the Court and the name of the President making the nomination. It also tracks the dates of formal actions taken, and time elapsing between these actions, by the Senate or Senate Judiciary Committee on each nomination, starting with the date that the Senate received the nomination from the President. For another perspective on Supreme Court nominations, focusing, among other things, on when the Senate first *became aware* of each President's nominee selections (e.g.,via public announcements of the President), see CRS Report RL33118, *Speed of Presidential and Senate Actions on Supreme Court Nominations, 1900-2005*, by R. Sam Garrett, Denis Steven Rutkus, and Curtis W. Copeland.

Thirty-nine of the 42 Presidents in the history of the United States have made a total of 158 nominations to the Supreme Court, and the Senate has confirmed 121 of them (with one now pending before the Senate). Of the 36 unsuccessful nominations, 11 were rejected in Senate roll-call votes, while nearly all of the rest, in the face of committee or Senate opposition to the nominee or the President, were withdrawn by the President, or were postponed, tabled, or never voted on by the Senate. A total of 114 of the 158 nominations were referred to a Senate committee, with 113 of them to the Judiciary Committee (including almost all nominations since 1868). Prior to 1916, the Judiciary Committee considered Supreme Court nominations behind closed doors. Since 1946, however, almost all nominees have received public confirmation hearings. Most recent hearings have lasted four or more days. Since 1967, a median of 37 days elapsed between the Senate's receipt of a Supreme Court nomination and a final committee vote. The Senate has confirmed about three-quarters of the 157 nominations it has received since 1789 (not including the pending 158th nomination), with 11 rejected in roll-call votes, 11 withdrawn by the President, and 14 lapsed at the end of a session of Congress.

This report will be updated at the conclusion of the current nomination and confirmation process.

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Introduction

The procedure for appointing a Justice to the Supreme Court of the United States is provided for by the Constitution in only a few words. The "Appointments Clause" (Article II, Section 2, clause 2) states that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court." The process of appointing Justices has undergone changes over two centuries, but its most basic feature — the sharing of power between the President and Senate — has remained unchanged. To receive a lifetime appointment to the Court, a candidate must first be nominated by the President and then confirmed by the Senate. An important role also has come to be played midway in the process (after the President selects, but before the Senate considers) by the Senate Judiciary Committee.

On rare occasions, Presidents also have made Supreme Court appointments without the Senate's consent, when the Senate was in recess. Such "recess appointments," however, were temporary, with their terms expiring at the end of the Senate's next session. The last recess appointments to the Court were made in the 1950s.

The appointment of a Supreme Court Justice might or might not proceed smoothly. From the first appointments in 1789, the Senate has confirmed 121 out of 157 Court nominations, with a 158th now pending before the Senate.[1] Of the 36 unsuccessful nominations, 11 were rejected in Senate roll-call votes, while nearly all of the rest, in the face of committee or Senate opposition to the nominee or the President, were withdrawn by the President, or were postponed, tabled, or never voted on by the Senate.

Description of Report's Contents

This report lists and describes actions taken by the Senate, the Senate Judiciary Committee, and the President on all Supreme Court nominations, from 1789 to the present. The listing appears in a Supreme Court nominations table, **Table 1**, later

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[1] On Nov. 10, 2005, President George W. Bush nominated a U.S. appellate court judge, Samuel A. Alito Jr., to be an Associate Justice of the Supreme Court. The Senate Judiciary Committee has scheduled confirmation hearings on the nomination to begin on Jan. 9, 2006.

in this report. Preceding the table is summary text, which highlights certain nominations statistics derived from the table. The text also provides historical background information on the Supreme Court appointment process and uses nominations statistics from the table to shed light on ways in which the appointment process has evolved over time. Many of the statistical findings discussed, for example, provide historical perspective on the emergence, and then increased involvement, of the Senate Judiciary Committee in the appointment process.

Specifically, the table lists, for each Supreme Court nomination, the following:

- name of the person nominated (the nominee);
- name of the President who made the nomination;
- date the nomination was received in the Senate;
- date(s) of any committee hearings held on the nomination that were open to the public;
- type and date of final committee action; and
- type and date of final action by the Senate or, in rarer instances, by the President (when the final action taken on a nomination was its withdrawal by the President).

Table 1 also shows the speed with which action was taken on each nomination, specifically presenting the number of days that elapsed from the date the nomination was formally received in the Senate until the following:

- the first day of public confirmation hearings (if any);
- the date of final committee action (if any); and
- the date of final Senate action or presidential withdrawal of the nomination.

The table also lists all recess appointments to the Supreme Court, as well as the later nomination of each recess appointee.

Table 1, in sum, tracks the dates of formal actions taken by the Senate or Senate Judiciary Committee on each Supreme Court nomination, starting with the date that the Senate received the nomination from the President. For another perspective on Supreme Court nominations, focusing, among other things, on when the Senate informally first *became aware* of each President's nominee selections (e.g., via public announcements of the President), see CRS Report RL33118, *Speed of Presidential and Senate Actions on Supreme Court Nominations, 1900-2005*, by R. Sam Garrett, Denis Steven Rutkus, and Curtis W. Copeland.

Actions by the full Senate tracked in **Table 1** are those on which the Senate took *final* action (ordinarily in the form of confirmation, and less often in the form of rejecting, tabling, or postponing action on a nomination). For certain Supreme Court nominations, **Table 1** also provides dates of procedural actions taken on the Senate floor, prior to or after final Senate action, in order to put the final action in fuller context. The table, however, does not account for all Senate procedural actions on, or for all dates of Senate floor consideration of, Supreme Court nominations. More comprehensive information in these areas will be available in a forthcoming CRS report.

Findings from the Nominations Table

Number of Nominations and Nominees. **Table 1** lists all 158 Supreme Court nominations since 1789, including the pending nomination of Samuel A. Alito Jr. Each of the 158 nominations entailed a President signing a nomination message, which was then transmitted to, and received by, the Senate. A lesser number of separate individuals, 139, were actually nominated to the Court, with some of them nominated more than once.[2]

Of the 158 total nominations to the Court, 22 were to the position of Chief Justice and the other 136 to a position as Associate Justice. The 22 Chief Justice nominations involved 20 persons nominated once, and one person nominated twice.[3] The 136 Associate Justice nominations involved 119 persons nominated once, seven persons nominated twice, and one person nominated three times.

Presidents Who Made the Nominations. Thirty-nine of the 42 Presidents in the history of the United States have made nominations to the Supreme Court.[4] These 39 are listed in the second column of **Table 1**. All but one of the 39 Presidents succeeded in having at least one Supreme Court nomination receive Senate confirmation. The one exception was President Andrew Johnson, whose only Court nomination, of Henry Stanbery in1866, was thwarted when the Senate enacted

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[2] Specifically, eight persons were nominated twice to the same Court position (seven to be Associate Justice, one to be Chief Justice); one person was nominated three times to be Associate Justice; and nine persons were nominated first to be Associate Justice and later to be Chief Justice. The sum of 19 (the number of Court nominations that were not a person's first nomination to the Court) and 139 (the number of persons nominated to the Court at least once) is 158 (total Supreme Court nominations).

[3] The nation's first Chief Justice, John Jay, was nominated to that position twice. Jay was first nominated, and confirmed, in September 1789. He resigned as Chief Justice in 1795 to serve as governor of New York. In December 1800, Jay was nominated and confirmed a second time as Chief Justice, but declined the appointment. For analysis of the process by which a Chief Justice is appointed, accompanied by a list of all Chief Justice nominations from 1789 to the present (including the nomination, confirmation, judicial oath, and end-of-service dates of Chief Justice nominees, as well as their ages at time of appointment and upon termination of service), see CRS Report RL32821, *The Chief Justice of the United States: Responsibilities of the Office and Process for Appointment,* by Denis Steven Rutkus and Lorraine H. Tong.

[4] The three Presidents not to have made any Supreme Court nominations were William Henry Harrison, Zachary Taylor, and Jimmy Carter, with no Court vacancies having occurred while they were in office. See "Table 3. Supreme Court Nominations, by President, 1789 to October 2005," in CRS Report RL31171, *Supreme Court Nominations Not Confirmed, 1789-2005,* by Henry B. Hogue, which lists the number of vacancies on the Court that existed during each presidency, from George Washington to George W. Bush. While it is unremarkable that no vacancies occurred during the short-lived presidencies of Harrison (Mar. 4 to Apr. 4, 1841) and Taylor (Mar. 5, 1849 to July 9, 1850), Jimmy Carter's presidency (Jan. 20, 1977, to Jan. 20, 1981) is remarkable as the only one lasting a full term during which no Supreme Court vacancies occurred.

legislation eliminating the Associate Justice position to which Stanbery had been nominated.[5]

As **Table 1** shows, the number of nominations made to the Supreme Court has varied greatly from President to President. For any given President, the number of nominations will be affected by various factors, including the length of time the President was in office, the number of vacancies occurring on the Court during that presidency, and whether more than one nomination was required to fill a Court vacancy due to a previous nomination's failure to be confirmed. Examination of the nominations to the Court for each President reveals that half of the 42 Presidents made four or more nominations, and half made three or fewer. Half of the 42 Presidents saw three or more of their Court nominations confirmed, and half saw two or fewer confirmed.

The President with the most Supreme Court nominations and confirmations was George Washington with 14 nominations, 12 of which were confirmed. The two Presidents with the second-largest number of Court nominations were John Tyler and Franklin D. Roosevelt, with nine each. Only one of Tyler's nine nominations, however, received Senate confirmation, while all nine of FDR's were confirmed. The President with the largest number of Supreme Court confirmations in one term (apart from the first eight of George Washington's nominations — all in his first term, and all confirmed) was William Howard Taft, who, during his four years in office, made six Court nominations, all of which were confirmed. Six Presidents made only one Supreme Court nomination each, with the nominations of five of these Presidents receiving confirmation.[6] And, as noted above, three of the nation's 42 Presidents were unable to make a single nomination to the Court, because no vacancies occurred on the Court during their presidencies.

Date That Nominations Were Received in Senate. The Supreme Court appointment process officially begins when the President signs a message to the Senate nominating someone for appointment to the Court. Usually on the date of the signing, the message is delivered to the Senate and recorded in the *Senate Executive Journal* as having been received that day.[7] However, in 30 instances (all but two

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[5] See Myron Jacobstein and Roy M. Mersky, *The Rejected* (Milpitas, CA: Toucan Valley Publications, 1993), pp. 69-74. (Hereafter cited as Jacobstein and Mersky, *The Rejected*.)

[6] The five Presidents whose single Supreme Court nominations received Senate confirmation were Franklin Pierce, James A. Garfield, William McKinley, Calvin Coolidge, and Gerald R. Ford. As mentioned above, the one President whose single Court nomination did not receive confirmation was Andrew Johnson.

[7] A President may announce the selection of a nominee well before transmitting a nomination message to the Senate. For instance, President George W. Bush announced his selection of Samuel A. Alito Jr. to be a Supreme Court nominee on Oct. 31, 2005, but formally signed and transmitted the nomination of Alito to the Senate on Nov. 10, 2005. For a complete list, from 1900 to 2005, of the dates on which Presidents announced their Supreme Court nominees (as distinguished from when they signed and transmitted nomination documents to the Senate), see CRS Report RL33118, *Speed of Presidential and Senate Actions on Supreme Court Nominations, 1900-2005*, by R. Sam Garrett, Denis

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prior to the 20th century), Supreme Court messages were recorded in the *Senate Executive Journal* as received in the Senate on a day after they were signed by the President — usually the next day. In **Table 1**, in the "Date received in Senate" column, a second date is provided in parentheses (as the "Nom. date"), whenever a President made a nomination on a day prior to its receipt by the Senate.

