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Remarks
Clerks of Judge Luther A. Wilgarten, Jr.
The Cosmos Club
Washington, D.C.
November 9, 1989
7:30 p.m.

This evening I speak of one of the great giants of the American Judiciary, a man of towering intellect, a Judge whose contributions to the law continue to light the way to truth and justice, a man whose integrity and impartiality never have been questioned in any quarter, a judge's judge and a paragon of virtue. But enough about me. I'm here to talk about Luther A. Wilgarten, Jr.

In the firmament of the American Judiciary, there shines no brighter star than Luther A. Wilgarten, Jr. By his own example, he has been a source of guidance and inspiration to all of us who serve in the judicial systems of English speaking peoples throughout the world. Often compared to Justice Bushrod Washington, who also had an uncle named George, Luke Wilgarten long has been known as a judicial conservative and economic liberal -- or is it an economic conservative and a judicial liberal? In any event, it is with great humility, or as much humility as a judge of the Second Circuit Court of Appeals can muster, and that isn't much, that I attend this grand banquet in the company of those who have sat at the feet of Luke Wilgarten. If he would buy some chairs, there wouldn't be so many people sitting at his feet!

We celebrate tonight the publication of the Fourth Edition of Wilgarten on Bulk Sales. This, of course, is not the only treatise published by the learned jurist and, unfortunately, probably will not be his last. As is well known, the Judge is acclaimed not only for his lucid opinions but also for his many scholarly writings. These include the celebrated Article in the University of Prague Law Journal on Livery of Seizin and the well-known Comment in the Moscow University Law Review on the Writ of Ne Exeat. He is said to be collaborating with Judge Posner on a new law review article entitled: "An Economic Analysis of the Ten Commandments." The progeny spawned by his many seminal decisions are legion -- American as well as French Foreign. The work in progress and the one the world awaits with great anticipation, is, of course, Wilgarten on Penumbral Rights. I am told that Judge Bork is reading that manuscript with a view toward suggesting some changes in the text, having characterized it in its present form as an "intellectual famine."

It is my pleasure tonight to share with you some little known information on the early years of L.A. Wilgarten. I am going back several decades now -- to the days when Wilgarten first became a Municipal Court Judge. He was a strict constructionist then. Because the First Amendment starts with the words "Congress shall make no law," Wilgarten would recognize no law passed by Congress. He has mellowed somewhat since those days, but recently has vowed not to consult legislative history or to search for congressional intent in any case until Congress

provides a salary raise for federal judges. Reacting to the recent Powell Report, Wilgarten was heard to say: "I believe in the death penalty if it's not too severe." But I digress.

Early in his career, the good Judge was known to enjoy the juice of the grape in great measure. It was said that if there was a nip in the air, he would drink it. He was once heard to say that a woman drove him to drink and he never stopped to thank her. His advice to young lawyers included this admonition:

"Always carry a bottle of spirits in case of snake bite. Also, always carry a small snake." So great was his reputation in this regard that when he said to a prisoner: "Young man, you've been brought here for drinking," the prisoner replied: "Thank you your honor, when do we start?" Addressing the same prisoner, the Judge said: "You're drunk." The prisoner said: "That's the only correct judgment you have made all day." Wilgarten continued: "Haven't you been up before me?" The answer: "I don't know, your honor, what time do you get up?" Wilgarten: "I am sure you have appeared before me at least twenty-five times in the last three years. What do you have to say for yourself?" The prisoner answered: "I can't help it if you're not promoted."

In those early days, the great Wilgarten sometimes became discouraged with the course of his judicial career. He felt that he would never advance beyond the Municipal Court. He came home one night and started packing his clothes. His wife, our beloved Edna, said: "Where are you going, Luke?" He said: "I'm going to Mexico." She said: "What are you going to do in Mexico?" He

replied: "I understand that they pay a man \$100 a night for his services in Mexico." Thereupon, Edna started packing also. The Judge asked her what she was doing and she said: "I too am going to Mexico. I want to see how you can live on \$200 a month." Those were the days when the Wilgarten reputation was being made. His sagacity was becoming known far and wide. It was said in those times that he could examine any contract and tell at once whether it was oral or written. Well-known is the anecdote about the young couple who came to his chambers late on a Friday afternoon and asked him to perform a marriage ceremony. After he told the couple to come back on Monday, the young man said: "Could you say a few words to tide us over the weekend?" His early decisions were not quite up to the standards of his later ones. He was once reversed by an appellate court in a brief opinion as follows: "We reverse, substantially for the reasons stated in the opinion of the court below."

Many interesting exchanges occurred in the Municipal Court presided over by Luther A. Wilgarten. One man appeared before him and said: "Ever since I fell off a loading platform at the Ajax Company, I have been unable to have marital relations more than five times a week." Judge Wilgarten responded: "Tell me, where is that loading platform? I'd like to fall off it myself." In one criminal case, Wilgarten read the following charges to the defendant: "Robbery, burglary, murder and arson." He then said to the defendant: "What do you have to say for yourself?" "None of us is perfect, your honor," was the answer. When a 75-year-

old man said he could not survive the 25 year sentence imposed on him, Wilgarten said: "Do as much as you can." On one occasion, before passing sentence, he said to the defendant: "Do you have anything to offer the court before I pronounce sentence?" "No, your honor," was the reply. "My lawyer took my last cent."

On that note, I bring my remarks to a close. "The Early Years of Luther A. Wilgarten, Jr." still is very much a work in progress, and I shall be happy to share additional information with you as my research develops. There is one final story, however, that shows the measure of the man and his devoted commitment to individual rights. In an important criminal case the Judge advised the defendant, in the customary way, of the right to counsel. The defendant said: "I shall have no lawyer, for God will represent me." The Judge responded, "I think you should have someone locally."

It has been a great pleasure to be with you and to share with you my thoughts about a man who is truly a Legend.