

Supreme Court Justice W.E. Lantz?

*John Q. Barrett**

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President Franklin D. Roosevelt, whose first four years in the White House brought no opportunity to appoint a Supreme Court Justice, made five appointments to the Court during his second term:

- in 1937, Senator Hugo L. Black (D.-AL);
- in 1938, Solicitor General Stanley F. Reed;
- in 1939, Harvard Law School Professor Felix Frankfurter;
- also in 1939, Securities and Exchange Commission Chairman William O. Douglas; and
- in 1940, Attorney General Frank Murphy.

Each of these Justices came to the Court from public prominence. Most came from the Roosevelt Administration itself. These appointees were well known to the President. Their selections involved no surprises or mysteries.

In contrast, the process by which an outsider, W.E. Lantz of West Virginia, came to White House attention in early 1941 for a Supreme Court appointment has been little studied or understood. I also know of no scholarship regarding the process by which the White House promptly informed the Department of Justice of Lantz's candidacy, or on the process by which DOJ then made Lantz's potential appointment known to the Supreme Court.

* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York (www.roberthjackson.org). An earlier version of this text was posted to my Jackson Email List on April 8, 2009.

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JUSTICE LANTZ?

Luckily, these processes are documented in the following paper trail, which begins a few weeks after Justice James C. McReynolds's abrupt resignation from the Supreme Court:

- On February 21, 1941, Mr. Lantz, apparently believing that he was responding to a White House inquiry, wrote by hand to President Roosevelt's appointments secretary, Marvin H. McIntyre:

Philippi W-Va Route 1
Feb 21 – 1941

Mr. M. H McIntyre Secretary
I received your Letter of 13 and
can Say that I am ready
to take associate Justice
of Supreme Court will you
tell me by return mail
how Soon the President
will make appointment
as Mr. Reynolds [sic] has Resig
ned the Job. So if Mr.
Roosevelt can favor
me with the Appointment
I will do my best to
favor you and him on
every opportunity[.] how much
does the Justice Job pay per
yr. or month.

Your Truly. W.E. Lantz¹

¹ W.E. Lantz to M.H. McIntyre, Feb. 21, 1941 (photocopy), *in* Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. ("RHJ LOC"), Box 13, Folder 2. An image of the photocopy of the Lantz letter that Attorney General Jackson retained in his files follows the end of this essay.

JUSTICE LANTZ?

- McIntyre, after reading Mr. Lantz's letter, wrote "Justice" (meaning the Department of Justice) across the top of the page and sent it to Attorney General Robert H. Jackson. On March 8, 1941, Jackson dictated this letter and then sent it, apparently along with Lantz's original letter and a typed transcription of it, to Justice Frankfurter at the Supreme Court:

Dear Felix:

I think you should know how casually a Justice of the Supreme Court is created, and of what material.

Sincerely,

/s/ Bob²

- When Justice Frankfurter received Jackson's letter, he penned this note on the bottom of the page and sent it back to the Attorney General:

Dear Bob-

I now know what
is meant by

"meet me at
Philippi."

But – or and –
W.E. Lantz ought to
make an interesting
colleague!

Always yrs FF³

(These letters are real, and Mr. Lantz's seems not to be a joke; some amusement obviously was had by McIntyre, Jackson and Frankfurter.)

² Attorney General Robert H. Jackson to Justice Felix Frankfurter, Mar. 8, 1941, *in* RHJ LOC Box 13, Folder 2.

³ Justice Felix Frankfurter to Attorney General Robert H. Jackson, n.d. (est. Mar. 1941), on *id.* An image of Jackson's letter to Frankfurter, which bears on the same page Frankfurter's handwritten reply, is at the end of this file.

JUSTICE LANTZ?

For Mr. Lantz, alas, Supreme Court appointment never came. In June 1941, President Roosevelt nominated Senator James F. Byrnes (D.-SC) to succeed Justice McReynolds (on the same day that the President also nominated Justice Harlan Fiske Stone to succeed retiring Chief Justice Charles Evans Hughes and Attorney General Jackson to succeed Stone as Associate Justice). When Byrnes resigned from the Court a year later to take a White House position, FDR nominated Judge Wiley B. Rutledge to succeed Justice Byrnes. Justice Rutledge became FDR's ninth and final appointee to the Supreme Court.

For any who think to follow Mr. Lantz's example by writing to the White House seeking a Supreme Court appointment, I recommend better punctuation, less concern about salary, and the judgment not to offer to try to "favor" your appointing President.

Justin

Philippi W-Va Route 1

LIVE
ICE
ASHEB Feb 21 - 1941

Mr M. H. McIntyre Secretary

I recieved your letter of 13 and
can say that I am ready
to take associate Justice
of Supreme Court will you
tell me by return mail
how soon the President
will make appointment
as Mr. Reynolds has Resig
ned the job. So if Mr.
Roosevelt can favor
me with the appointment
I will do my best to
favor you and him on
every opportunity how much
does the Justice Job pay per
yr. or month.

Yours Truly W. E. Lantz



THE ATTORNEY GENERAL
WASHINGTON

March 8, 1941

Dear Felix:

I think you should know how casually a
Justice of the Supreme Court is created, and of
what material.

Sincerely,

Bob

Dear Bob -

*I now know what
it meant by
"meet me at"*

Honorable Felix Frankfurter
United States Supreme Court
Washington, D.C.

Mississippi.

Bob - or and -

*W.E. Lantry ought to
make an interesting
colleague
always yours*