

# Charles Brown Sears

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(1870–1950)

*COURT OF APPEALS, 1940*

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By Suzanne Aiardo

Judge Charles Brown Sears was born in Brooklyn on October 16, 1870, to Hector and Leora C. Brown Sears. His father was a manufacturer. Sears studied at the Adelphi Academy in Brooklyn and graduated in 1892 from Yale. While at Yale he was a member of Scroll and Keys and an editor of the *Yale News*. He later received an honorary degree from his alma mater.<sup>1</sup> Before receiving his bachelor of law from Harvard Law School, he attended lectures at the University of Berlin from 1892–1893, demonstrating an early interest in international matters. While at Harvard, he served as an editor of the *Law Review* and graduated cum laude.

Following his admission to the New York State Bar in 1895, Sears moved to Buffalo. He showed his affection for his adopted city by participating in virtually every important civic undertaking in that city for over 50 years. For his service he was awarded the Chancellor's Medal of the University of Buffalo in 1944 for outstanding service to the community. When the law school of the university moved to its new building, the law library was named after him.<sup>2</sup>

On October 20, 1896, Judge Sears married Florence A. Gilbert of Brookline, Massachusetts. From 1895 until 1917 he practiced law in Buffalo, first with Rogers,

Locke and Babcock and then as a partner of the firm Norton Penney and Sears<sup>3</sup> until Gov. Charles S. Whitman appointed him to the Supreme Court, Eighth Judicial District, to fill an unexpired term. The Republican Committee had urged Whitman to appoint Sears to the seat vacated by Judge Cuthbert W. Pound, who had been elected to the Court of Appeals. The committee lauded Sears as "one of the ablest and most broadminded men at the bar and [emphasized] that everyone who came in contact with him praised his disinterestedness and his sense of fairness."<sup>4</sup> That November he was nominated by both parties to run for the seat and was elected for the full 14-year term.

### THREE GUBERNATORIAL APPOINTMENTS

In 1922 Gov. Nathan L. Miller appointed Sears to the Appellate Division, Fourth Department, as associate justice, and in 1927 Gov. Alfred E. Smith redesignated him for another five-year term. In 1929 Gov. Franklin D. Roosevelt named Judge Sears presiding justice, a position he held until his appointment to the Court of Appeals in 1940.<sup>5</sup>

Sears was reelected in 1931 to another full 14-year term.<sup>6</sup> At the Republican Judicial Convention of 1931, John Lord O'Brian,<sup>7</sup> a longtime friend and colleague, in his nomination speech summarized Sears' qualities:

His opinions are known throughout the State and the sound character of his work is known far outside its boundaries. Indefatigable in industry and a profound student of the law, his reputation is even better established by his human qualities—his patience, his understanding, his highmindedness. Devoted to the service of his profession as a citizen of Buffalo he has made time for himself to engage helpfully in many civic undertakings and good causes have always had his active support. Today, receiving again the compliment of an endorsement by the Democratic party, the finest thing of all is that he has attained his present position of respect and esteem solely because of his own personal character and his own unaided efforts.

.....

[I]t should be a source of pride to all of us that as a contribution to the stability of our institutions we are able to present again as a candidate for the Judiciary one who has been faithful to its obligations and an exemplar of the finest traditions of our profession,—sound lawyer, good citizen, friend of humankind—Charles B. Sears.<sup>8</sup>

Well known and well respected among his peers, Judge Sears was chosen to be a delegate to the State Constitutional Conventions of 1915 and 1938. He was a member of the judiciary committee at the 1915 convention in Albany, where he and his friends rented a house at No. 4 Elk Street, which became known as the "house of lords."<sup>9</sup> Sears later wrote a paper about the convention for the Thursday Club at Buffalo, recalling some of the livelier incidents and providing a flavored view of the more notable personalities.<sup>10</sup>