Referral of Nominations to Senate Judiciary Committee. Although referral of Supreme Court nominations to the Senate Judiciary Committee is now standard practice, such referrals were not always the case. **Table 1** shows that 114 of 158 Supreme Court nominations have been referred to a Senate committee, 113 of them to the Judiciary Committee.

The first standing legislative committees of the Senate, including the Judiciary Committee, were created in 1816. Only once previously was a Supreme Court nomination referred to committee, when, in 1811, the Senate referred the nomination of Alexander Wolcott to a select committee of three Members. For roughly half a century afer the Judiciary Committee's creation, nominations, rather than being automatically referred to the committee, were referred by motion only. From 1816 to 1868, more than two-thirds of the nominations (26 out of 38 nominations), were referred to the committee. During this period, the confirmation success rate was roughly the same for nominations referred, 15 of 26, as it was for those not referred, seven out of 12.

In 1868, Senate rules were changed to provide that all nominations be referred to appropriate standing committees, unless otherwise ordered by the Senate.[8] Subsequently, from 1868 to the present day, 87 of 94 Supreme Court nominations have been referred to the Judiciary Committee. The seven not referred to committee were persons who, at the time of their nomination, were a former President, a Senator, a former Senator, an Attorney General and former U.S. Representative, or a former Secretary of War,[9] and all were easily confirmed. The last Supreme Court nomination not referred to the Judiciary Committee was that of Senator James F.

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[7] (...continued)
Steven Rutkus, and Curtis W. Copeland.

[8] See U.S. Congress, Senate Committee on the Judiciary, *History of the Committee on the Judiciary, United States Senate, 1816-1981.* Sen. Doc. No. 97-18, 97th Cong., 1st sess. (Washington: GPO, 1982), p. iv; also, U.S. Senate, *History of the Committee on Rules and Administration — United States Senate,* prepared by Floyd M. Riddick, Parliamentarian Emeritus of the Senate, 96th Cong., 1st sess., S. Doc. No. 96-27 (Washington: GPO, 1980). Riddick provides, on pp. 21-28, the full text of the general revision of the Senate rules, adopted in 1868, including, on p. 26, the following rule: "When nominations shall be made by the President of the United States to the Senate, they shall, unless otherwise ordered by the Senate, be referred to appropriate committees .... "

[9] The nominations from 1868 to the present not referred to the Judiciary Committee were those of: Edwin M. Stanton in 1869 (at time of nomination, former Secretary of War); Edward D. White in 1894 (Senator); Joseph M. McKenna in 1897 (Attorney General, and former U.S. Representative); Edward D. White again, in 1910, this time to be Chief Justice (Associate Justice at time of nomination, and former Senator); William Howard Taft in 1921 (former President); George Sutherland in 1922 (former Senator); and James F. Byrnes in 1941 (Senator).

Byrnes in 1941. The Senate by unanimous consent considered and confirmed the Byrnes nomination, without referral to committee, on the day it received the nomination from the President.

Nominations That Received Public Confirmation Hearings. **Table 1**, in the "Public hearing date(s)" column, lists dates on which the full Judiciary Committee, or a Judiciary subcommittee, held public confirmation hearings on Supreme Court nominations. Included in this listing are public sessions of the committee at which either Supreme Court nominees testified on their own behalf and/or outside witnesses testified for or against the nominees.

Advent of Public Hearings. Before 1916, the Judiciary Committee considered Supreme Court nominations behind closed doors. Thus, until that year, there are no entries in the "Public hearing date(s)" column. Rather, committee sessions on Court nominations typically were limited to committee members discussing and voting on a nominee in executive session, without hearing testimony from outside witnesses.[10] 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. More days of public hearings (19) were held on the Brandeis nomination than on any Supreme Court nomination since. 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 (during the years 1916 to1923) 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 1945, public confirmation hearings for Supreme Court nominations became the more common, if not invariable, 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.[11] During the next two

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[10] At least once in the 19th century, however, in 1873, the Judiciary Committee did hear witnesses testify concerning a Supreme Court nomination — that of George H. Williams to be Chief Justice — but these two days of hearings, on Dec. 16 and 17, 1873, were held in closed session. The closed-door sessions were held to examine documents and hear testimony from witnesses relevant to a controversy that arose over the Williams nomination only after the committee had reported the nomination to the Senate. The controversy prompted the Senate to recommit the nomination to the Judiciary Committee and to authorize the committee "to send for persons and papers." U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America*, vol. 19 (Washington: GPO, 1901), p. 189. After holding the two closed-door sessions on Dec. 16 and 17, the committee did not re-report the nomination to the Senate. Amid press reports of significant opposition to the nomination both in the Judiciary Committee and the Senate as a whole, the nomination, at Williams's request, was withdrawn by President Ulysses S. Grant on Jan. 8, 1874. See Jacobstein and Mersky, *The Rejected*, pp. 82-87.

[11] For a discussion of the advent of Supreme Court nominee appearances before the Senate Judiciary Committee, starting with Harlan F. Stone in 1925 (and carrying through the nominations of Abe Fortas and Homer Thornberry in 1968), see James A.Thorpe, *Journal* (continued...)

decades, the Stone nomination was one of nine Court nominations that received public confirmation hearings before either the full Judiciary Committee or a Judiciary subcommittee,[12] while six other nominations did not receive public hearings. One of the six nominees not receiving a public confirmation hearing was Senator James F. Byrnes, whose nomination in 1941, as noted earlier, was considered directly by the Senate without referral to the Judiciary Committee.[13]

Not indicated in the "Public hearing date(s)"column is the length (in minutes or hours) of each public hearing session. The hearing sessions for a few Supreme Court nominations during the 1925 to1945 period lasted for hours; others, however, were brief and perfunctory in nature, held only long enough to accommodate the small number of witnesses who wished to testify against a nominee.[14]

From Fred M. Vinson's Chief Justice appointment in 1946 through the nomination of Harriet E. Miers to be Associate Justice in 2005, all but three of 34 Supreme Court nominations have received public confirmation hearings before the Senate Judiciary Committee or a Judiciary subcommittee.[15] The first of the three exceptions involved the 1954 nomination of John M. Harlan II, made less than a month before the final adjournment of a Congress. At the beginning of the next Congress, however, Harlan was re-nominated, and hearings were held on that

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[11] (...continued)
of Public Law, vol. 18, 1969, pp. 371-402.

[12] A scholar examining the procedures followed by the committee in its consideration of 15 Supreme Court nominations referred to it between 1923 and 1947 found that, with two exceptions — the nominations of Charles Evans Hughes in 1930 and Harold H. Burton to be Associate Justices in 1945 — all of the nominations were first "processed by a subcommittee prior to consideration by the full committee membership." David Gregg Farrelly, "Operational Aspects of the Senate Judiciary Committee," (Ph.D. diss., Princeton University: 1949), pp. 184-185. (Hereafter cited as Farrelly, "Operational Aspects.")

[13] The five other nominations not receiving confirmation hearings even though referred to the Judiciary Committee were of former New York governor and former Supreme Court Associate Justice Charles Evans Hughes in 1930; former federal prosecutor Owen J. Roberts in 1930; Senator Hugo L. Black in 1937; Attorney General and former Michigan governor Frank Murphy in 1940; and former Senator Harold H. Burton in 1945.

[14] For example, a Judiciary subcommittee hearing on the 1932 nomination of Benjamin N. Cardozo lasted only five minutes, during which one witness testified in opposition. Likewise, when the Judiciary Committee extended open invitations for witnesses to testify in opposition at the confirmation hearings for Stanley F. Reed in 1938, William O. Douglas in 1939, Harlan F. Stone (for Chief Justice) in 1941, and Wiley B. Rutledge in 1943, no witnesses appeared to protest against Douglas or Stone, and "only one or two persons filed protests" against Reed and Rutledge. Farrelly, "Operational Aspects," pp. 194-195.

[15] The last Supreme Court nomination on which a Senate Judiciary subcommittee held hearings was the 1954 nomination of Earl Warren to be Chief Justice. The subcommittee held public hearings on the nomination on Feb. 2 and 19, 1954, after which the full committee, on Feb. 24, 1954, voted to report the nomination favorably. All subsequent hearings on Supreme Court nominations were held by the full Judiciary Committee.

nomination.[16] The second and third exceptions involved the Associate Justice nominations of John G. Roberts Jr. and Harriet E. Miers in 2005, both of which were withdrawn by the President before the scheduled start of confirmation hearings.

Length of Hearings in Days. The number of days given to confirmation hearings has varied greatly from one Supreme Court nomination to another, particularly in recent decades. Following the 19 days of hearings held on the Brandeis nomination in 1916, Court nominations through the Associate Justice nomination of Abe Fortas in 1965 typically received either one or two days of hearings. However, from 1967 through November 2005, 14 of the 20 Court nominations which advanced through the hearings stage received four or more days of open confirmation hearings. Four of the 14 nominations received 11 or more days of hearings,[17] while another received eight days of hearings.[18] By contrast, only three of the 20 nominations received two or fewer days of hearings.[19]

Hearings on the pending nomination of Samuel A. Alito Jr. for Associate Justice are scheduled to begin on January 9, 2006, and are expected to last at least four days.

Nominations Reported Out of Committee to Full Senate. Supreme Court nominations referred to the Judiciary Committee have almost always been reported to the Senate. If a majority of its members oppose confirmation, the Judiciary Committee technically may decide not to report a Supreme Court nomination. (This tactic would prevent the full Senate from considering the nominee, unless the Senate were able to undertake successfully the discharge of the committee.) **Table 1**, however, shows that the committee has almost never employed the strategy of not reporting. Of the 113 Supreme Court nominations referred to the Judiciary Committee, it has reported 105 to the Senate.[20] (The pending Alito

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[16] The Judiciary Committee held two days of confirmation hearings on the second Harlan nomination, on Feb. 24 and 25, 1955. The Feb. 24 session, held in *closed* session, heard the testimony of nine witnesses (seven in favor of confirmation, and two opposed). Luther A. Huston, "Harlan Hearing Held by Senators," *New York Times,* Feb. 25, 1955, p. 8. The committee also began the Feb. 25 hearing in closed session, to hear the testimony of additional witnesses. However, for Judge Harlan, who was the last scheduled witness, the committee "voted to open the hearing to newspaper reporters for his testimony." Luther A. Huston, "Harlan Disavows 'One World' Aims in Senate Inquiry," *New York Times,* Feb. 26, 1955, p. 1.

[17] These were the nominations of Robert H. Bork in 1987 (12 hearing days), Clarence Thomas in 1991 (11 days), and Abe Fortas and Homer Thornberry in 1968 (11 days for their joint hearings).

[18] In 1969, eight days of confirmation hearings were held on the nomination of Clement F. Haynsworth.

[19] One day of hearings each was held on the nominations of Warren E. Burger (to be Chief Justice) in 1969 and Harry A. Blackmun in 1970, while two days of hearings were held on the nomination of Antonin Scalia in 1986.

