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Stormy Weather

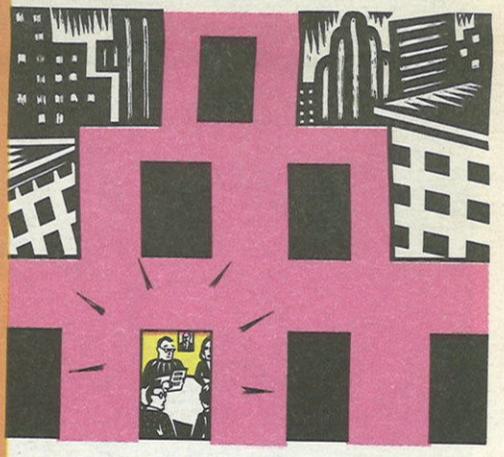
Even as William Mitchell College of Law celebrates the opening of its new \$7.5 million library, charges of chronic institutional insensitivity to race and gender continue to dog the school.

By David Carr/14



1990's Top Personal Injury Verdicts

Our annual survey of Minnesota's major personal injury suits/19



Rent-A-Robe

Increasing numbers of judges are coming out of retirement to resolve disputes in the private sector/24



Gumshoe CPAs

Forensic accountants are helping lawyers crack the tough cases/26

There are two William Mitchell Colleges of Law.

There is the 90-year-old law school with a unique history as a point-of-entry for people who would never have seen the inside of a law book but for William Mitchell's flexible approach to the business of creating a lawyer. This William Mitchell features a brand new \$7.5 million library, an ever-growing endowment and graduates who generally make damn fine practicing attorneys.

The other William Mitchell is a shade less edifying. This one is university as academic battlefield, a place of factionalism, suspicion and yes, racism. It's an institution that has fired its only tenured black faculty member, lost a substantial person of color from its board, lost a dean to sexual harassment charges, is being boycotted by the state's largest minority lawyer organization and was on the receiving end of a probable cause ruling of retaliation from the state Department of Human Rights.

The two William Mitchells converged last Sept. 16 when former Chief Justice Warren Burger, along with Supreme Court Justice Sandra Day O'Connor, came to christen the new library.

While 1,700 people milled under a tent and chatted about Mitchell's march toward genuine legitimacy in legal education, a clump of demonstrators out front carried signs suggesting that the fresh bricks and mortar failed to hide the fact that Mitchell was an institution incapable of righting itself. The protesters, including some faculty, stood on the sidewalk instead of under the tent because they are convinced that Mitchell is a place where charges of insensitivity and discrimination evoke only knee-jerk defensiveness and recrimination.

In a phone interview last week, Dean James Hogg says the protesters failed to spoil the party.