As chairman of the judiciary committee during the 1938 convention, Judge Sears was instrumental in drafting the new constitution and was generally recognized as an authority on judicial matters. Despite his reputation, Judge Sears revealed a more humble view of his purported influence with a dry wit. When questioned by Chief Judge Crane of the Court of Appeals about his own opinion of judicial review: "Don't you think your opinion carries enough weight?," the presiding justice of the Appellate Division replied, "No, I don't. . . . I am only a judge of a court of intermediate conjecture."<sup>11</sup>

In the end, the judiciary article the committee drafted was defeated by voters "largely through the inclusion of sections [opposed by Sears] dealing with judicial review of administrative decisions and establishments of new judicial districts for Nassau and Suffolk Counties."<sup>12</sup> Years later, however, Manly Fleischmann of the Erie County Bar spoke of Sears' contributions: "His skillful and impartial conduct [as chairman of the judiciary committee] won him public plaudits of leading members of the convention representing both major political parties."<sup>13</sup>

As early as 1928, Judge Sears was considered to be a desirable Republican candidate for mem-

bership on the Court of Appeals. In September of that year, a group of lawyers and former judges in a letter to the Republican State and National Committees supporting his nomination stated: "It is our deliberate judgment that it rarely happens that a man of [such] exceptional qualities and attainments can be secured for the office . . . ."<sup>14</sup> The time was not ripe, however, and Judge Sears went on to serve as presiding justice of the Appellate Division, Fourth Department. Later, in 1934, Judge Sears was the unsuccessful Republican candidate for associate judge of the court.<sup>15</sup>

### APPOINTMENT TO THE COURT OF APPEALS

In 1939, even though his age would limit his term to one year, Sears was tapped for the Court of Appeals by Gov. Herbert Lehman to replace Judge Irving Lehman,<sup>16</sup> who was set to accept the appointment of chief judge on January 1, 1940.<sup>17</sup> Many people regarded the one-year appointment as a reward for his long years of service in the courts of New York.<sup>18</sup> Unquestionably it was the highlight of his judicial career. Upon learning of it, Sears responded: "Of course I am very grateful to the governor for the confidence he has shown in this appointment."<sup>19</sup> If his remarks seemed subdued, it may have been attributed to the death on October 3, 1939, of his wife of almost 43 years, Florence A. Gilbert. The couple had no children. Sadly, the woman who had been by his side from the beginning of his legal career would not see him attain his place on the most prestigious bench.<sup>20</sup>

Although his term was a short one, his contributions, both personal and professional, were many. Perhaps Judge Sears's most notable case is *People v Johnson*, 284 NY 182 (1940). For a unanimous court, he wrote that prosecutors would not be permitted to advise jurors that appellate review would protect defendants in case of a mistaken guilty verdict. Stanley Johnson was convicted of capital murder after the prosecutor explicitly informed the prospective jurors that their verdict

would not be final because the Court of Appeals and the governor would still have opportunities to mitigate the death sentence. Despite the defendant's clear guilt, Judge Sears refused to allow the verdict to stand. In emotional language, he declared "Whatever may be our ideas as to the defendant's guilt, it is essential to the due administration of justice that he should have received a scrupulously fair trial" (284 NY at 184). Later, the U.S. Supreme Court cited Judge Sears's opinion in its own case invalidating the prosecutorial practice of informing jurors that a mistaken verdict would be corrected on appeal (see *Caldwell v Mississippi*, 472 U.S. 320, 334 n. 5 [1985] [observing that many states considered the practice "clearly improper" and following their lead]).

In another interesting case, Judge Sears provided an example of how courts handled the early stages of the administrative state. *New York State Guernsey Breeders Co-Operative v Noyes*, 284 N.Y. 197 (1940) reveals the court's early discomfort with administrative regulation of the economy, even as the massive growth in regulation associated with World War II was about to begin. The question before the court was whether milk price regulations promulgated by the state commissioner of agriculture had been properly established.