[20] As noted earlier, only once prior to the establishment of the Judiciary Committee in 1816 was a Supreme Court nomination referred to committee, and that nomination was reported to the Senate as well. See in **Table 1** the nomination in 1811 of Alexander Wolcott, which

(continued...)

nomination would be the 106th reported nomination, if the committee ultimately took that action.) The committee has reported these nominations in the following four ways.

Reporting. For most of the first five decades in which the Judiciary Committee considered Supreme Court nominations (1828 to 1863), its usual practice was simply to report these nominations to the Senate, without any official indication of the committee members' opinions regarding them. Twenty-three nominations were reported to the Senate in this way, and 15 of them were confirmed.

Reporting with a Favorable Recommendation. In 1870, the Judiciary Committee initiated the practice of reporting to the Senate an explicit recommendation in favor of confirmation whenever a majority of members supported a Supreme Court nominee. Over the course of almost a century and a half, the committee has favorably reported 71 Supreme Court nominations, with 65 receiving Senate confirmation.[21]

Reporting Without Recommendation. On four occasions — three times in the late 19th century and once in the late 20th century — the Judiciary Committee has voted to report a Supreme Court nomination while explicitly stating it was not making a recommendation to the Senate. On each occasion, the committee reported a nomination without urging the Senate either to confirm or to reject.[22] The Senate confirmed three of the nominations that were reported in this way, while rejecting the fourth.[23]

Reporting with an Unfavorable Recommendation. On seven occasions — five times in the 19th century and twice in the 20th century — the Judiciary Committee voted to report a Supreme Court nomination with a recommendation to the Senate that it reject the nomination. Only two of the seven nominations received

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[20] (...continued)
was considered by a select committee and then reported to the Senate, where it was rejected by a 9-24 vote.

[21] The six favorably reported nominations which failed to receive Senate confirmation involved these nominees: George H. Williams, for Chief Justice, in 1873 (nomination withdrawn); Caleb Cushing, in 1874 (nomination withdrawn); Pierce Butler in 1922 (no action taken by Senate); Abe Fortas, for Chief Justice, in 1968 (nomination withdrawn); Clement F. Haynsworth Jr. in 1969 (rejected by Senate); and G. Harrold Carswell in 1970 (rejected by Senate). Butler, it should be noted, was re-nominated and confirmed.

[22] A report that states it is not accompanied by a recommendation can be a way to alert the Senate that a substantial number of committee members have some reservations about the nominee which, however, do not rise, at that point, to the level of opposition; it might also be a way, for reporting purposes, to bridge or downplay differences between committee members who favor confirmation and other members who oppose it.

[23] The three nominees confirmed by the Senate after the Judiciary Committee explicitly reported their nominations without recommendation were: Melville W. Fuller, for Chief Justice, in 1888; George Shiras Jr. in 1892; and Clarence Thomas in 1991. A fourth nomination reported without recommendation, Wheeler H. Peckham, in 1894, was rejected by the Senate.

Senate confirmation (and each only by a close roll call vote);[24] the Senate rejected four of the others[25] and postponed taking action on the fifth.[26]

Nominations Not Reported Out of Committee. Of the 113 Supreme Court nominations referred to the Judiciary Committee since its establishment, eight were not reported by the committee to the Senate. The final outcome for all eight nominees, however, was determined not by the failure of their nominations to be reported out of committee, but by action, or lack of action, taken outside the committee — by the Senate, Congress as a whole, or the President. While five of the nominees were never confirmed to the Court,[27] the other three ultimately were, after being re-nominated.[28]

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[24] See in **Table 1** the second nomination of Stanley Matthews in 1881 (confirmed 24-23) and the nomination of Lucius Q. C. Lamar in 1888 (confirmed 32-28).

[25] The nominations reported unfavorably and then rejected by the Senate involved these nominees: Ebenezer R. Hoar in 1869 (rejected 24-33); William B. Hornblower in 1894 (rejected 24-30); John J. Parker in 1930 (rejected 39-41); and Robert H. Bork in 1987 (rejected 42-58).

[26] The Senate in 1829 postponed taking action on the nomination of John Crittenden after receiving an adverse report on the nomination from the Judiciary Committee.

[27] In 1853, the nomination of William C. Micou was referred to the Judiciary Committee and on the same day ordered discharged by the Senate, where no action was taken. In 1866, the nomination of Henry Stanbery was referred to the Judiciary Committee, but shortly afterwards, while the nomination was pending in the Senate, the Associate Justice position to which Stanbery had been nominated was eliminated by statute. In 1893, the nomination of William B. Hornblower was referred to the Judiciary Committee, but not reported; later that year, in a new session of Congress, Hornblower was re-nominated, reported unfavorably by the Judiciary Committee (in early 1894), and rejected by the Senate, 24-30. In 1968, the Judiciary Committee declined to report the nomination of Homer Thornberry to succeed Associate Justice Abe Fortas until the final outcome of the nomination of Fortas to be Chief Justice was determined. The Thornberry and Fortas nominations were both withdrawn by the President after a motion to close debate on the Fortas nomination failed to pass in the Senate. (The failure of Fortas's Chief Justice nomination eliminated the prospective Associate Justice vacancy that Thornberry had been nominated to fill.) In 2005, the nomination of Harriet E. Miers was withdrawn by the President before the Judiciary Committee held hearings on the nomination.

[28] In February 1881, just before the final adjournment of the 46th Congress, the Judiciary Committee voted to postpone taking action on the Supreme Court nomination of Stanley Matthews; shortly afterwards, however, in a special session of the 47th Congress, Matthews was re-nominated, and, although his second nomination was reported unfavorably by the Judiciary Committee, it was confirmed by the Senate, 24-23. In Nov. 1954, late in the 83rd Congress, the nomination of John M. Harlan II was referred to the Judiciary Committee, where no action was taken; in 1955, Harlan was re-nominated, considered and reported favorably by the Judiciary Committee, and confirmed by the Senate. In Sept. 2005, before the scheduled start of confirmation hearings, the nomination of John G. Roberts Jr. to be Associate Justice was withdrawn and, on the same day of the withdrawal, Roberts was re-nominated for Chief Justice; the second Roberts nomination was reported favorably by the Judiciary Committee and confirmed by the Senate.

Final Action by the Senate or the President. From the first Supreme Court appointments in 1789 to the present day, Presidents have made 157 nominations to the court, not including the pending nomination of Samuel A. Alito Jr. **Table 1** shows, in the "Final action by Senate or President" column, that the Senate confirmed 121 of these nominations, or roughly three-fourths.[29] Of the 36 nominations that were not confirmed, 11 were rejected by the Senate (all in roll-call votes),[30] 11 were withdrawn by the President,[31] and 14 lapsed at the end of a session of Congress without a Senate vote cast on whether to confirm.[32]

While the invariable practice of the Senate in recent decades has been to vote on Supreme Court nominations by roll call, this historically was usually not the case. **Table 2,** at the end of this report, shows that of the132 Senate votes on whether to

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[29] The exact confirmation percentage is 77.1%, reached by dividing 121 confirmations by 157 nominations (excluding the 158th nomination of Samuel A. Alito Jr.).

[30] The earliest Senate rejection of a Supreme Court nomination occurred in 1795, when President George Washington's nomination of John Rutledge to be Chief Justice failed on a 10-14 vote. The latest instance was the Senate's rejection of Robert H. Bork in 1987, by a 42-58 vote. Between Rutledge and Bork, the following nominations were also rejected: Alexander Wolcott in 1811, John C. Spencer in 1844, George W. Woodward in 1846, Ebenezer R. Hoar in 1870, William B. Hornblower in 1894, Wheeler H. Peckham in 1894, John J. Parker in 1930, Clement F. Haynsworth Jr. in 1969, and G. Harrold Carswell in 1970.

[31] The following Supreme Court nominations were withdrawn, in the years indicated, with the Presidents who withdrew them shown in parentheses: The first nomination of William Paterson, in 1793 (George Washington); the first nomination of Reuben H. Walworth, in 1844 (John Tyler); the second nomination of John C. Spencer, in 1844 (John Tyler); the third nomination of Reuben H. Walworth, in 1845 (John Tyler); the second nomination of Edward King, in 1845 (John Tyler); George H. Williams and Caleb Cushing, both in 1874 (Ulysses S. Grant); Abe Fortas and Homer Thornberry, both in 1968 (Lyndon B. Johnson); John G. Roberts Jr. and Harrier E. Miers, both in 2005 (George W. Bush). Less than a week after his first nomination was withdrawn, Paterson was re-nominated by President Washington and confirmed by the Senate on the same day. On the same day that President Bush withdrew the Roberts nomination to be Associate Justice, he re-nominated Roberts to be Chief Justice, and the latter nomination was confirmed.

[32] The 14 nominations that lapsed at the end of a session of Congress, without a Senate confirmation or rejection vote or a withdrawal by the President having occurred, can be broken into the following groups according to Senate actions, or lack of Senate actions, taken: On three nominations (John Crittenden in 1829, the first nomination of Roger Taney in 1835, and George E. Badger in 1853), the Senate voted to postpone taking action; the Senate tabled two nominations (the first nomination of Edward King in 1844 and Edward A. Bradford in 1852); on one nomination, the Senate rejected a motion to proceed (Jeremiah S. Black in 1861, by a 25-26 vote); and on eight nominations, there was no record of any vote taken (the second nomination of Reuben H. Walworth in 1844, John M. Read in 1845, William C. Micou in 1853, Henry Stanbery in 1866, the first nomination of Stanley Matthews in 1881, the first nomination of William B. Hornblower in 1893, the first nomination of Pierce Butler in 1922, and the first nomination of John M. Harlan II in 1954). However, four of the 14 persons whose nominations lapsed in one session of Congress were re-nominated in the next congressional session and confirmed (Taney in 1835, Matthews in 1881, Butler in 1922, and Harlan in 1955).

confirm (resulting in 121 confirmations and 11 rejections), 59 decisions were reached by roll-call votes, and the other 73 by voice vote or unanimous consent.

Initially, for some 40 years, the Senate rarely used roll-call votes to decide Supreme Court nominations. Starting in the 1830s, however, and continuing through the 1880s, the Senate used roll-call votes on Supreme Court nominations somewhat more often than unrecorded votes. The trend reversed between 1890 and 1965, when fewer than one-third of Senate decisions on confirming Court nominations were by roll-call vote. Since 1967, though, every Senate vote on whether to confirm a Supreme Court nomination has been by roll call. **Table 2** shows these trends within the four historical periods just noted, by breaking down the number of Senate decisions on confirmation within each period according to whether made by voice vote or unanimous consent (UC) on the one hand, or by roll-call vote, on the other. As already mentioned, all 11 Senate rejections of Supreme Court nominations were accomplished by roll-call votes.

