

Memorial Address

By Henry Rottschafer

For

Wilbur Harkness Cherry

(November 28, 1887 – February 21, 1950)



**Hennepin County Bar Association
District Court
Fourth Judicial District
Minneapolis, Minnesota
1950**

I shall speak today of one who was not only a colleague but a friend of long standing.

Wilbur Harkness Cherry was born in Toledo, Ohio, on November 28, 1887, and died at Minneapolis on February 21, 1950. He received his Bachelor of Arts degree from McGill University in 1907. His preparation for the profession in which he devoted his life began in the fall of that year at the Law School of Columbia University from which he received his Bachelor of Laws degree in 1910. He was a member of the student editorial board for volume 9 and 10 of the Columbia Law Review, serving as Secretary for the Board in charge of publishing the latter of those volumes. He was permitted to take, and passed, the New York bar examination while still in his last year at Columbia.

The career of Wilbur Cherry after his graduation from Law School was marked by outstanding services not only to the profession of the law but to the public. He first practiced law with the firm of Esselstyn and Haughwout in New York City with which he was connected for two years. He then came to Minneapolis and engaged actively in practice from 1912 through 1925. In 1914, two years after coming to Minneapolis, he became an instructor of law at the Law School of the University of Minnesota on a part-time basis. In 1917 he was promoted to the rank of Professor of Law still on a part-time basis. In 1925 he left the active practice of law to accept appointment as Professor of Law on a full-time basis, a position that he held until his death.

The distinguished services rendered his chosen profession, both as a practicing lawyer and as a teacher, were the logical result of his intense interest in law in all of its aspects. He brought to bear upon the problem of law an extraordinarily keen mind, an unusual degree of wisdom, and the highest ideals. He was not content to be a mere observer of the passing scene. He realized fully that the attainment of objectives that he deemed worthwhile required hard work. His

extensive participation in the activities of the State and Local Bar Associations bear witness to his willingness to carry more than his fair share of the load. He believed firmly that it was a principal obligation of the State Bar Association to promote the public welfare by improving the law where experience had revealed defects. Among his conspicuous contributions to implementing this philosophy were his service as a member of the Committee that drafted the Minnesota Business Corporation act in 1933 and the Probate Code in 1935. He also accepted it as axiomatic that the State Bar Association should assume, as one of his public obligations, the raising of professional standards, and worked diligently to achieve that objective. He served on the Association's Board of Governors from 1926 to 1943, and in 1939 acted as a Minnesota member of the American Bar Association's House of Delegates. His interest and participation in the State Bar Association's activities continued until his death. I am confident that his devotion to the work of the Association expressed his philosophy that lawyers are inevitably public servants, and the public has a right to look to them and their associations' leadership in making law a more effective instrument for realizing justice.

I knew Wilbur Cherry best as a colleague on the Faculty of the Law School of the University of Minnesota. His connection with the School extended over a period of 36 years, during which he has taught a majority of the lawyers now practicing within the State. He developed a course in Practice that was unique among the Law Schools. It was widely known and acclaimed by law teachers, and gained for Professor Cherry a national reputation. Though tendered offers from other Law Schools at salaries beyond those Minnesota could have met, he declined them all. He believed that the function of a teacher was to guide the student in his learning process, and was a finished artist in the give and take of classroom discussion. The students not only respected him, but became his friends and remained such after their graduation. His contacts with them were not limited to those immediately involved in the teacher-student

relationship. Many a student sought his advice on personal matters, and he gave generously of his time. He gave financial assistance to many a needy student, but only his very close friends were aware of this generosity. He aimed in his teaching not only to impart knowledge of the legal rules that comprised the subject-matter of his courses, but also to inculcate the students with a sense of the obligations that would be theirs as members of the legal profession. The record of his students is convincing proof of his success.

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Professor Cherry played an important part in shaping the policies of the Law School. He applied to their consideration a breadth of vision and a wealth of sound judgment. The administrative officers of the Law School consulted with him whenever faced with a difficult problem of administration or policy. He held many positions

of responsibility and administration of loan and scholarship funds and served for years as Treasurer of the Minnesota Law Review Foundation. His influence was not only confined to the Law School. The University administration frequently availed itself of his great abilities and sound judgment by the giving him posts of great responsibility. His colleagues on the Law Faculty shall ever cherish the memory of the cordial and happy relationship that existed between him and them, not only as members of the Faculty but in the wider range of friendship that transcended official relations.



A. J. Carlson, left, teacher at the University of Chicago and President of the American Association of University Professors, confers on the University of Minnesota campus with W. H. Cherry, local chapter President and teacher at Minnesota's Law School since 1917.