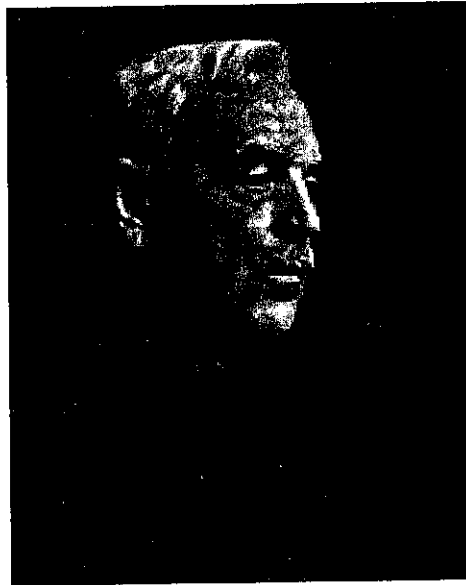
The court held, unanimously, that although the commissioner had given adequate notice of the rule, held a hearing on the proposed rule, and then referred to the testimony at the hearing in support of the final text, the proceeding was actually judicial rather than administrative (284 NY at 204). In that context, the court felt that the commissioner had given insufficient weight to the dairy cooperative's request for an exemption from the rule. Judge Sears explained that the case had to be remitted for further fact-finding, in no small part because "[n]o mention is made in the order of the specific conditions brought out by the testimony of petitioner's representative. We do not know what circumstances prompted the Commissioner to reject this seemingly uncontroverted testimony, nor do we even know that it was considered" (*id.*).

This type of searching judicial review of administrative fact-finding and policymaking in an area of special agency expertise may seem quaint today, but the decision was uncontroversial in 1940.

Finally, in *Finn v New York*, 282 NY 153 (1940), Judge Sears wrote for a divided court that certain public officials' entitlement to their full authorized salary during the officials' term of office could be waived by failure to comply with administrative procedures. The New York City charter required public officials to sign a written statement contemporaneous with their payment that they accepted a salary underpayment under protest or else forfeit their right to their full wages. The city then paid the plaintiff, the sheriff and clerk for New York County, less than his lawful salary. He accepted payment without noting his objection. The court held that the failure to object in writing at the time of underpayment operated as a waiver of the official's entitlement to his full salary. The official argued that the charter provision permitting underpayment in the absence of a contemporaneous objection conflicted with the state constitution's art. XIII, sec. 12, which declared that the official's compensation "shall not be increased or diminished during the term for which he shall have been elected or appointed" (282 NY at 156). Judge Sears took a more expansive view, holding that although the constitution did prohibit upward or downward adjustments of an official's pay during his term of office, that constitutional right could be waived by a failure to object, as described by the city charter.

## RETIREMENT

On Sears' retirement, Chief Judge Lehman presented him with a loving cup "as a symbol and token of [the Court's] friendship and admiration." The chief judge continued, praising Sears for using his intellectual prowess not to gain advantage for himself but "to promote justice in accordance with ideals which are eternal for their source is in the divine."<sup>21</sup>



Courtesy University of Buffalo Charles B. Sears Law Library.

In his eulogy of Judge Sears given before the Appellate Division, Fourth Department, on November 1953, Manly Fleischmann noted that Sears approached his work on the court with the vigor of a much younger man:

With only a year to serve, the record [made] it clear that he intended to make that year count. Volumes 282, 283 and 284 of the New York Reports contain approximately thirty of his opinions—all but one for the majority of the court. Each one of them bore the familiar hallmarks of his strong and simple English style, his absolute mastery of the tools of the law, and above all, his devoted search for justice among men.<sup>22</sup>

At the unveiling of Judge Sears's portrait in the magnificent H. H. Richardson courtroom, Chief Judge John T. Loughran recalled the remarks of an unidentified Court of Appeals judge:

His younger associates in the Court of Appeals will be in everlasting debt to Judge Sears for many lessons he gave them out of his skill and experience and for the bracing example of the painstaking thoroughness with which he did his work day in and day out. He was in truth a godsend to us at a time when the court lost overnight three of its then most seasoned members.<sup>23</sup>