Historically, recorded vote margins on Supreme Court nominations have varied considerably. Some roll-call votes, either confirming or rejecting a nomination, have been close.[33] Most votes, however, have been overwhelmingly in favor of confirmation.[34]

Days from Date of Senate Receipt of Nomination to First Hearing. For Supreme Court nominations, the amount of time elapsing between Senate receipt and start of confirmation hearings has varied greatly. **Table 1** shows that, for all 41 Court nominations receiving public confirmation hearings (starting with the Brandeis nomination in 1916), the shortest time that elapsed between Senate receipt and start of hearings was two days, for the nomination of Felix Frankfurter in 1939; the second-shortest time interval of this sort was four days, also in 1939, for the nomination of William O. Douglas. The longest time elapsing between Senate receipt and first day of confirmation hearings was 82 days, for the nomination of

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[33] The closest roll calls ever cast on Supreme Court nominations were the 24-23 vote in 1881 confirming Stanley Matthews, the 25-26 vote in 1861 rejecting a motion to proceed to consider the nomination of Jeremiah S. Black, and the 26-25 Senate vote in 1853 to postpone consideration of the nomination of George E. Badger. Since the 1960s, the closest roll calls on Supreme Court nominations were the 52-48 vote in 1991 confirming Clarence Thomas, the 45-51 vote in 1970 rejecting G. Harrold Carswell, the 45-55 vote in 1969 rejecting Clement Haynsworth Jr., the 42-58 vote in 1987 rejecting Robert H. Bork, and the 65-33 vote confirming William H. Rehnquist to be Chief Justice in 1986. Also noteworthy was the 45-43 vote in 1968 rejecting a motion to close debate on the nomination of Abe Fortas to be Chief Justice; however, the roll call was not as close as the numbers by themselves suggested, since passage of the motion required a two-thirds vote of the Members present and voting.

[34] The most lopsided of these votes were the unanimous roll calls confirming Morrison R. Waite to be Chief Justice in 1874 (63-0), Harry A. Blackmun in 1970 (94-0), John Paul Stevens in 1975 (98-0), Sandra Day O'Connor in 1981 (99-0), Antonin Scalia in 1986 (98-0), and Anthony M. Kennedy in 1988 (97-0); and the near-unanimous votes confirming Noah H. Swayne in 1862 (38-1),Warren E. Burger in 1969 to be Chief Justice (74-3), Lewis F. Powell Jr. in 1971 (89-1), and Ruth Bader Ginsburg in 1993 (96-3).

Potter Stewart in 1959; the next-longest time interval of this sort was 70 days, for nominee Robert H. Bork in 1987.

In recent decades, from the late 1960s to the present, the Judiciary Committee has tended to take more time in starting hearings on Supreme Court nominations than it did previously. **Table 1** reveals that prior to 1967, a median of 11 days elapsed between Senate receipt of Supreme Court nominations and the first day of confirmation hearings. From the Supreme Court nomination of Thurgood Marshall in 1967 through the nomination of John G. Roberts Jr. to be Chief Justice in 2005,[35] a median of 15 days elapsed between Senate receipt and first day of confirmation hearings.[36]

Starting in the 1990s, the inclination of the Judiciary Committee has been to allow at least four weeks to pass between Senate receipt of Supreme Court nominations and the start of confirmation hearings. This block of time is intended to be used by the committee members and staff for thorough study and review of background information about nominees and issues relevant to their nominations, in preparation for the hearings. In the case of four of the five most recent Court nominations to receive confirmation hearings (starting with the David H. Souter nomination in 1990), the shortest elapsed time between Senate receipt and first day of hearings was 28 days.[37] While the elapsed time for the fifth nomination, of John G. Roberts Jr. to be Chief Justice in 2005, was only six days, another, longer time interval is more meaningful. **Table 1** shows that Roberts's earlier nomination to be Associate Justice — later withdrawn, in order to have Roberts be re-nominated for Chief Justice — was received by the Senate 45 days prior to the start of hearings on his Chief Justice nomination. Confirmation hearings on the pending Supreme Court nomination of Samuel A. Alito Jr. are scheduled to begin on January 9, 2006, 60 days after Senate receipt of the nomination on November 10, 2005.

Days from Senate Receipt to Final Committee Vote. The time elapsing between Senate receipt of Supreme Court nominations from the President and final committee votes has also varied greatly. **Table 1** shows that, for the 107 Court

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[35] In calculating the median elapsed time for the contemporary period, the Marshall nomination in 1967 was selected as the starting point for the following reason. The Marshall nomination, it could be argued, marked the start of an era in which the confirmation hearings of most, if not all, Supreme Court nominees were highly charged events, covered closely by the news media, with nominees interrogated rigorously and extensively (and for more than a day) about their judicial philosophy as well as their views on constitutional issues and the proper role of the Supreme Court in the U.S. government. For the Marshall nomination, the elapsed time between Senate receipt and start of confirmation hearings was 30 days.

[36] See bottom rows of **Table 1** for median number of days that elapsed from the date Supreme Court nominations were received in the Senate to first hearing dates, for three different time spans.

[37] For the four nominations, the elapsed time between Senate receipt of nomination and the first day of confirmation hearings was 50 days for David Souter in 1990, 64 days for Clarence Thomas in 1991, 28 days for Ruth Bader Ginsburg in 1993, and 56 days for Stephen G. Breyer in 1994.

nominations that received final committee votes,[38] the nomination receiving the most prompt committee vote was of Caleb Cushing in 1874, which was reported by the Judiciary Committee on the same day that the Senate received it from the President.[39] The committee votes on 14 other nominations to the court occurred three days or less after the dates of Senate receipt.[40] At the other extreme was the 1916 nomination of Louis D. Brandeis, on which the Judiciary Committee voted 117 days after Senate receipt and referral to the committee. Five other nominations as well, one in the 19th century and four in the 20th, received committee votes more than 80 days after Senate receipt from the President.[41]

In recent decades, the Judiciary Committee has taken much more time in casting a final vote on Supreme Court nominations than it did previously. **Table 1** shows that prior to 1967, a median of nine days elapsed between Senate receipt of Supreme Court nominations and the committee's final vote on reporting them to the full Senate.[42] From the Supreme Court nomination of Thurgood Marshall in 1967 through the nomination of John G. Roberts Jr. to be Chief Justice in 2005, a median of 37 days elapsed between Senate receipt and final committee vote.[43]

Somewhat earlier, during the presidency of Dwight Eisenhower (1953 to 1961), four Supreme Court nominations all were pending, prior to Judiciary Committee vote,

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[38] As already mentioned, the first such nomination, of Alexander Wolcott in 1811, was reported by a select committee; all subsequently reported nominations were reported by the Senate Judiciary Committee.

[39] Ironically, five days after the committee's favorable, and extremely prompt, recommendation of Cushing, President Ulysses S. Grant withdrew the nomination.

[40] Five nominations were voted on by the Judiciary Committee one day after their receipt by the Senate: Robert C. Grier in 1846; John A. Campbell in 1853; Morrison R. Waite, to be Chief Justice, in 1874; Horace Gray in 1881; and Harold H. Burton in 1945. Six nominations were voted on by the committee two days after Senate receipt: James M. Wayne in 1835; Samuel Nelson in 1845; Noah H. Swayne in 1862; David Davis in 1862; Stephen J. Field in 1963; and Oliver Wendell Holmes in 1902. Three nominations were voted on by the committee three days after Senate receipt: Horace H. Lurton in 1909; Willis Van Devanter in 1910; and Joseph R. Lamar in 1910.

[41] The first of Reuben H. Walworth's three nominations to the Court in 1844 was voted on by the Judiciary Committee 93 days after Senate receipt and committee referral. During the 20th century, the Judiciary Committee, in addition to its 1916 vote on the Brandeis nomination, voted on the following nominations more than 80 days after Senate receipt: Potter Stewart in 1959 (93 days); Robert H. Bork in 1987 (91 days), Abe Fortas, to be Chief Justice, in 1968 (83 days); and Clarence Thomas in 1991 (81 days).

[42] All of the 15 aforementioned nominations on which the Judiciary Committee voted three days or less after Senate receipt were made prior to 1946, and 14 of the 15 were made prior to 1911.

[43] See bottom rows of **Table 1** for median number of days that elapsed from the date Supreme Court nominations were received in the Senate to final Senate vote dates, for three different time spans.

well in excess of the 1967 to 2005 median of 37 days for that time interval;[44] however, the corresponding time intervals for the next three Court nominations (two by President John F. Kennedy and one by President Lyndon B. Johnson) were all well below the 37-day median.[45]

Days from Senate Receipt to Final Senate or Presidential Action. The Supreme Court confirmation process now typically extends over a much longer period of time than it once did. **Table 1** shows that from the appointment of the first Justices in 1789, continuing into the early 20th century, most Senate confirmations of Supreme Court nominees occurred within a week of the nominations being made by the President. In recent decades, by contrast, it has become the norm for the Court appointment process — from Senate receipt of nominations from the President to Senate confirmation or other final action (such as Senate rejection, or withdrawal by the President) — to take more than two months.

The last column of **Table 1** shows the number of days that elapsed from the dates Supreme Court nominations were received in the Senate until the dates of final Senate or presidential action. The number of elapsed days is shown for 149 of the 158 nominations listed in the table, with no elapsed time shown for the pending Alito nomination or for eight nominations on which there was no record of any kind of official or effective final action by the Senate or by the President.[46] At the bottom of the table, the median number of elapsed days from initial Senate receipt until final

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[44] For four Eisenhower nominations, the number of days elapsing from the date received in the Senate to the date voted on by the Senate Judiciary Committee were the following: Earl Warren to be Chief Justice in 1954, 44 days; John M. Harlan II in 1955, 59 days; William J. Brennan Jr. in 1957, 49 days; and Potter Stewart in 1959, 93 days. Three of the nominees — Warren, Brennan, and Stewart — were already on the Court as recess appointees, a circumstance that served perhaps to make action on their nominations seem less urgent to the committee than if their seats on the Court had been vacant. Harlan, however, was not a recess appointee at the time of his nomination. See "The Harlan Nomination," *New York Times*, Feb. 25, 1955, p. 20, discussing, according to the editorial, the "inexcusable delay" on the part of the committee in acting on the nomination and the objections to the nomination voiced by a few of the committee's members. (Ultimately, the committee voted 10-4 to report the nomination favorably.)

[45] The days that elapsed from the date received in the Senate to the date voted on by the Senate Judiciary Committee were eight days and 25 days for the 1962 nominations of Byron R. White and Arthur J. Goldberg and 13 days for the 1965 nomination of Abe Fortas to be Associate Justice.

[46] Besides nominations that received official final Senate action in the form of confirmation or rejection (121 and 11 respectively), or that were withdrawn by the President (11), six others are treated in the table as also receiving final action, albeit not of a definitive official sort — with three having been postponed by the Senate, two tabled, and one (the nomination of Jeremiah S. Black in 1861) not considered after a motion to proceed was defeated by a 25-26 vote. While the six nominations remained pending in the Senate after the noted actions, the effect of the actions, it can be argued, was decisive in eliminating any prospect of confirmation, and thus constituted a final Senate action for time measurement purposes. Accordingly, for these six nominations, the number of days elapsed is measured from date of Senate receipt to the dates of effective final action just noted.

action by the Senate or the President is shown for three historical periods — 1789-2005, 1789-1966, and 1967-2005.

In recent decades, the median elapsed time for Supreme Court nominations to receive final action has increased dramatically, dwarfing the median time taken on earlier nominations. **Table 1** shows that from 1967 (starting with the nomination of Thurgood Marshall) through 2005 (ending with the nomination of John G. Roberts Jr. for Chief Justice), a median of 67 days elapsed from when a Supreme Court nomination was received in the Senate until the date it received final action, compared with a median of seven days for the same interval for the prior years of 1789 to 1966.[47] Most of the Supreme Court nominations receiving final action within a relatively brief period of time — for example, within three days of initial receipt in the Senate — occurred before the 20th century,[48] while most of the nominations receiving final action after a relatively long period of time — for example, 75 days or more after receipt in the Senate — occurred in the 20th century (and nearly all of these since 1967).[49]

The presence of Senate committee involvement has clearly tended to increase the overall length of the Supreme Court confirmation process. Of the 26 Court nominations made prior to the establishment of the Judiciary Committee in 1816, only one, of Alexander Wolcott in 1811, received final action more than seven days after initial Senate receipt (being rejected by the Senate nine days after receipt). It also was the only Court nomination prior to 1816 which was referred to, and considered by, a select committee. Subsequently, until the Civil War, six nominations received final action more than 50 days after initial Senate receipt. All six were first considered and reported by the Judiciary Committee. During the same period, other Court nominations were considered and acted on by the Senate more quickly – some with, and some without, first being referred to committee.

