

# The Rebuilding of Duke University's School of Law, 1925-1947

## Part II

BY ROBERT F. DURDEN\*

Some faculty members at Duke in the early 1930s believed that Justin Miller aspired to become the president of Duke University. That may or may not have been true. Some people—students and a few anonymous journalists—expressed the opinion, publicly in the case of the latter group, that he should be president and would make a first-rate successor to William Preston Few. What the truth was about Miller's own purposes and motives remains murky and may never be known. The clear fact was, however, that he played a central and somewhat mysterious role in a complex academic drama that culminated in 1934 but began several years earlier.

Miller's administrative style became clear as soon as he arrived at Duke in the summer of 1930. Energetic and ambitious, as much for the Duke law school as for himself, he was articulate, extremely well organized, and highly efficient. Letters to him received prompt, careful replies, and in them he often displayed considerable tact and diplomacy. He had a knack for combining candor, and sometimes stern advice to young would-be law professors, with a winning graciousness.<sup>1</sup>

That he immediately began bombarding Few and Robert L. Flowers, the other two members of the administrative committee for the law school, with all sorts of memorandums was hardly surprising, for there was much to be done for a rapidly expanding school in a new building on a new campus. Strong pleas for quick expansion of the law library from Miller and William R. Roalfe, the law librarian, met with consistent approval from Few and Flowers. Significant support for library-building and an understanding of the library's centrality in the academic enterprise had been hallmarks of Trinity College under both Presidents John C. Kilgo and Few, and those policies were carried over and even expanded in Duke University. In addition to the regular annual appropriations of \$25,000 for the law library,

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<sup>1</sup>See, for example, Justin Miller to T. A. Adams, September 24, 26, 1930, Records of the Duke University Law School, Files of Dean Justin Miller, 1930-1934, Duke University Archives, Duke University Library, Durham, hereinafter cited as Miller Papers.

Miller requested and got a special appropriation of \$5,000 for purchases in Europe. When Miller asked a friend from Stanford's law school who was then in Europe partly on a book-buying mission to purchase books for Duke also, the friend quickly agreed to help and added: "You make me gasp with envy. The nonchalant way in which you say you took up the matter [with Duke's administration] and got a special appropriation of \$5,000.00 makes me feel positively poverty stricken."<sup>2</sup>

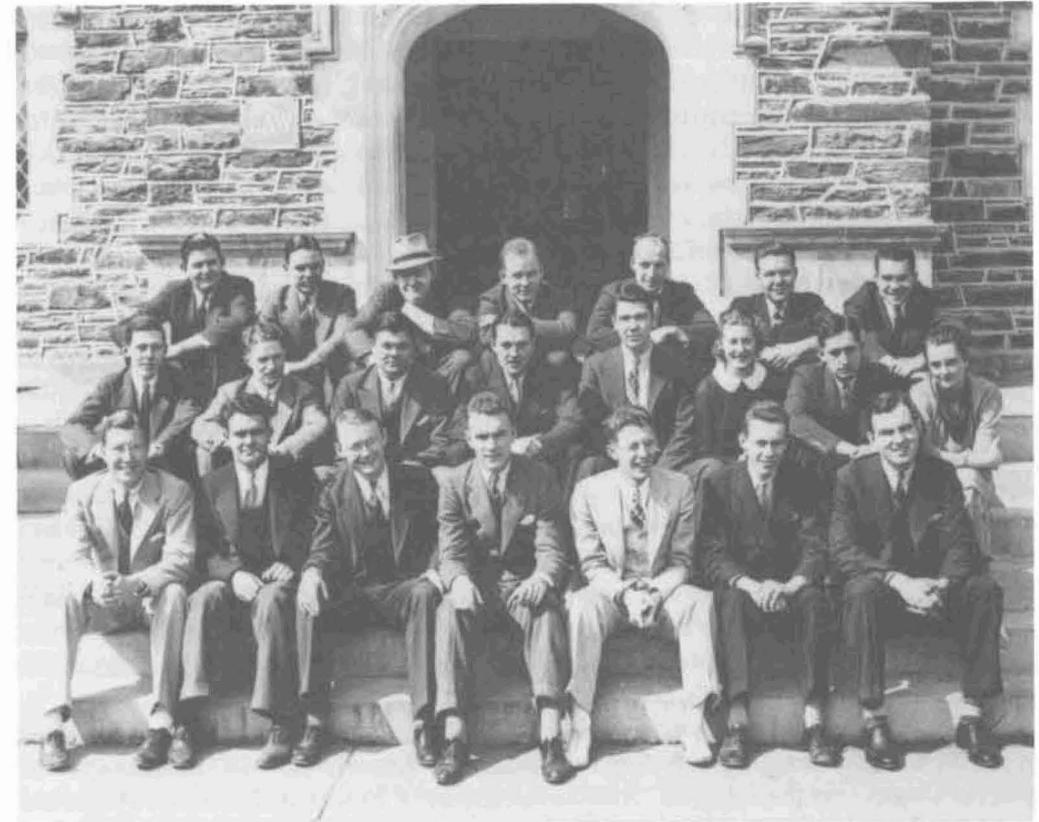
Getting what he wanted for the library as well as in the way of appointments to the faculty, Miller launched a battle in May, 1931, about one of academia's favorite bones of contention—space. Both faculty offices and classrooms were in short supply on Duke's two campuses in the 1930s, and especially was this true on the west or Gothic campus. Since the student body of the law school was still quite small and Miller and his colleagues talked a lot about the relationships between law and such social sciences as economics and politics, Few obviously thought that there were advantages in having Duke's Department of Economics and Political Science (then still combined in one department) share some of the excess space in the law school building. Miller thought otherwise. He explained that it was "not the practice in the better law schools to use the building for any other purpose than that of the Law School itself." Any attempt to secure cooperation between professors of law and those in the other social sciences by forcing them into contact with each other, Miller argued, was doomed to failure. The "result of such forcing is to create friction and irritation which makes it impossible for the law department or for any of the other departments properly to carry on the work which they are supposed to do."<sup>3</sup> The chairman of the Department of Economics and Political Science, W. H. Glasson, who was also the dean of the Graduate School of Arts and Sciences, noted that his large department had approximately fifty-four classes that met in the law school building, with a total registration of about 1,600 students. Moreover, twelve of the sixteen faculty members in the department had offices there (though three and sometimes four professors had to share an office).<sup>4</sup>