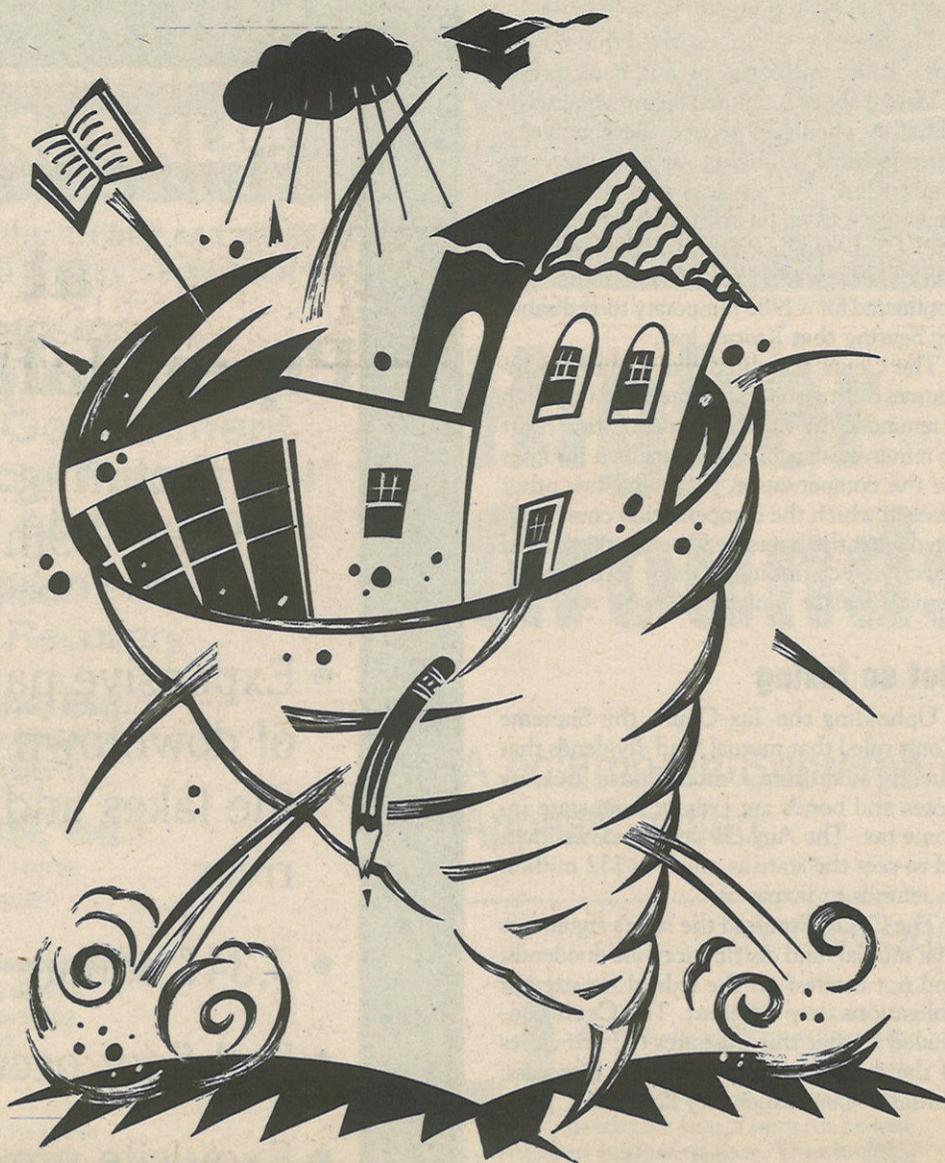
"The protest passed virtually unnoticed, at least by me," he says. "They exercised their right to do what they did and that is as it should be. It did not detract in any way from the celebration."

The question remains whether everyone truly belongs — in the fullest sense of the word — under the tent of William Mitchell College of Law. Approximately 50 students of color attend a school with the equivalent of about 780 full-time students. True enough, minority recruitment continues apace, above-average numbers of tenured women faculty report for work every day, and the college has just appointed a second and third person of color to sit on its board.

But the news that one of the new minority board members was from far-off Cleveland sparked curiosity and some suspicion on the part of critics of Mitchell. What was so special about Owen Heggs, a former law school professor at Case Western Reserve University and currently a partner at the second largest law firm in the country, Jones, Day, Reavis & Pogue of Cleveland?

Something in the form of a reply came in a memo authored by Dean Hogg — a document which was either spirited out of an office or retrieved from a waste basket, depending on whom you talk to. The memo, which describes a visit by Hogg and faculty member Rolf Engh with Heggs in Cleveland, included the rather startling assertion that Heggs "believes in Jones, Day's firm's philosophy of no quotas, no affirmative action — admission by proven qualifications."

Confronted with the memo, Hogg said it was a working document that was neither finished nor reflective of his personal com-



The Trouble With William Mitchell

Even as the 90-year-old college of law christens its beautiful new library, charges of chronic institutional insensitivity to race and gender continue to dog the school.

BY DAVID CARR

mitment to affirmative action, a record which he said speaks for itself.

Hogg's opponents at Mitchell were outraged. Chris Jones, an African American instructor who has decided this year will be her last at Mitchell, teamed up with the head of Student Bar Association (SBA) in a response to the memo and Hogg's subsequent explanation. Ticking off the allegations of racial discrimination, retaliation and the adverse probable cause ruling from the Department of Human Rights, they observed that "This

is indeed a 'record that speaks for itself.'"

Asked about the memo in a phone interview, the normally expansive Hogg is uncharacteristically terse: "It was simply erroneous. The memo was in error and not correct."

Tom Kayser, a board member and managing partner of Robins, Kaplan, Miller & Ciresi, offers no explanation for the memo other than a shake of the head, followed by the assertion that "Dean Hogg has a stated and personal commitment to diversity. He

believes that part of that process of achieving excellence is to encourage diversity."

Sandy Glass-Sirany, a former SBA president, believes the board has made a conscious decision to ignore evidence of the dean's lack of sensitivity and commitment.