Subsequent historical developments involving the Senate Judiciary Committee further served to increase the median length of the Supreme Court confirmation process. One such development was the Senate's adoption of a rule in 1868 that

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[47] At first glance, the most recently confirmed nomination, of John G. Roberts Jr. for Chief Justice, appears to be a deviation from the 1967 to 2005 median interval from date received to final action of 67 days, as the nomination was confirmed only 23 days after its initial receipt in the Senate. However, it can be argued that a more meaningful context is to see the Roberts Chief Justice nomination (received in the Senate on Sept. 6, 2005) in relation to the earlier July 29, 2005, nomination of Judge Roberts to be Associate Justice. After the death of Chief Justice William H. Rehnquist on Sept. 3, 2005, the Roberts Associate Justice nomination was withdrawn, and he was re-nominated to be Chief Justice. Hearings on the Roberts Associate Justice nomination, set to begin on Sept. 6, were cancelled, and rescheduled hearings, on the Chief Justice nomination, began on Sept. 12. The overall time that elapsed from the Associate Justice nomination of Judge Roberts on July 29 until Senate confirmation of his Chief Justice nomination on Sept. 29 was 62 days.

[48] **Table 1** shows that 43 nominations received final Senate or presidential action three days or less after date of receipt in the Senate. Thirty-six of the 43 were pre-20th century nominations.

[49] **Table 1** shows that 15 nominations received final Senate or presidential action more than 75 days after date of receipt in the Senate. Eleven of the 15 were 20th century nominations, with nine made since 1967.

nominations be referred to appropriate standing committees, resulting in the referral of nearly all Supreme Court nominations thereafter to the Judiciary Committee. Another was the increasing practice of the Judiciary Committee in the 20th century of holding public confirmation hearings on Supreme Court nominations (ultimately to become standard practice). A third, more recent, historical trend has involved the pace and thoroughness of the Judiciary Committee in preparing for and conducting confirmation hearings. Since the late 1960s, close and thorough examination of the background, qualifications, and views of Supreme Court nominees has become the norm for the Judiciary Committee, an approach that typically extends the confirmation process by at least several weeks, as a result of preparation for and holding of confirmation hearings.

Recess Appointments to the Supreme Court. On 12 occasions in the nation's history, Presidents have made temporary recess appointments to the Supreme Court without submitting nominations to the Senate. **Table 1** identifies all of these 12 appointments, showing how each was related to a later nomination of the appointee for the same position. The table shows that nine of the 12 recess appointments were made before the end of the Civil War,[50] with the last three made almost a century later, in the 1950s, during the presidency of Dwight D. Eisenhower.[51]

Each of the 12 recess appointments occurred when a President exercised his power under the Constitution to make recess appointments when the Senate was not in session.[52] Historically, when recesses between sessions of the Senate were much longer than they are today, recess appointments served the purpose of averting long vacancies on the Court when the Senate was unavailable to confirm a President's appointees. The terms of these recess appointments, however, were limited by the constitutional requirement that they expire at the end of the next session of Congress (unlike the lifetime appointments Court appointees receive when nominated and then confirmed by the Senate).[53]

Despite the temporary nature of these appointments, every person appointed during a recess of the Senate except for one — John Rutledge, to be Chief Justice, in 1795 — ultimately received a lifetime appointment to the Court after being nominated by the President and confirmed by the Senate. As **Table 1** shows, all 12 of the recess

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[50] See in **Table 1** the recess appointments of Thomas Johnson in 1791, John Rutledge (to be Chief Justice) in 1795, Bushrod Washington in 1798, H. Brockholst Livingston in 1806, Smith Thompson in 1823, John McKinley in 1837, Levi Woodbury in 1845, Benjamin R. Curtis in 1851, and David Davis in 1862.

[51] See in **Table 1** the recess appointments of Earl Warren (to be Chief Justice) in 1953, William J. Brennan Jr. in 1956, and Potter Stewart in 1958.

[52] Specifically, Article II, Section 2, clause 3 of the U.S. Constitution empowers the President "to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session."

[53] For background on the history of recess appointments to the Supreme Court, and the policy and constitutional issues associated with those appointments, see CRS Report RL31112, *Recess Appointments of Federal Judges*, by Louis Fisher; and Henry B. Hogue, "The Law: Recess Appointments to Article III Courts," *Political Science Quarterly*, vol. 34, September 2004, p. 656.

appointees were subsequently nominated to the same position, and 11 (all except for Rutledge) were confirmed.

Concluding Observations

The preceding discussion suggests that Senate treatment of Supreme Court nominations has gone through various phases during the more than 200 years of the Republic. Initially, such nominations were handled without Senate committee involvement. Later, from 1816 to 1868, most nominations to the Supreme Court were referred to the Judiciary Committee, but only by motion. Since 1868, as the result of a change in its rules, the Senate has referred nearly all Court nominations to the Judiciary Committee. During the rest of the 19th century and early 20th century, the committee considered nominations without public hearings. Subsequently, public hearings gradually became the more common, if not invariable, committee practice, although many of the earlier hearings were perfunctory and held simply to accommodate a small number of witnesses wishing to testify against the nominees. Gradually, however, in the latter half of the 20th century, public hearings on Supreme Court nominations lasting four or more days, with nominees present to answer extensive questioning from committee members, would become the usual practice.

Also, the overall length of time taken by the Supreme Court confirmation process has, in general, increased significantly over the course of more than 200 years. From the appointment of the first Justices in 1789, continuing well into the 20th century, most Supreme Court nominations received final action (usually, but not always, in the form of Senate confirmation) within a week of being submitted by the President to the Senate. In recent decades, by contrast, it has become the norm for the confirmation process to take from two to three months.

Other trends and historical phases may be discerned from **Tables 1** and **2**. Still other trends, of course, may be revealed by future nominations that Presidents make and by the actions taken on them by the Senate and its Judiciary Committee.

Table 1. Nominations to the Supreme Court of the United States, 1789-2005

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
John Jay of New York (Chief Justice – hereafter C. J.)	Washington	09/24/1789	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			09/26/1789	Confirmed	—	—	2
John Rutledge of South Carolina	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
William Cushing of Massachusetts	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
Robert Harrison of Maryland	Washington	09/24/1789				09/26/1789	Confirmed (Nominee declined)	—	—	2
James Wilson of Pennsylvania	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
John Blair Jr. of Virginia	Washington	09/24/1789				09/26/1789	Confirmed	—	—	2
James Iredell of North Carolina	Washington	02/09/1790 (Nom. date 02/08/1790)				02/10/1790	Confirmed	—	—	1
Thomas Johnson of Maryland	Washington	*Recess Appointment, 08/05/1791*								
		11/01/1791 (Nom. date 10/31/1791)	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			11/07/1791	Confirmed	—	—	6
William Paterson of New Jersey	Washington	02/27/1793				02/28/1793	Withdrawn	—	—	1

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
William Paterson of New Jersey	Washington	03/04/1793				03/04/1793	Confirmed	—	—	0
John Rutledge of South Carolina (C. J.)	Washington	*Recess Appointment, 07/01/1795*								
		12/10/1795	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			12/15/1795	Rejected (10-14)	—	—	5
William Cushing of Massachusetts (C. J.)	Washington	01/26/1796				01/27/1796	Confirmed (Nominee declined)	—	—	1
Samuel Chase of Maryland	Washington	01/26/1796				01/27/1796	Confirmed	—	—	1
Oliver Ellsworth of Connecticut (C. J.)	Washington	03/03/1796				03/04/1796	Confirmed (21-1)	—	—	1
Bushrod Washington of Virginia	J. Adams	*Recess Appointment, 09/29/1798*								
		12/19/1798	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			12/20/1798	Confirmed	—	—	1
Alfred Moore of North Carolina	J. Adams	12/04/1799				12/10/1799	Confirmed	—	—	6
John Jay of New York (C. J.)	J. Adams	12/18/1800				12/19/1800	Confirmed (Nominee declined)	—	—	1
John Marshall of Virginia (C. J.)	J. Adams	01/20/1801				01/27/1801	Confirmed	—	—	7
William Johnson of South Carolina	Jefferson	03/22/1804				03/24/1804	Confirmed	—	—	2

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
H. Brockholst Livingston of New York	Jefferson	*Recess Appointment, 11/10/1806*								
		12/15/1806	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			12/17/1806	Confirmed	—	—	2
Thomas Todd of Kentucky	Jefferson	02/28/1807				03/02/1807	Confirmed	—	—	2
Levi Lincoln of Massachusetts	Madison	01/02/1811				01/03/1811	Confirmed (Nominee declined)	—	—	1
Alexander Wolcott of Connecticut	Madison	02/04/1811	No record of hearing	Select Committee, 02/13/1811	Reported	02/13/1811	Rejected (9-24)	—	9	9
John Quincy Adams of Massachusetts	Madison	02/21/1811	Nomination predated creation of Judiciary Committee in 12/10/1816. No record of other committee referral.			02/22/1811	Confirmed (Nominee declined)	—	—	1
Joseph Story of Massachusetts	Madison	11/15/1811				11/18/1811	Confirmed	—	—	3
Gabriel Duvall of Maryland	Madison	11/15/1811				11/18/1811	Confirmed	—	—	3
Smith Thompson of New York	Monroe	*Recess Appointment, 09/01/1823*								
		12/08/1823 (Nom. date 12/5/1823)	Nomination was not referred to Judiciary Committee.			12/09/1823	Confirmed	—	—	1
Robert Trimble of Kentucky	J. Q. Adams	04/12/1826 (Nom. date 04/11/1826)	Motion to refer to Judiciary Committee rejected by Senate, 05/09/1826 (7-25)			05/09/1826	Confirmed (27-5)	—	—	27

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
John Crittenden of Kentucky	J. Q. Adams	12/18/1828 (Nom. date 12/17/1828)	No record of hearing	01/26/1829	Reported with recommendation not to act	02/12/1829	Postponed (23-17)	—	39	56
John McLean of Ohio	Jackson	03/06/1829	Nomination was not referred to Judiciary Committee.			03/07/1829	Confirmed	—	—	1
Henry Baldwin of Pennsylvania	Jackson	01/05/1830	Nomination was not referred to Judiciary Committee.			01/05/1830	Confirmed (41-2)	—	—	0
James M. Wayne of Georgia	Jackson	01/07/1835 (Nom. date 01/06/1835)	No record of hearing	01/09/1835	Reported	01/09/1835	Confirmed	—	2	2
Roger B. Taney of Maryland	Jackson	01/15/1835	Nomination was not referred to Judiciary Committee.			03/03/1835	Postponed (24-21)	—	—	47
Roger B. Taney of Maryland (C. J.)	Jackson	12/28/1835	No record of hearing	01/05/1836	Reported	Motion to proceed, 03/14/1836 (25-19)		—	8	78
						03/15/1836	Confirmed (29-15)			
Philip P. Barbour of Virginia	Jackson	12/28/1835	No record of hearing	01/05/1836	Reported	Motion to proceed, 03/15/1836 (25-20)		—	8	78
						03/15/1836	Confirmed (30-11)			