Miller won his battle for the exclusive use of the law school building. And though the law school had no summer session, and summer classes in Arts and Sciences boomed in that period, Miller strenuously objected to the use of the law building even for summer classes. Because the halls rang "with student foot steps, student voices, student laughter, and student noises," he found that his plans for research and writing in his office during the summer were "ruined" and there was "no hope of my accomplishing anything of importance." Going on for six single-spaced pages in this particular document, he struck one of his favorite themes in his increasingly peevish memorandums to Few and Flowers: "I have been faced constantly

<sup>2</sup>Justin Miller to George Osborne (in Paris, France), November 11, 1930, and Osborne to Miller, n.d. [November, 1930], Miller Papers.

<sup>3</sup>Justin Miller to William Preston Few and Robert L. Flowers, May 5, 1931, William Preston Few Papers, Duke University Archives, hereinafter cited as Few Papers.

<sup>4</sup>W. H. Glasson to W. P. Few, May 5, 1931, Few Papers.



The Duke University School of Law has produced a number of well-known graduates. On the right end of the rear row of this class, ca. 1937, is Richard M. Nixon, who subsequently served as president of the United States from 1969 until his resignation in 1974. Photograph from the Duke University Archives, Duke University Library, Durham.

during this year [1930-1931] with the dilemma of having to work against the traditions and methods of the small church school which have no comprehension of what is standard method or standard policy or what is necessary in order to build a great law school." Miller went on to reject the argument that good business management required the use of the law school building during the summer, for there were many "intangible considerations" that caused "all the rules of business to go by the board when they came in conflict with proper methods of university administration." Miller suggested that the university needed an arts and social science building. If Trinity College truly was, as Few often declared, "the heart and centre of Duke University," Miller concluded, then it was "obvious that the heart and centre has been the most inadequately provided for of any department in the University organization."<sup>5</sup>

What, if anything, President Few said in response to Miller's blast about the traditions of a "small church school" is not known. To Miller's

<sup>5</sup>Justin Miller to W. P. Few and R. L. Flowers, June 24, 1931, Few Papers.

annoyance, neither Few nor Flowers was as enamored of written communications as was the dean of the law school. Miller's scholarly output may or may not have actually suffered in the summer of 1931, but his production of a wide range of memorandums to Few and Flowers was certainly not in any way stymied. Most of them were routine, but at the end of the summer he hit again on substantive issues and somehow failed to show the same tact and diplomacy that his letters to outsiders revealed.