**Source: Minneapolis Morning Tribune January 29, 1947.
Minneapolis Newspaper Photograph Collection,
Hennepin County Library.**

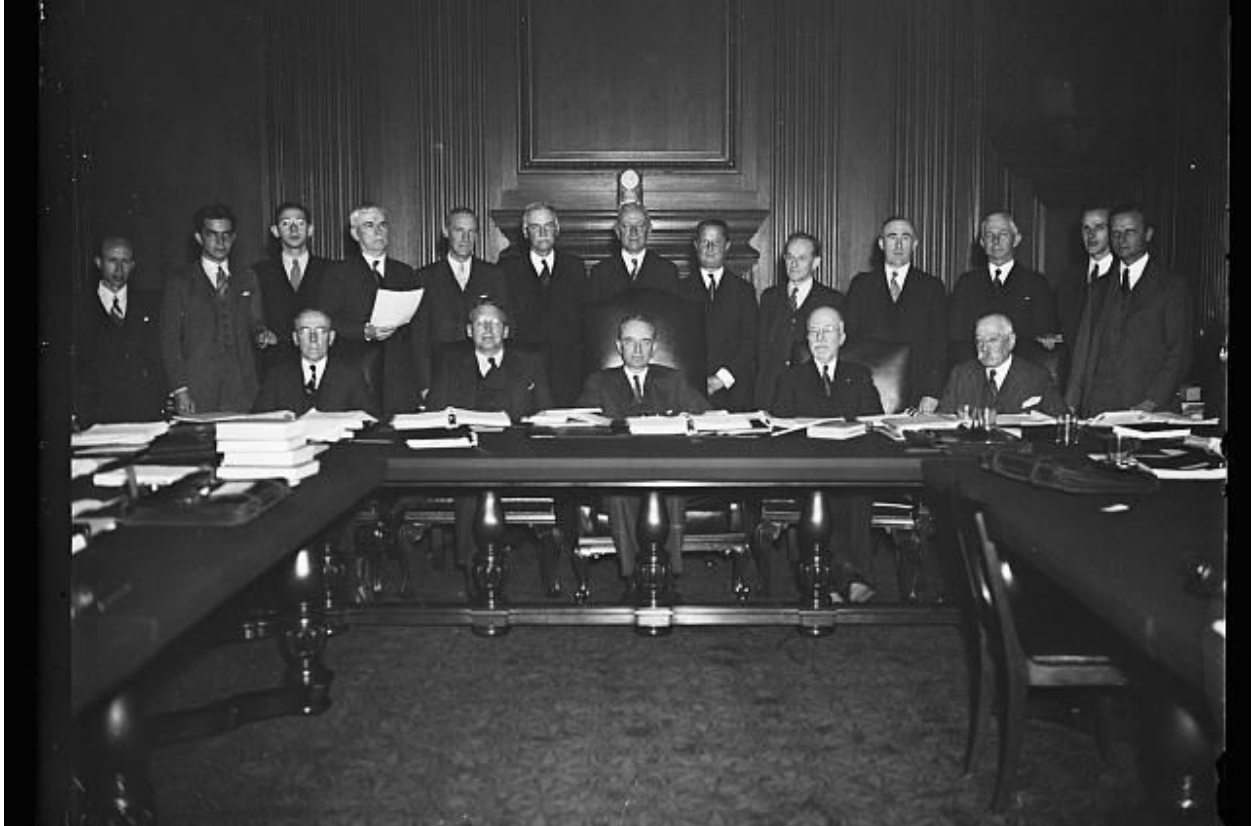
The same factors that won their confidence, respect and love, gave him a position of great influence within the entire University faculty, and made him a leader in protecting and advancing their legitimate interests. Those were causes close to his heart, and he gave without stint in their support.

His eminence in the field of legal education received due recognition when he was chosen as President of the Association of American Law Schools for 1939, after a period of service on its Executive Committee.

It had always been one of Professor Cherry's cherished belief that the lawyer should use his knowledge and skill to promote the public interest. He practiced this philosophy by accepting numerous and important assignments to public service. He served as secretary of the Minnesota Crime Commission in 1926 and 1927; as an advisor to the American Law Institute Committee in charge of drafting a Code of Evidence from 1939 to 1942; as a member of the United States Supreme Court Advisory Committee on Rules of Civil Procedure from 1935 until his death; and as president of the Minnesota Minneapolis Legal Aid Society from 1947 until that time.

But his public services were not confined to areas immediately concerned with his profession. Rejected for military service in World War I, he served his country by active participation in numerous civilian activities promoting the victory of the ideals of freedom for which he had offered his life. During World War II he served as Compliance Commissioner for the War Production Board from 1942 to 1945, and did so without accepting any financial compensation.