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
William Smith of Alabama	Jackson	03/03/1837	No record of hearing	03/08/1837	Reported	03/08/1837	Confirmed (23-18) (Nominee declined)	—	5	5
John Catron of Tennessee	Jackson	03/03/1837	No record of hearing	03/08/1837	Reported	03/08/1837	Confirmed (28-15)	—	5	5
John McKinley of Alabama	Van Buren	*Recess Appointment, 04/22/1837*								
		09/19/1837 (Nom. date 09/18/1837)	No record of hearing	09/25/1837	Reported	09/25/1837	Confirmed	—	6	6
Peter V. Daniel of Virginia	Van Buren	02/27/1841 (Nom. date 02/25/1841)	Nomination was not referred to Judiciary Committee.			03/02/1841	Confirmed (22-5)	—	—	3
John C. Spencer of New York	Tyler	01/09/1844 (Nom. date 01/08/1844	No record of hearing	01/30/1844	Reported	01/31/1844	Rejected (21-26)	—	21	22
Reuben H. Walworth of New York	Tyler	03/13/1844	No record of hearing	06/14/1844	Reported	Tabled, 06/15/1844 (27-20)		—	93	96
						06/17/1844	Withdrawn			
Edward King of Pennsylvania	Tyler	06/05/1844	No record of hearing	06/14/1844	Reported	06/15/1844	Tabled (29-18)	—	9	10
John C. Spencer of New York	Tyler	06/17/1844	Nomination was not referred to Judiciary Committee.			06/17/1844	Withdrawn	—	—	0

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Reuben H. Walworth of New York	Tyler	06/17/1844	Nomination was not referred to Judiciary Committee.			No record of action		—	—	—
Reuben H. Walworth of New York	Tyler	12/10/1844 (Nom. date 12/04/1844)	No record of hearing	01/21/1845	Reported	Tabled, 01/21/1845		—	42	58
						02/06/1845	Withdrawn			
Edward King of Pennsylvania	Tyler	12/10/1844 (Nom. date 12/04/1844)	No record of hearing	01/21/1845	Reported	Tabled, 01/21/1845		—	42	60
						02/08/1845	Withdrawn			
Samuel Nelson of New York	Tyler	02/06/1845 (Nom. date 02/04/1845)	No record of hearing	02/08/1845	Reported	02/14/1845	Confirmed	—	2	8
John M. Read of Pennsylvania	Tyler	02/08/1845	No record of hearing	02/14/1845	Reported	No record of action		—	6	—
George W. Woodward of Pennsylvania	Polk	12/23/1845	No record of hearing	01/20/1846	Reported	Motion to postpone rejected, 01/22/1846 (21-28)		—	28	30
						01/22/1846	Rejected (20-29)			
Levi Woodbury of New Hampshire	Polk	*Recess Appointment, 09/20/1845*								
		12/23/1845	No record of hearing	01/03/1846	Reported	01/03/1846	Confirmed	—	11	11

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Robert C. Grier of Pennsylvania	Polk	08/03/1846	No record of hearing	08/04/1846	Reported	08/04/1846	Confirmed	—	1	1
Benjamin R. Curtis of Massachusetts	Fillmore	*Recess Appointment, 09/22/1851*								
		12/12/1851 (Nom. date 12/11/1851)	No record of hearing	12/23/1851	Reported	12/23/1851	Confirmed	—	11	11
Edward A. Bradford of Louisiana	Fillmore	08/21/1852 (Nom. date 08/16/1852)	No record of hearing	08/30/1852	Reported	08/31/1852	Tabled	—	9	10
George E. Badger of North Carolina	Fillmore	01/10/1853 (Nom. date 01/03/1853)	Nomination was not referred to Judiciary Committee.			02/11/1853	Postponed (26-25)	—	—	32
William C. Micou of Louisiana	Fillmore	02/24/1853 (Nom. date 02/14/1853)	No record of hearing	Referred to Judiciary Committee on 02/24/1853. Senate ordered committee discharged of nomination on same day; no record of Senate consideration after discharge.				—	—	—
John A. Campbell of Alabama	Pierce	03/21/1853	No record of hearing	03/22/1853	Reported	03/22/1853	Confirmed	—	1	1
Nathan Clifford of Maine	Buchanan	12/09/1857	No record of hearing	01/06/1858	Reported	01/12/1858	Confirmed (26-23)	—	28	34

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Jeremiah S. Black of Pennsylvania	Buchanan	02/06/1861 (Nom. date 02/05/1861)	Nomination was not referred to Judiciary Committee.			02/21/1861	Motion to proceed rejected (25-26)	—	—	15
Noah H. Swayne of Ohio	Lincoln	01/22/1862 (Nom. date 01/21/1862)	No record of hearing	01/24/1862	Reported	01/24/1862	Confirmed (38-1)	—	2	2
Samuel F. Miller of Iowa	Lincoln	07/16/1862	Nomination was not referred to Judiciary Committee.			07/16/1862	Confirmed	—	—	0
David Davis of Illinois	Lincoln	*Recess Appointment, 10/17/1862*								
		12/03/1862 (Nom. date 12/01/1862)	No record of hearing	12/05/1862	Reported	12/08/1862	Confirmed	—	2	5
Stephen J. Field of California	Lincoln	03/07/1863 (Nom. date 03/06/1863	No record of hearing	03/09/1863	Reported	03/10/1863	Confirmed	—	2	3
Salmon P. Chase of Ohio (C. J.)	Lincoln	12/06/1864	Nomination was not referred to Judiciary Committee.			12/06/1864	Confirmed	—	—	0
Henry Stanbery of Ohio	A. Johnson	04/16/1866	No record of hearing	Referred to Judiciary Committee on 04/16/1866. No record of committee vote, and no record of Senate action after referral.				—	—	—
Ebenezer R. Hoar of Massachusetts	Grant	12/15/1869 (Nom. date 12/14/1869)	No record of hearing	12/22/1869	Reported adversely	02/03/1870	Rejected (24-33)	—	7	50

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Edwin M. Stanton of Pennsylvania	Grant	12/20/1869	Nomination was not referred to Judiciary Committee			12/20/1869	Confirmed (46-11)	—	—	0
William Strong of Pennsylvania	Grant	02/08/1870 (Nom. date 02/07/1870)	No record of hearing	02/14/1870	Reported favorably	02/18/1870	Confirmed	—	6	10
Joseph P. Bradley of New Jeresy	Grant	02/08/1870 (Nom. date 02/07/1870)	No record of hearing	02/14/1870	Reported favorably	Postponed, 03/02/1870 (31-26)		—	6	41
Ward Hunt of New York	Grant	12/06/1872 (Nom. date 12/03/1872)	No record of hearing	12/11/1872	Reported favorably	12/11/1872	Confirmed	—	5	5
George H. Williams of Oregon (C. J.)	Grant	12/02/1873 (Nom. date 12/01/1873)	No record of hearing	12/11/1873	Reported favorably	Recommitted, 12/15/1873		—	9	37
			Closed hearings [d] 12/16/1873 12/17/1873	—	—	01/08/1874	Withdrawn			
Caleb Cushing of Massachusetts (C. J.)	Grant	01/09/1874	No record of hearing	01/09/1874	Reported favorably	01/14/1874	Withdrawn	—	0	5
Morrison R. Waite of Ohio (C. J.)	Grant	01/19/1874	No record of hearing	01/20/1874	Reported favorably	01/21/1874	Confirmed (63-0)	—	1	2
John Marshall Harlan of Kentucky	Hayes	10/17/1877	No record of hearing	11/26/1877	Reported favorably	11/29/1877	Confirmed	—	40	43

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
William B. Woods of Georgia	Hayes	12/15/1880	No record of hearing	12/20/1880	Reported favorably	12/21/1880	Confirmed (39-8)	—	5	6
						Tabled motion to reconsider, 12/22/1880 (36-3)				
Stanley Matthews of Ohio	Hayes	01/26/1881	No record of hearing	Considered on 02/07/1881		No record of action		—	19	—
				02/14/1881	Postponed					
Stanley Matthews of Ohio	Garfield	03/18/1881 (Nom. date 03/14/1881)	No record of hearing	05/09/1881	Reported adversely (6-1)	05/12/1881	Confirmed (24-23)	—	53	55
Horace Gray of Massachusetts	Arthur	12/19/1881	No record of hearing	12/20/1881	Reported favorably	12/20/1881	Confirmed (51-5)	—	1	1
Roscoe Conkling of New York	Arthur	02/24/1882	No record of hearing	03/02/1882	Reported favorably	03/02/1882	Confirmed (39-12) (Nominee declined)	—	6	6
Samuel Blatchford of New York	Arthur	03/13/1882	No record of hearing	03/22/1882	Reported favorably	03/22/1882	Confirmed	—	9	9
Lucius Q. C. Lamar of Mississippi	Cleveland	12/12/1887 (Nom. date 12/06/1887)	No record of hearing	01/10/1888	Reported adversely	01/16/1888	Confirmed (32-28)	—	29	35

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Melville W. Fuller of Illinois (C. J.)	Cleveland	05/02/1888 (Nom. date 04/30/1888)	No record of hearing	07/02/1888	Reported without recommen-dation	07/20/1888	Confirmed (41-20)	—	61	79
David J. Brewer of Kansas	Harrison	12/04/1889	No record of hearing	12/16/1889	Reported favorably	Motion to postpone rejected, 12/18/1889 (15-54)		—	12	14
						Motion to postpone rejected, 12/18/1889 (25-45)				
						12/18/1889	Confirmed (53-11)			
Henry B. Brown of Michigan	Harrison	12/23/1890	No record of hearing	12/29/1890	Reported favorably	12/29/1890	Confirmed	—	6	6
George Shiras Jr. of Pennsylvania	Harrison	07/19/1892	No record of hearing	07/25/1892	Reported without recommen-dation	07/26/1892	Confirmed	—	6	7
Howell E. Jackson of Tennessee	Harrison	02/02/1893	No record of hearing	02/13/1893	Reported favorably	02/18/1893	Confirmed	—	11	16
William B. Hornblower of New York	Cleveland	09/19/1893	No record of hearing	Considered on 09/25/1893 and 10/25/1893		No record of action		—	—	—

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
William B. Hornblower of New York	Cleveland	12/06/1893	No record of hearing	01/08/1894	Reported adversely	01/15/1894	Rejected (24-30)	—	33	40
Wheeler H. Peckham of New York	Cleveland	01/22/1894	No record of hearing	02/12/1894	Reported without recommen-dation	02/16/1894	Rejected (32-41)	—	21	25
Edward D. White of Louisiana	Cleveland	02/19/1894	Nomination was not referred to Judiciary Committee			02/19/1894	Confirmed	—	—	0
Rufus W. Peckham of New York	Cleveland	12/03/1895	No record of hearing	12/09/1895	Reported favorably	12/09/1895	Confirmed	—	6	6
Joseph McKenna of California	McKinley	12/16/1897	No record of hearing	01/13/1898	Reported favorably	01/21/1898	Confirmed	—	28	36
Oliver Wendell Holmes of Massachusetts	T. Roosevelt	12/02/1902	No record of hearing	12/04/1902	Reported favorably	12/04/1902	Confirmed	—	2	2
William R. Day of Ohio	T. Roosevelt	02/19/1903	No record of hearing	02/23/1903	Reported favorably	02/23/1903	Confirmed	—	4	4