"The board and Jim Hogg keep saying they don't understand why we are so upset," she says. "Whenever we bring up evidence that William Mitchell is a hostile environment for people of color, they say 'We don't understand.' That is just another form of denial. In spite of all the programs they have sponsored on race discrimination and sexual harassment, they are still in a state of denial."

Josie Johnson, a senior fellow from the University of Minnesota's College of Education and a trustee at Mitchell for a year, resigned May 30. She had been the board's only black member for a year. In her resignation letter to board chair Tom Libera she said that she was quitting because the environment at the school did not "support and encourage diversity nor civility and is presently unable to prepare our students to defend our freedom of speech."

Micheal Dees, president of William Mitchell's Black Law Students Association (BLSA), says the college's response to charges of racism has been both impractical and ultimately ineffective.

"All they ever say is that there is a problem of perception," he says. "While I think the problems here go a lot deeper than perception, I was always taught that if there is a perception of a problem, then it is worth investigating. Quite frankly, I haven't seen that happening in our discussions with the school. Every time we get together, the administration reels off this list of numbers of minority students. We have told them in no uncertain terms that they can bring all of the minority numbers they want and if the atmosphere doesn't change, nothing has been accomplished."

Dees says that William Mitchell has a learning disability when it comes to issues of diversity.

"This is a good institution that is in need of correction. The first thing they need to do is get information out there that is based on the truth. Right now, there are far too many people who are walking around here clueless."

There's nothing unique about the roots of the debate over race and gender at William Mitchell. Evidence supporting allegations of racism at the school is hardly any more obvious than in any other part of the Twin Cities community.

What has made William Mitchell stand out and generate headlines is the college's inability to put together a constructive, coherent response to institutional insensitivity. The college has made efforts, some no doubt sincere, but every time it seems about to extract itself from the mire, the administration sticks its foot in it again.

Perhaps because it is a place that's run by lawyers, William Mitchell has tried to litigate its way out of challenges from the community of women and minorities at the school. In the past three years, the college has spent over \$300,000 fighting charges from its own faculty that the administration is racially-biased and bent on retribution against all those who don't toe the line.

Andrew Haines is a professor of law and an African American. His unorthodox teaching style and non-establishment views were a feature of Mitchell for some 16 years. He was the sixth in seniority of 26 professors, but he

was the second-lowest paid. Haines concluded that his salary was an economic expression of racism and commenced a series of lawsuits in an effort to achieve parity.

Last May 25 the college lost a motion for summary judgment against Haines. The following day Dean Hogg fired him, citing — among other sins — Haines' history of "unfounded litigation against the school."

His termination without a hearing was without precedent at Mitchell. A detenure hearing was later arranged before a committee composed of several people who had been sued by Haines in the past. Haines, arguing that he didn't have much of a shot at justice by pleading his case to people with a history of demonstrated antagonism toward him, declined to attend the detenure hearing. The firing was upheld by a unanimous vote in his absence.

More than a year earlier, faculty member Mary Dean had suggested in a number of faculty meetings that the Haines litigation should be settled for the good of the school and Haines. Dean had also requested informal, confidential mediation to resolve problems she was having with a colleague's behavior toward her. A few months later, in a routine retention hearing, the tenure committee voted 10-6 to retain her. Hogg ignored the recommendation and told the board that she should not be retained.

In the 10 years since the adoption of William Mitchell's Tenure Code, there had never been an instance of the dean ignoring a majority vote by the tenure committee, but Hogg refused to budge even after the faculty voted 15-4 to send the issue of Mary Dean's retention back to the committee.

Mary Dean considered her rejection a clear-cut case of retaliation, so she filed a grievance with the Minnesota Department of Human Rights. The department found probable cause to believe there had been a reprisal, and has since decided to refer the matter to the state attorney general. As matters stand now, the college is reportedly trying to negotiate a settlement, but sources close to the case say the matter will likely be sued to a conclusion — no doubt accompanied by the negative headlines that have dogged the school for most of the past decade.

"I am a single mother, and I moved across the country here on the assurance that William Mitchell would help me develop as a teacher," Dean says in an interview. "I stayed in reliance on Dean Hogg's promise to never take any action against me contrary to tenure committee recommendation."