This imposing record of public service was the natural expression of the philosophy he believed and lived, that no man liveth unto himself alone.



First exclusive picture in new Supreme Court building. Members of the United States Supreme Court Advisory Committee on rules of Civil Procedure which is working out a uniform set of rules to be used in district courts. From the left, seated: Edison R. Sunderland, U. of Mich.; Chas. E. Clark. Yale; Wm. D. Mitchell, former attorney general; Edgar B. Colman, Spl. Ass't Att. Gen/; George W. Wickersham, former Attorney Gen. (Standing), L to R: James Moore, clerk; Ferdinand Stone. Edward C. Jaegerman, both clerks; Geo. Donworth, Seattle; A.M. Dobie, Virginia Law School; Warren Olney, Jr., San Francisco; Robt. G. Dodge, Boston; Monte N. Lee Lemman, New Orleans; Edmund M. Morgen, Harvard; Wilbur H. Cherry, Minn.; S.M. Loftin, former Bar Assn. President.

Date of photograph: November 1935.

Source: Harris & Ewing Collection, Library of Congress

But a man is more than a member of a profession, or even a citizen. He is ultimately an individual facing problems, constructing a philosophy of life, and weaving for himself a pattern of experience. Wilbur Cherry possessed an unusual capacity for deep and abiding friendships. The scope of his intellectual and cultural interests enriched not only his own life but that of all who came in contact with him. A keen and elegant sense of humor added zest to his

companionship, and gave his scale of value a classic balance. He put first things first. He eschewed the shallow optimism that ignores difficulties and constructs Utopias, but believed that progress was possible only through intelligently directed effort. Though conscious of its limitations he believed that the law could, and should, be used as an instrument of progress. His long and distinguished career at the bar and as a teacher were an expression of that fundamental philosophy, which is part of the broader and more general philosophy of life that he espoused. In his passing, the bar has lost one of his finest representatives; the teaching profession one of its greatest exponents; the public one of its most valued our devoted servants; his colleagues and host of friends a loyal friend; and the world one who gladly bore his share of the tasks required to better the lot of humanity.

Henry Rottschaefer

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APPENDIX

Profile from Marion Daniel Shutter, editor, 2 *History of Minneapolis, Gateway to the Northwest* 179-180 (1923).

WILBUR H. CHERRY.

One of the prominent attorneys of Minneapolis is Wilbur H. Cherry, a member of the well-known legal firm of Fish-Carleton-Cherry & Carleton. He was born in Toledo, Ohio, in 1887, a son of William and Katherine (Lender-son) Cherry, the former a native of Canada and the latter of Ohio. The father is a prominent physician of Toledo. To the union of Dr. and Mrs. Cherry three sons and two daughters have been born, Wilbur H., whose name introduces this review, being the second child. In the

acquirement of his academic education Wilbur H. Cherry attended the public and private schools of Toledo and subsequently enrolled in the McGill University of Montreal, Canada, from which institution he was graduated in 1907, with the B. A. degree. He then took up the study of law in Columbia University, receiving the LL. B. degree from that institution in 1910. He immediately began practice in New York city and remained there until 1911, when he came to Minneapolis. After admittance to the Minnesota bar he practiced independently until 1920, when he became associated with the firm of Carleton & Carleton. He was in active practice under the name of Carleton-Cherry & Carleton until 1921, when the firm name was changed to Fish-Carleton-Cherry & Carleton. They enjoy an extensive and lucrative clientele and handle much important litigation before the courts. Aside from his private practice Mr. Cherry has been a professor in law at the University of Minnesota since 1917.

In politics Mr. Cherry has always maintained an independent course, giving his support to the man he thinks best fitted for office without being controlled by party lines. Along strictly professional lines he holds membership in the American, State, County and City Bar associations. He was one of the incorporators of the Hennepin County Bar Association and for some time has been chairman of the committee on jurisprudence and law reform of the State Bar Association. Mr. Cherry is unmarried. Socially he is identified with the Minneapolis Athletic Club and as a public-spirited citizen holds membership in every organization that has for its purpose the upbuilding of the city, county and state.

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Dean Everett Fraser's tribute to Cherry, published in 36 *Minnesota Law Review* 557-561 (1952):

<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=2288&context=mlr>

A version of Professor Rottschaefers' memorial was published in 36 *Minnesota Law Review* 562-564 (1952):

<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=2480&context=mlr>

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Credits

The photograph on the first page was taken on September 29, 1939.
It is from the Minneapolis Newspaper Photograph Collection,
Hennepin County Library.

The photographs on pages 5 and 7 have been added by the MLHP.

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