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
William H. Moody of Massachusetts	T. Roosevelt	12/03/1906	No record of hearing	12/10/1906	Reported favorably	12/12/1906	Confirmed	—	7	9
Horace H. Lurton of Tennessee	Taft	12/13/1909	No record of hearing	12/16/1909	Reported favorably	12/20/1909	Confirmed	—	3	7
Charles Evans Hughes of New York	Taft	04/25/1910	No record of hearing	05/02/1910	Reported favorably	05/02/1910	Confirmed	—	7	7
Edward D. White of Louisiana (C. J.)	Taft	12/12/1910	Nomination was not referred to Judiciary Committee.			12/12/1910	Confirmed	—	—	0
Willis Van Devanter of Wyoming	Taft	12/12/1910	No record of hearing	12/15/1910	Reported favorably	12/15/1910	Confirmed	—	3	3
Joseph R. Lamar of Georgia	Taft	12/12/1910	No record of hearing	12/15/1910	Reported favorably	12/15/1910	Confirmed	—	3	3
Mahlon Pitney of New Jersey	Taft	02/19/1912	No record of hearing	03/04/1912	Reported favorably	03/13/1912	Confirmed (50-26)	—	14	23
James C. McReynolds of Tennessee	Wilson	08/19/1914	No record of hearing	08/24/1914	Reported favorably	08/29/1914	Confirmed (44-6)	—	5	10

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Louis D. Brandeis of Massachusetts	Wilson	01/28/1916	02/09/1916 02/10/1916 02/15/1916 02/16/1916 02/17/1916 02/18/1916 02/24/1916 02/25/1916 02/26/1916 02/29/1916 03/01/1916 03/02/1916 03/03/1916 03/04/1916 03/06/1916 03/07/1916 03/08/1916 03/14/1916 03/15/1916	05/24/1916	Reported favorably (10-8)	06/01/1916	Confirmed (47-22)	12	117	125
John H. Clarke of Ohio	Wilson	07/14/1916	No record of hearing	07/24/1916	Reported favorably	07/24/1916	Confirmed	—	10	10
William Howard Taft of Connecticut (C. J.)	Harding	06/30/1921	Nomination was not referred to Judiciary Committee.			06/30/1921	Confirmed (60-4) [e]	—	—	0
George Sutherland of Utah	Harding	09/05/1922	Nomination was not referred to Judiciary Committee.			09/05/1922	Confirmed	—	—	0
Pierce Butler of Minnesota	Harding	11/23/1922 (Nom. date 11/22/1922)	No record of hearing	11/28/1922	Reported favorably	Placed on the Executive Calendar on 11/28/1922, with no record of further action		—	5	—

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			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Pierce Butler of Minnesota	Harding	12/05/1922	No record of hearing	12/18/1922	Reported favorably	Motion to recommit defeated, 12/21/1922 (7-63)		—	13	16
						12/21/1922	Confirmed (61-8)			
Edward T. Sanford of Tennessee	Harding	01/24/1923	No record of hearing	01/29/1923	Reported favorably	01/29/1923	Confirmed	—	5	5
Harlan F. Stone of New York	Coolidge	01/05/1925	Closed hearing 01/12/1925	Reported favorably 01/21/1925		Recommitted 01/26/1925		—	28	31
			01/28/1925 (after 01/26/1925 recomt'l) [f]	02/02/1925	Reported favorably	02/05/1925	Confirmed (71-6)	23		
Charles Evans Hughes of New York (C. J.)	Hoover	02/03/1930	No record of hearing	02/10/1930	Reported favorably (10-2)	Motion to recommit rejected, 02/13/1930 (31-49)		—	7	10
						02/13/1930	Confirmed (52-26)			
John J. Parker of North Carolina	Hoover	03/21/1930	04/05/1930	04/17/1930	Reported adversely (10-6)	05/07/1930	Rejected (39-41)	15	27	47
Owen J. Roberts of Pennsylvania	Hoover	05/09/1930	No record of hearing	05/19/1930	Reported favorably	05/20/1930	Confirmed	—	10	11

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			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Benjamin N. Cardozo of New York	Hoover	02/15/1932	02/19/1932	02/23/1932	Reported favorably	02/24/1932	Confirmed	4	8	9
Hugo L. Black of Alabama	F. Roosevelt	08/12/1937	No record of hearing	08/16/1937	Reported favorably (13-4)	Motion to recommit rejected, 08/17/1937 (15-66)		—	4	5
						08/17/1937	Confirmed (63-16)			
Stanley F. Reed of Kentucky	F. Roosevelt	01/15/1938	01/20/1938	01/24/1938	Reported favorably	01/25/1938	Confirmed	5	9	10
Felix Frankfurter of Massachusetts	F. Roosevelt	01/05/1939	01/07/1939 01/10/1939 01/11/1939 01/12/1939	01/16/1939	Reported favorably	01/17/1939	Confirmed	2	11	12
William O. Douglas of Connecticut	F. Roosevelt	03/20/1939	03/24/1939	03/27/1939	Reported favorably	04/04/1939	Confirmed (62-4)	4	7	15
Frank Murphy of Michigan	F. Roosevelt	01/04/1940	No record of hearing	01/15/1940	Reported favorably	01/16/1940	Confirmed	—	11	12
Harlan F. Stone of New York (C. J.)	F. Roosevelt	06/12/1941	06/21/1941	06/23/1941	Reported favorably	06/27/1941	Confirmed	9	11	15
James F. Byrnes of South Carolina	F. Roosevelt	06/12/1941	Nomination was not referred to Judiciary Committee.			06/12/1941	Confirmed	—	—	0
Robert H. Jackson of New York	F. Roosevelt	06/12/1941	06/21/1941	06/30/1941	Reported favorably	07/07/1941	Confirmed	9	18	25
Wiley B. Rutledge of Iowa	F. Roosevelt	01/11/1943	01/22/1943	02/01/1943	Reported favorably	02/08/1943	Confirmed	11	21	28

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			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Harold H. Burton of Ohio	Truman	09/18/1945	No record of hearing	09/19/1945	Reported favorably	09/19/1945	Confirmed	—	1	1
Fred M. Vinson of Kentucky (C. J.)	Truman	06/06/1946	06/14/1946	06/19/1946	Reported favorably	06/20/1946	Confirmed	8	13	14
Tom C. Clark of Texas	Truman	08/02/1949	08/09/1949 08/10/1949 08/11/1949	08/12/1949	Reported favorably (9-2)	08/18/1949	Confirmed (73-8)	7	10	16
Sherman Minton of Indiana	Truman	09/15/1949	09/27/1949	10/03/1949	Reported favorably (9-2)	Motion to recommit rejected, 10/04/1949 (21-45)		12	18	19
						10/04/1949	Confirmed (48-16)			
Earl Warren of California (C. J.)	Eisenhower	*Recess Appointment, 10/02/1953*								
		01/11/1954	02/02/1954 02/19/1954	02/24/1954	Reported favorably (12-3)	03/01/1954	Confirmed	22	44	49
John M. Harlan II of New York	Eisenhower	11/09/1954	No record of hearing	Referred to Judiciary Committee on 11/09/1954. No record of committee vote or Senate action.				—	—	—
John M. Harlan II of New York	Eisenhower	01/10/1955	02/25/1955 [g]	03/10/1955	Reported favorably (10-4)	03/16/1955	Confirmed (71-11)	45	59	65
William J. Brennan Jr. of New Jersey	Eisenhower	*Recess Appointment, 10/15/1956*								
		01/14/1957	02/26/1957 02/27/1957	03/04/1957	Reported favorably	03/19/1957	Confirmed	43	49	64

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			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Charles E. Whittaker of Missouri	Eisenhower	03/02/1957	03/18/1957	03/18/1957	Reported favorably	03/19/1957	Confirmed	16	16	17
Potter Stewart of Ohio	Eisenhower	*Recess Appointment, 10/14/1958*								
		01/17/1959	04/09/1959 04/14/1959	04/20/1959	Reported favorably (12-3)	05/05/1959	Confirmed (70-17)	82	93	108
Byron R. White of Colorado	Kennedy	04/03/1962	04/11/1962	04/11/1962	Reported favorably	04/11/1962	Confirmed	8	8	8
Arthur J. Goldberg of Illinois	Kennedy	08/31/1962	09/11/1962 09/13/1962	09/25/1962	Reported favorably	09/25/1962	Confirmed	11	25	25
Abe Fortas of Tennessee	L. Johnson	07/28/1965	08/05/1965	08/10/1965	Reported favorably	08/11/1965	Confirmed	8	13	14
Thurgood Marshall of New York	L. Johnson	06/13/1967	07/13/1967 07/14/1967 07/18/1967 07/19/1967 07/24/1967	08/03/1967	Reported favorably (11-5)	08/30/1967	Confirmed (69-11)	30	51	78
Abe Fortas of Tennessee (C. J.)	L. Johnson	06/26/1968	07/11/1968 07/12/1968 07/16/1968 07/17/1968 07/18/1968 07/19/1968 07/20/1968 07/22/1968 07/23/1968 09/13/1968 09/16/1968	09/17/1968	Reported favorably (11-6)	Cloture motion rejected, 10/01/1968 (45-43) [h]		15	83	100
						10/04/1968	Withdrawn			

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			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Homer Thornberry of Texas	L. Johnson	06/26/1968	07/11/1968 07/12/1968 07/16/1968 07/17/1968 07/18/1968 07/19/1968 07/20/1968 07/22/1968 07/23/1968 09/13/1968 09/16/1968	Referred to Judiciary Committee on 06/26/1968. No committee vote taken.		10/04/1968	Withdrawn	15	—	100
Warren E. Burger of Virginia (C. J.)	Nixon	05/23/1969	06/03/1969	06/03/1969	Reported favorably	06/09/1969	Confirmed (74-3)	11	11	17
Clement F. Haynsworth Jr. of South Carolina	Nixon	09/03/1969	09/16/1969 09/17/1969 09/18/1969 09/19/1969 09/23/1969 09/24/1969 09/25/1969 0926/1969	10/09/1969	Reported favorably (10-7)	11/21/1969	Rejected (45-55)	13	36	79
George Harrold Carswell of Florida	Nixon	01/19/1970	01/27/1970 01/28/1970 01/29/1970 02/02/1970 02/03/1970	02/16/1970	Reported favorably (13-4)	04/08/1970	Rejected (45-51)	8	28	79
Harry A. Blackmun of Minnesota	Nixon	04/15/1970	04/29/1970	05/06/1970	Reported favorably (17-0)	05/12/1970	Confirmed (94-0)	14	21	27