"It turned out to be — as the lawyers say — a detrimental reliance and contrary to the history of the school," she says. "I was given no severance. The meanness with which they treated me is simply not explained by their reasoning that I was not a good fit at the school," she suggests, adding that "any severance was conditioned on my foregoing the full sexual harassment procedure of William Mitchell."

Dean recalls that after she returned from a conference at the end of the school year in 1989, she became a non-person at William Mitchell.

"They had wanted me out by the end of May, and when I wasn't out, they changed the locks on my door and cut off the phone. I was escorted up to my office and they unlocked the door so I could get my things and be escorted back out the door."

Dean's summary dismissal and expulsion from the academic community of William Mitchell, in spite of consistently positive work reviews, sent a clear message to those that remained. Then dissent began to erupt outside the school. After Haines was fired,

the Minnesota Minority Lawyers Association (MMLA) undertook their own investigation of the matter and concluded that his termination lacked even the rudiments of due process. MMLA also pointed out that there was an obvious causal relationship between Dean's support for Haines and her firing.

The MMLA announced a boycott of the school, recommending that people of color, whether they be potential students, faculty or staff, should not attend the institution because it was a hostile environment for minorities.

"We decided that William Mitchell was not listening to us, that they were not taking us seriously," says Jarvis Jones of the MMLA. "We decided that it was such an egregious situation that we had no alternative but to go public and let the public decide what they thought of Mitchell's handling of Haines and other related affairs. We think they must have received a fair amount of public pressure because a week-and-a-half after the announcement, he was reinstated."

Under a subsequent out-of-court settlement, Haines was placed on two-year leave with undisclosed financial compensation. He is currently a visiting professor at Texas Southern University's Thurgood Marshall School of Law.

The settlement includes an agreement that the two parties won't speak ill of each other, but Haines says he's entitled to speak about his time at Mitchell in a general way.

In a phone conversation last week, Haines suggested that Mitchell is in the hands of people with business backgrounds who have no concept of academic freedom or cultural diversity.

"There is an abuse of power that hides behind the bureaucratic notion that they are running a hamburger stand over there," Haines says. "They have the attitude that the small business they are running just happens to produce legal education."

Indeed, questioned in a deposition about Haines' alleged insubordination, Hogg compared the law school to a restaurant again and again. Professor Doug Heidenreich, a former dean and current professor at William Mitchell, believes that the college's close ties with the business and legal community are not all to the good.

"Hogg is a person who has a corporate mentality, one that suggests that management is always right and anybody who differs with them is being insubordinate. When Dean Hogg was asked why he wanted to run a school, his answer in part was that 'he had always wanted to run a small business.' His metaphors and similes are those of a corporate person."

"With business people, there is a tendency to equate management with the institution and from that flows the belief that what is good for management is good for the institution."

Heidenreich is one of the leaders of a dissident group of tenured professors who will tell you repeatedly that the problem with William Mitchell is Dean Hogg. But Hogg isn't going anywhere. On April 12 of this year the board of trustees unanimously authorized the executive committee to negotiate the retention of James Hogg, and he signed a five-year contract.

During the board's deliberations on whether to retain Hogg, the dialogue took a decidedly personal turn. In a memo to the board arguing against his retention, Heidenreich got right to the point:

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"Jim Hogg is a singularly unqualified candidate for the deanship. He is (a) not very smart; (b) intellectually dishonest; (3) [sic] arrogant. Any of these qualities would make him a poor candidate for the deanship. . . the blending of the three has given us the expected result; the devastating, embarrassing reign of a person whose leadership style is best compared to that of a banana republic dictator."

Neil Hamilton is a staunch supporter of the dean's leadership style, and he thinks the dialogue about Hogg has been corrosive. He attributes a lot of the mud slinging to the legal battles that have swirled at Mitchell.

"I have been struck by how the normal truth-seeking mode in academic life is open engagement, but the normal mode in a litigation setting is extreme caution, and fear of twisting of every ambiguity. . . the creation of innuendo and the use of the half-truth. We find ourselves in the very difficult dilemma as to which mode we should be in," Hamilton says.

But it would be tough to argue that the school has been blown into court by forces beyond its control. William Mitchell fought a pitched legal battle with Haines for years, only to end up settling under pressure of a boycott. And now the college, under Hogg's leadership, seems more than willing to litigate the Dean matter.

Sandy Glass-Sirany suggests that the college's take-'em-to-court strategy is a dynamic of confrontation that began a long time ago.