Following his retirement at age 70, Judge Sears served as official referee of the court. At the urging of his old friend, attorney general and later United States Supreme Court Justice, Robert H. Jackson, he took a leave of absence from that post to serve as presiding American judge of one of the Nuremberg Trials.<sup>24</sup>

No longer a widower, at the age of 76 Judge Sears remarried on November 24, 1946. His bride, 64-year-old Mary Vanderpoel Hun, was a daughter of one of Albany's oldest families and was prominent in her own right, having served as chair of the State Commission for the Blind during Gov. Franklin D. Roosevelt's tenure.<sup>25</sup>

At the age of 80, Judge Sears died on December 18, 1950. His memorial service was held at Trinity Episcopal Church in Buffalo.<sup>26</sup> He is buried at the Forest Lawn Cemetery in Buffalo.<sup>27</sup> He was survived by his wife Mary, who died on January 16, 1966.<sup>28</sup>

### Progeny

Judge Sears and his first wife Florence A. Gilbert had no children.

Judge Sears was survived by his second wife Mary Vanderpoel Hun Sears, who died on Jan. 16, 1966. She was survived by two sisters. Apparently, Judge Sears has no direct descendants.

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C.B. Sears Dies: Was a Judge of 2 State Courts, *New York Herald Tribune*, Dec. 18, 1950.

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Lehman Will Put Sears and Lewis on Appeals Bench, *New York Times*, Dec. 3, 1939.

In Memoriam: Charles Brown Sears and Thomas Day Thacher, 303 NY vii.

In Memoriam: Proceedings in the Appellate Division of the Supreme Court of the Fourth Judicial Department Held at the Courthouse of the City of Rochester on the 9th Day of Nov. 1953 at 1:45 p.m., 282 NY vii.

39 National Cyclopaedia of American Biography: New York; 158-59 J.T. White (1954).

3 Who Was Who in America, 770 (1960).

Year Book of the Century Association 1951-52, 74-75, Box 15, Folder 1, John Lord O'Brian Papers, Charles B. Sears Law Library, University at Buffalo.

### Published Writings

Correspondence between Charles B. Sears, 1870-1950, and Robert Houghwout Jackson, Papers of Robert Houghwout Jackson, 1816-1983 (bulk 1934-54), General Correspondence 1912-54, Box 20, Library of Congress, Manuscript Division, Washington, D.C. (concerning the Nuremberg Trials).

Dennis' Buffalo City Court Act Annotated: Forward by Hon. Charles B. Sears, associate judge of the Court of Appeals of the State of New York. Buffalo, Dennis & Co., Inc. (1940).

Sears, Some Episodes of the Constitutional Convention: Paper Read at Thursday Club. Buffalo, 1916 (Photocopy) held in Buffalo and Erie County Historical Society Archives.

Judge Sears also issued opinions while official referee of the court and as judge of the Nuremberg Trials.

### Endnotes

1. In Memoriam: Proceedings in the Appellate Division of the Supreme Court in the Fourth Judicial Department Held at the Courthouse of the City of Rochester on the 9th Day of Nov. 1953 at 1:45 p.m., 282 AD vii, xiv.
2. <http://ublib.buffalo.edu/libraries/units/law/about/sears/html> (last viewed 2/8/06).
3. In Memoriam: Proceedings in the Appellate Division of the Supreme Court of the Fourth Judicial Department Held at the Courthouse of the City of Rochester on the 9th Day of Nov. 1953 at 1:45 p.m., 282 NY vii, xvi.

4. Remarks of Mr. John Lord O'Brian in Nominating Hon. Charles B. Sears for justice of the Supreme Court: Republican Judicial Convention, Buffalo, Friday noon, Sep. 26, 1931, Box 59, Folder 17, John Lord O'Brian Papers, Charles B. Sears Law Library, University at Buffalo.

5. Remarks of Mr. John Lord O'Brian in Nominating Hon. Charles B. Sears for justice of the Supreme Court: Republican Judicial Convention, Buffalo, Friday noon, Sep. 26, 1931, Box 59, Folder 17, John Lord O'Brian Papers, Charles B. Sears Law Library, University at Buffalo.