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			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Lewis F. Powell Jr. of Virginia	Nixon	10/22/1971	11/03/1971 11/04/1971 11/08/1971 11/09/1971 11/10/1971	11/23/1971	Reported favorably (16-0)	12/06/1971	Confirmed (89-1)	12	32	45
William H. Rehnquist of Arizona	Nixon	10/22/1971	11/03/1971 11/04/1971 11/08/1971 11/09/1971 11/10/1971	11/23/1971	Reported favorably (12-4)	Cloture motion rejected, 12/10/1971 (52-42) [i]		12	32	49
						Motion to postpone until 01/18/1972 rejected, 12/10/1971 (22-70)				
						12/10/1971	Confirmed (68-26)			
John Paul Stevens of Illinois	Ford	12/01/1975 (Nom. date 11/28/1975)	12/08/1975 12/09/1975 12/10/1975	12/11/1975	Reported favorably (13-0)	12/17/1975	Confirmed (98-0)	7	10	16
Sandra Day O'Connor of Arizona	Reagan	08/19/1981	09/09/1981 09/10/1981 09/11/1981	09/15/1981	Reported favorably (17-1)	09/21/1981	Confirmed (99-0)	21	27	33
William H. Rehnquist of Arizona (C. J.)	Reagan	06/20/1986	07/29/1986 07/30/1986 07/31/1986 08/01/1986	08/14/1986	Reported favorably (13-5)	Cloture invoked, 09/17/1986 (68-31) [j]		39	55	89
						09/17/1986	Confirmed (65-33)			
Antonin Scalia of Virginia	Reagan	06/24/1986	08/05/1986 08/06/1986	08/14/1986	Reported favorably (18-0)	09/17/1986	Confirmed (98-0)	42	51	85

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Robert H. Bork of District of Columbia	Reagan	07/07/1987	09/15/1987 09/16/1987 09/17/1987 09/18/1987 09/19/1987 09/21/1987 09/22/1987 09/23/1987 09/25/1987 09/28/1987 09/29/1987 09/30/1987	Motion to report favorably rejected, 10/06/1987 (5-9)		10/23/1987	Rejected (42-58)	70	91	108
				10/06/1987	Reported unfavorably (9-5)					
Anthony M. Kennedy of California	Reagan	11/30/1987	12/14/1987 12/15/1987 12/16/1987	01/27/1988	Reported favorably (14-0)	02/03/1988	Confirmed (97-0)	14	58	65
David H. Souter of New Hampshire	G. H. W. Bush	07/25/1990	09/13/1990 09/14/1990 09/17/1990 09/18/1990 09/19/1990	09/27/1990	Reported favorably (13-1)	10/02/1990	Confirmed (90-9)	50	64	69
Clarence Thomas of Virginia	G. H. W. Bush	07/08/1991	09/10/1991 09/11/1991 09/12/1991 09/13/1991 09/16/1991 09/17/1991 09/19/1991 09/20/1991 10/11/1991 10/12/1991 10/13/1991	Motion to report favorably failed, 09/27/1991 (7-7) [k]		UC agreement reached, 10/08/1991, to reschedule vote on confirmation from 10/08/1991 to 10/15/991, to allow for additional hearings		64	81	99
				09/27/1991	Reported without recommen-dation (13-1)	10/15/1991	Confirmed (52-48)			

Nominee	President	Date received in Senate [a]	Senate committee actions			Final action by Senate or President		Days from date received in Senate to:		
			Public hearing date(s)	Final vote date [b]	Final vote	Date	Final action [c]	First hearing date	Committee final vote date	Final action by Senate or President
Ruth Bader Ginsburg of New York	Clinton	06/22/1993	07/20/1993 07/21/1993 07/22/1993 07/23/1993	07/29/1993	Reported favorably (18-0)	08/03/1993	Confirmed (96-3)	28	37	42
Stephen G. Breyer of Massachusetts	Clinton	05/17/1994	07/12/1994 07/13/1994 07/14/1994 07/15/1994	07/19/1994	Reported favorably (18-0)	07/29/1994	Confirmed (87-9)	56	63	73
John G. Roberts Jr. of Maryland	G. W. Bush	07/29/2005	Referred to Judiciary Committee on 07/29/2005. No hearing held and no committee vote taken.			09/06/2005	Withdrawn	—	—	39
John G. Roberts Jr. of Maryland (C. J.)	G. W. Bush	09/06/2005	09/12/2005 09/13/2005 09/14/2005 09/15/2005	09/22/2005	Reported favorably (13-5)	09/29/2005	Confirmed (78-22)	6	16	23
Harriet E. Miers of Texas	G. W. Bush	10/07/2005	Referred to Judiciary Committee on 10/07/2005. No hearing held and no committee vote taken.			10/28/2005	Withdrawn	—	—	21
Samuel A. Alito Jr.	G. W. Bush	11/10/2005	Referred to Judiciary Committee on 11/10/2005. Hearings scheduled to begin on 01/09/2006.							
Median number of days from date received in Senate, 1789-2005								13	11	10
Median number of days from date received in Senate, 1789-1966								11	9	7
Median number of days from date received in Senate, 1967-2005								15	37	67

Sources: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America* (hereafter, *Senate Executive Journal*), various editions from the 1st Congress through the 107th Congress; Senate Committee on the Judiciary, *Legislative and Executive Calendar*, various editions from the 77th Congress through the 103rd Congress; various newspaper accounts accessed on-line through ProQuest Historical Newspapers (the primary source for recorded vote tallies in committee prior to the 1980s); and CRS Report RL31171, *Supreme Court Nominations Not Confirmed, 1789-2005*, by Henry B. Hogue.

a. Usually the date on which the President formally makes a nomination, by signing a nomination message, is the same as the date on which the nomination is received, and these two dates are the same for any given nomination when only one date is shown in the "Date received in Senate" column. However, for the occasional nomination made by a President on a date prior to the nomination's receipt by the Senate, the earlier presidential nomination date ("Nom. date") is distinguished, in parentheses, from the date when the nomination was received by the Senate.

b. For nominations prior to 1873 that were referred to committee, the "Final vote date" is the date recorded in the *Senate Executive Journal* on which the committee's chairman or other member reported the nomination to the Senate. For nominations from 1873 to 2005, the "Final vote date" is the date on which the Judiciary Committee voted to report a nomination or, in one instance (on Feb. 14 1881) involving the first Stanley Matthews nomination), voted to postpone taking taking action.

c. "Final action," for purposes of this table, covers the following mutually exclusive outcomes: confirmation by the Senate ("Confirmed"), withdrawal of a nomination by the President ("Withdrawn") and Senate rejection by a vote disapproving a nomination ("Rejected"). In other instances, when none of the preceding three outcomes occurred, the last procedural action taken by the Senate on a nomination is indicated. On certain nominations, as indicated in the table, the last procedural outcome entailed tabling a nomination ("Tabled"), postponing consideration ("Postponed"), or rejecting a motion to proceed to consideration ("Motion to proceed rejected"). Final Senate actions taken by roll-call votes are shown in parentheses. Final Senate actions without roll-call votes shown in parentheses were reached by voice vote or unanimous consent. For roll-call votes shown above, the number of Yea votes always comes before the number of Nay votes. Thus, under "Confirmed" or "Rejected," the first number in the vote tally is the number of Senators who voted in favor of confirmation, and the second the number voting against confirmation.

d. On Dec. 16 and 17, 1873, the Judiciary Committee held closed-door sessions to examine documents and hear testimony from witnesses relevant to a controversy that arose over the Williams nomination only after the committee had reported the nomination to the Senate. The controversy prompted the Senate to recommit the nomination to the Judiciary Committee and to authorize the committee "to send for persons and papers." *Senate Executive Journal*, vol. 19, p. 211. After holding the two closed- door sessions , the committee did not re-report the nomination to the Senate. Amid press reports of significant opposition to the nomination in both the Judiciary Committee and the Senate as a whole, the nomination, at Williams's request, was withdrawn by President Ulysses S. Grant on Jan. 8, 1874. The Dec. 16 and 17 sessions can be regarded as an early, perhaps the earliest, example of a Judiciary Committee closed-door hearing. However, the above table, which focuses in part on the times that elapsed between dates nominations were received in the Senate and dates of *public* confirmation hearings, does not count the time that elapsed from the date the Williams nominations was received in the Senate until the Dec. 16 and 17, 1873, sessions, because they were closed to the public.

e. The 60-4 roll call vote to confirm Taft, conducted by the Senate in closed-door executive session, was not recorded in the *Senate Executive Journal*. Newspaper accounts, however, reported that a roll call vote on the nomination was demanded in the executive session, and that the vote was 60-4 to confirm, with an agreement reached afterwards not to make the roll call public. See Robert J. Bender, "Ex-President Taft New Chief Justice of United States," *Atlanta Constitution*, July 1, 1921, p. 1; Charles S. Groves, "Taft Is Confirmed, as Chief Justice," *Boston Daily Globe*, July 1, 1921, p. 1; and "Proceedings of Congress and Committees in Brief," *Washington Post*, July 1, 1921, p. 6.

f. The Jan. 12, 1925, hearing, held in closed session, heard the testimony of former Sen. Willard Saulsbury of Delaware. "Nomination of Stone Is Held Up Once More," *New York Times*, Jan. 13, 1925, p. 4. At the Jan. 28, 1925, hearing, which was held in open session, the nominee was questioned by the Judiciary Committee for four hours. This was the first confirmation hearing for a Supreme Court nomination at which the nominee appeared in person to testify. See Albert W. Fox, "Stone Tells Senate Committee He Assumes Full Responsibility for Pressing New Wheeler Case," *Washington Post*, Jan. 29, 1925, p. 1.

g. The Judiciary Committee held two days of confirmation hearings on the Harlan nomination, on Feb. 24 and 25, 1955. The Feb. 24 session, held in *closed* session, heard the testimony of nine witnesses (seven in favor of confirmation, and two opposed). Luther A. Huston, "Harlan Hearing Held by Senators," *New York Times*, Feb. 25, 1955, p. 8. The committee also began the Feb. 25 hearing in closed session, to hear the testimony of additional witnesses. However, for Judge Harlan, who was the last scheduled witness, the committee "voted to open the hearing to newspaper reporters for his testimony." Luther A. Huston, "Harlan Disavows 'One World' Aims in Senate Inquiry," *New York Times*, Feb. 26, 1955, p. 1.

h. The 45 votes in favor of the motion to close debate fell far short of the super-majority required under Senate rules — then two-thirds of Senators present and voting. The cloture motion, if approved, would have closed a lengthy debate (which had consumed more than 25 hours over a four-day period) on a motion to proceed to consider the Fortas nomination.

i. The 52 votes in favor of the motion to close debate fell short of the super-majority required under Senate rules — then two-thirds of Senators present and voting. Although the cloture motion failed, the Senate later that day (Dec. 10, 1971) agreed, without a procedural vote, to close debate and then voted to confirm Rehnquist 68-26.

j. The 68 votes in favor of the motion to close debate, by invoking cloture, exceeded the majority required under Senate rules — then, and currently, three-fifths of the Senate's full membership.

k. Motions to gain approval in Senate committees require a majority vote in favor and thus fail if there is a tie vote.

Table 2. Senate Votes on Whether to Confirm Supreme Court Nominations: Number Made by Voice Vote/Unanimous Consent (UC) or by Roll-Call Vote

Years	By voice vote or UC (all to confirm)	By roll-call vote (votes to reject in parentheses)	Totals
1789-1829	24	4 (2)	28
1830-1889	15	21 (3)	36
1890-1965	34	16 (3)	50
1966-2005	0	18 (3)	18
Totals	73	59 (11)	132 (11)

Sources: U.S. Congress, Senate, *Journal of the Executive Proceedings of the Senate of the United States of America*, various editions from the 1st Congress through the 107th Congress; also, "Nominations" database in the Legislative Information System, available at [http://www.congress.gov/nomis/].