"There is a level of denial that goes back to the Dean [Geoffrey] Peters' era. The sexual harassment that was part of that time at the college was brought up during a meeting with Dean Hogg and he said that the matter had never been adjudicated," she says, pointing out that the Supreme Court publicly reprimanded Dean Peters for using his position as dean to exert physical control over women. They found, among other things, that "Peters pulled some of the woman against his body, held one against a file cabinet and placed his hands on another 'high up on her rib cage underneath her breasts and squeezed her ribs.'"

There is a tendency toward historical revision of the Peters era that's codified in a recent law review article entitled "Up from the Ashes" by Professor Robert Oliphant. "The sexual harassment charges had made it impossible for Peters to continue as dean and had created terrible pressures on his family," Oliphant writes. In his footnotes he suggests that Peters' behavior is mitigated by the Supreme Court's finding that he was "a tactile dean."

That's an understatement, according to the women whom Peters is said to have victimized. And Oliphant's concern for Peters' family, rather than the victims of harassment, indicates the kind of loyalty that has led the institution into a series of PR disasters.

"I have this feeling that the organization will never be healthy until there is a recognition that they have hurt people and they are willing to rectify the situation with the individuals they have hurt," says Glass-Sirany, who has since gone to work as a clerk for Hennepin County District Court Judge Harold Crump.

Just last week, Oliphant escorted Peters on a tour of the new library, where Patricia Dolan works. Dolan is one of the women who was allegedly sexually harassed by Peters. While Oliphant is certainly within his rights to show his former boss around the new facility, many took it as another indication that some of the faculty still believe that it was Peters who was the victim. And it should

be noted that Peters was never fired, in spite of the public reprimand from the Supreme Court. Instead, he was given a severance package along with the good wishes of the board.

"I think that this institution, in the form of the board of trustees, hasn't learned very much from the Peters era," observes Heidenreich.

Jarvis Jones of the MMLA suggests that the band-aids slapped over gaping problems in the past continue to pop off, revealing un-addressed issues.

"They claim to have done things about various situations, and I will grant that they have made efforts," he says. "But the biggest problem is historically, they have wanted to fix things in a hurry and then move on. There is no underlying commitment to change. There has been progress, but we are not willing to get into a half-full or half-empty argument. With the resignation of the only black board member and the only black professor, there is clearly a lot of work that needs to be done."

Chris Jones, the only black professor still at the college, will leave at the end of the year. She is a young, talented lawyer with an impressive resume, someone who will be difficult to replace, given the stiff competition for minority faculty and Mitchell's growing national reputation as a school where minority teachers don't prosper.

"I would describe the overall environment here as . . . troubled, in a word," she says in a phone interview. "I find it very difficult to concentrate on academics because the atmosphere of contention permeates."

"From the start, I tried to plug my nose and remain uninvolved, but I wasn't permitted to do that," she recalls. "Still, I didn't really have a personal stake because I was so new and all we were saying at the time was that it was in the interest of the college to settle the Haines case. I was a little surprised by the force of the response."

Jones' background as a lawyer working during the highly controversial tenure of federal civil rights chief Clarence Pendleton meant "I was not unfamiliar with a highly political environment, an environment that was marked by major conflicts, but this place [William Mitchell] made that seem like Candyland. This is an incredibly difficult place to work because your integrity gets put on the line right away."

"I guess I decided that the future didn't look too bright here. The dean may be staying, but I'm headed to Chicago to practice law with my sister."

Members of the board, the administration and the faculty acknowledge that William Mitchell has problems in the area of race and gender which parallel society's, but that the durability of the controversy is a testament to the willfulness of a tiny group of dissenters.

Robert Oliphant suggests that "there is a small group of extremists within the college who use racism or sexism or any other -ism to achieve their political aims or objectives.

"They continue their efforts to replace Hogg in spite of the fact that he has the full confidence of the board," he says, "and they continue to foster within the college the idea that it is a terrible environment and that it is doing nothing of substance to address the problems. That's just not true."

Oliphant says the dissidents fail to acknowledge the college's substantive efforts to make Mitchell a place where diversity can flourish. Among other things, he points to the college's 90-year history as a point of en-

try for immigrants and minorities, the fact that within the last year, eight people of color have been offered positions on the board with two deciding to serve.