6. C.B. Sears Dies; Was a Judge of 2 State Courts, N.Y. Herald Tribune, Dec. 18, 1950.

7. John Lord O'Brian was a contemporary of Judge Sears and was known in his profession as a lawyer's lawyer; not only a dedicated public servant, he was regarded as the "Dean of the Supreme Court Bar" having appeared so often before the United States Supreme Court. His friendship with Judge Sears spanned many years. John Lord O'Brian Dies at 98; Dean of the Supreme Court Bar, N.Y. Times, Apr. 11, 1973.

8. Remarks of Mr. John Lord O'Brian in Nominating Hon. Charles B. Sears for justice of the Supreme Court: Republican Judicial Convention, Buffalo, Friday noon, Sep. 26, 1931, Box 59, Folder 17, John Lord O'Brian Papers, Charles B. Sears Law Library, University at Buffalo.

9. The Reminiscences of John Lord O'Brian, Columbia University, Oral Research History Office, 1953, 144 held in the John Lord O'Brian Papers, Charles B. Sears Law Library, University at Buffalo.

10. See Sears, Some Episodes of the Constitutional Convention: Paper Read at Thursday Club Buffalo 1916 (Photocopy) Buffalo and Erie County Historical Society Archives.

11. 'Infallibility' of Courts Brings Sneer From Judge, N.Y. Times, Aug. 19, 1938.

12. Lehman will put Sears and Lewis on Appeals Bench, N.Y. Times, Dec. 3, 1939.

13. In Memoriam: Proceedings in the Appellate Division of the Supreme Court in the Fourth Judicial Department Held at the Courthouse of the City of

Rochester on the 9th Day of Nov. 1953 at 1:45 p.m., 282 AD vii, xv.

14. Jurists Urge Sears for Appeals Court, N.Y. Times, Sep. 24, 1928.

15. Lehman Will Put Sears and Lewis on Appeals Bench, N.Y. Times, Dec. 3, 1939.

16. Judge Lehman and the governor were brothers. Justices Lewis and Sears to be Elevated to State Appeals Court, Syracuse-Herald American, Dec. 3, 1939.

17. Lehman will put Sears and Lewis on Appeals Bench, N.Y. Times, Dec. 3, 1939.

18. Lehman will put Sears and Lewis on Appeals Bench, N.Y. Times, Dec. 3, 1939.

19. Designated Judges Pleased, N.Y. Times, Dec. 3, 1939.

20. Eminent Members of the Bench and Bar of New York, p. 153. C.W. Taylor Jr. Pub. (1943).

21. Address to Judge Charles B. Sears Upon His Retirement from the Court of Appeals, 284 NY v, vi.

22. In Memoriam: Proceedings in the Appellate Division of the Supreme Court in the Fourth Judicial Department Held at the Courthouse of the City of Rochester on the 9th Day of Nov. 1953 at 1:45 p.m., 282 AD vii, xv.

His portrait, which hangs on the south wall of the Court of Appeals courtroom, shows a vigorous, serene, and youthful 70-year-old jurist. Another portrait of Judge Sears hangs on the east wall in the Appellate Division, Fourth Department law library.

23. In Memoriam: Charles Brown Sears and Thomas Day Thacher, 303 NY vii, ix.

24. C.B. Sears Dies: Was a Judge of 2 State Courts, N.Y. Herald Tribune, Dec. 18, 1950.

25. Ex-Judge Sears Marries: Former Appeals Court Member Weds Mary V. Hun of Albany, N.Y. Times, Nov. 25, 1946. See also Red Book, 1930-33 Albany, J.B. Lyon Co., Publishers.

26. Obituary, Buffalo Courier Express, Dec. 19, 1950.

27. Burial records at Forest Lawn Cemetery, 1411 Delaware Avenue, Buffalo, N.Y. 14209.

28. Deaths, N.Y. Times, Jan. 18, 1966.

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A Biographical History

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