And in the area of gender sensitivity, he adds, the college tenures women at a higher rate than the national average. And William Mitchell continues to be popular with females, who make up over half of the student body.

"The issues of race and sex in our community are real, but in the context of William Mitchell, those issues are being used to accomplish other objectives," Oliphant says.

Oliphant goes on to imply that opposition to the administration at William Mitchell is composed of faculty members who are basically lazy.

"The major conflict within the school centers on productivity," he says. "Productivity in the scholarly area and race and sex have become tools in this on-going conflict. These are extraordinarily good jobs and they are fighting a political fight to keep them. This is not a battle on its merits."

Nor is it a very civil one. A wag once suggested that academic politics are so bloody because the stakes are so low. The crossfire of memos between warring members of the faculty offers written support of that theory.

In one instance, Professor Jennifer Brooks responded to a particularly blazing memo from Peter Erlinder by framing a copy of the memo and sending it to him because it "is an unusually fine example of the fact-free diatribe that has become your special area of expertise."

Neil Hamilton, who is committed to Hogg's leadership, has been writing and lobbying strenuously within the college community for a more civil exchange of views.

"The lack of civility is of great concern to me," he says. "We have two obligations. We should be modeling behavior for our students and secondly, it is the duty of academic freedom to be temperate and civil."

Chris Jones suggests that civility among colleagues should be expressed in more than words.

"For my money, when the other side starts talking about civility and how the memos should be more polite, I tend to recall that what happened to Andrew Haines was pretty rude... what happened to Mary Dean was pretty rude."

Heidenreich is not prepared to turn the volume down. "I'm not very enthusiastic about the use of the term 'civility' in this context," he says. "The emotionalism that people have displayed is related to the moral outrage at what other people are doing or have done. The way that the law school dealt with the Haines matter and the Mary Dean matter has given rise to feelings that the other side is bad and that they have values that are incompatible with common decency. That is where the emotion comes in," he says.

The memo traffic of the past two years among the faculty and administration does stray from the topic of personalities long enough to argue about information — who has it, how they got it, and what should be done about it. In one instance, a professor's ode to the students of Tiananmen Square for railing against monolithic leadership was parodied and slipped under the doors of faculty anonymously. A member of the administration promptly used a pass key to enter various academic offices and scoop up the offending exercise in free speech.

There is also an inordinate amount of writing about what should and should not be published in the school newspaper *The Docket*. After attending a faculty meeting as a member of the SBA, Glass-Sirany

published comprehensive notes of the meeting. Faculty member Chris Ver Ploeg cried foul, saying she "will not feel free to share my honest feelings if I know those thoughts will be publicly disseminated."

The litigious nature of the dialogue between administration and faculty who oppose it has created an environment where getting issues onto the table is a task in itself, according to MMLA member Jerry Blackwell.

"I think that generally speaking, our meetings with the board and the dean have been defensive and ultimately very guarded affairs," he says. "In the early meetings, we were greeted by the dean and the law school's counsel from Briggs & Morgan, which indicated to us that the law school wouldn't be interested in an open and free-flowing discussion. It was more damage control than dialogue."

Dean Hogg doesn't see it that way.

"We are working closely with the MMLA, and I have been meeting with a number of people from the Black Student Law Association and I think we are making progress," he says. "I believe that the college has a program and a plan that is sound and we want to pursue it."

Part of the process currently includes the Transition Committee, a group set up to implement suggestions from the MMLA report in the wake of Haines' firing. Although minority recruitment has been continuing apace, the boycott creates some significant PR problems at a time when the law school's accreditation is being reviewed by the American Bar Association.

Hogg said that in spite of the administration's detractors, and the ongoing MMLA boycott, accreditation will not be a problem.

But Mike Dees of BLSA suggests that the endorsement of national governing bodies can't erase the effect of all the hostility, both expressed and unexpressed, which characterizes life at William Mitchell.

"Honestly, you have very good teachers here and there is the possibility of getting a good legal education, but we aren't really getting what we deserve because the faculty is spending half their time arguing amongst themselves. I went to a faculty meeting and these people were ready to fight, I mean physically fight."

From Dees' perspective, the dean's approach to conflict has naturally encouraged the development of factions on the faculty.

"He is a nice enough person and I actually think that we could work with him, but he has to quit taking things so personally. He is so defensive that he has trouble listening to what we have to say," Dees says.

Whether Hogg is at the core of the problem or not, at least one of his most enduring antagonists has come to realize that Hogg is firmly entrenched in the dean's office.

"He is obviously operating the college well within the comfort zone of the board," Andrew Haines says. "If he responds to criticism by intimidating the source, then it is my interpretation that he is doing exactly what the board has hired him to do."

Blackwell was not left feeling very hopeful in the wake of a meeting with the dean: "I think that as long as he persists in his pattern of intransigence, change will be only marginal and will come at the expense of great strife."

Trustee Tom Kayser says that the administration doesn't have a monopoly on communication problems.

"There has to be open communication and right now, I think that people are talking past each other," he says. "It too often happens that people are not really listening to what is being said. The debate needs to rise above personalities and come to a common ground on issues."

Among local law firms, there continues to be a market for William Mitchell graduates. Its strong ties to the community and practical approach to the business of lawyering means, in the words of former Minnesota Supreme Court Chief Justice Doug Amdahl, that "Mitchell graduates know their way to the courthouse and know what to do once they get there."

Oliphant is convinced that "the students' and alumni pride will eventually carry the day. They are getting tired of people trying to tear the institution down. I think that sort of pride and belief in the college will put some parameters on the dissident voice."

Professor Ken Kirwin is part of the chorus of criticism. He refuses to accept the notion that because he has voiced opposition to the current administration, he doesn't care about the future of the school.

"Certainly, we support the school for what it has been, what it can be and what it should be. From the administration's perspective, their way has been the only way to go, and I don't think they have any idea of what it looks like from the outside."

Moving?

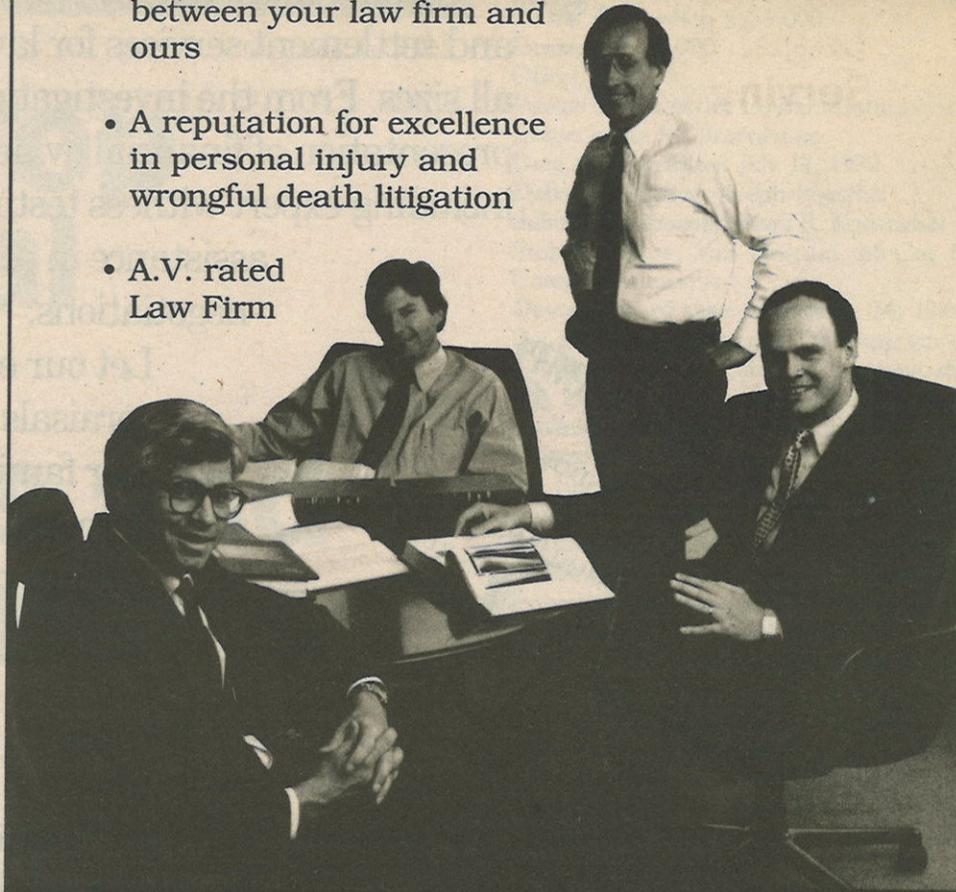
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