Looking back over his first year at Duke, Miller first made an encouraging progress report. He regarded the most outstanding evidence of accomplishment as being the fact that both the American Bar Association and the Association of American Law Schools had given their stamp of approval to Duke's reorganized school. The latter organization, moreover, had just released a classification based on the size and qualifications of the faculty, salaries, and libraries, and Duke's law school was listed as one of the seventeen leading schools in the nation. From three full-time faculty members in 1929-1930, the school had expanded to have seven in 1930-1931 and would have eleven in September, 1931. All of them were experienced teachers and productive scholars with degrees from the strongest law schools. While Harvard, Miller concluded, then had around 1,600 students and 34 full-time faculty members, Duke aimed at 300 students, which would be about the size of Yale's school.<sup>6</sup>

Miller was not content with such positive reports, however. Not long after writing so encouragingly, he again launched into a long (nine single-spaced pages) attack on the administrative methods of Few and Flowers. He noted at the outset that he was typing the document himself, so that there could be no "outside" discussion of it, and that his interest in the general administration derived from his concern about the success of the whole university as well as the proper development of the law school.

First, he pointed out that the administration was poorly organized for the proper handling of details on the apparent assumption that such details were not important. Neither Few nor Flowers had competent secretarial staffs, Miller asserted, and both had themselves attempted to handle too many details. There followed a long list of alleged problems and misunderstandings that various law professors had encountered, particularly concerning their arrangements with the university about housing, and the specific charge against Flowers of not answering letters. "In all of my dealings with you," Miller continued, "there has been a disorderly procedure which cannot fail to produce misunderstandings and trouble." Miller noted that he sent memorandums but that Few and Flowers preferred conversations.

In a recent conversation with Few, Miller claimed, the president had spoken casually about the attitudes of some of the newly appointed law professors. Miller charged that Few thus revealed "a condition of mind peculiar to the man who has been for a long time administrator of a small college." Forced by a limited budget to staff the college with poorly paid "second-rate men," the small-college president could not trust them and had

to try to control everything himself. While Miller granted that Few had shown no lack of vision or imagination in recruiting the "great men needed for a great university," he had not changed his administrative style accordingly nor realized that the new faculty could simply not be treated in the old, small-college manner.<sup>7</sup>

What, if anything, Few said in response to Miller's outburst is not known. A remarkably patient man and long-accustomed to the vagaries of all sorts of academics, Few may well have said nothing. Zeal about administrative detail was not, in fact, his forte and the fact that Miller was put off by Few's style is perhaps understandable. Preoccupied night and day almost every day of the year with the plans for and problems of Duke University, Few often had an abstract or distant quality that some people found disconcerting. He often received visitors to his office while sitting in a favorite rocking chair, and he might gaze off into space, reaching across the top of his head with his right arm to scratch the left side of his head, or make a low whistling sound through his teeth as his visitor talked.<sup>8</sup> One historian who knew and worked under Few for more than a decade, the late Robert H. Woody, admitted that Few was never an orator and was even, to a certain degree, "inept" in faculty meetings. Woody, in interesting contrast to Miller, saw Few like this:

If he lacked the power of a vibrant personality, he possessed a quiet charm which was especially effective in small gatherings, and he was always listened to with respect. He had a certain air of kindness, of benevolence, which was as genuine as his quiet and pleasant voice. In short, he looked like what he was: a college president, shy, earnest, devoted to the causes of education and the church and anxious to do great good and little harm. He was a scholar; yet, all in all, he was a man of sound judgment, especially when viewing large matters of policy rather than the petty details of routine administration. He was a student by preference, a scholar by training, and an administrator only by force of circumstances. His abilities as an administrator were acquired rather than native.<sup>9</sup>

The fact that Few refused to take Miller's criticisms too seriously or personally is best shown by the fact that late in 1931, after having received several of Miller's stinging critiques, Few nevertheless reported to William R. Perkins that an important citizen in Durham had remarked that "Dean Miller was the best of all the men brought here in the last five years." Few added that he felt "sure that we can make a success of the Law School, but it is going to require some time and meanwhile, as we all recognize, it will cost us a good deal."<sup>10</sup>

Few was not the only person who kept Perkins informed about the law school, for Miller frequently saw the powerful trustee of the university who,

<sup>7</sup>Justin Miller to W. P. Few and R. L. Flowers, September 9, 1931, Miller Papers.

<sup>8</sup>Author's interviews with various members of the faculty who worked with Few.

<sup>9</sup>Robert H. Woody (ed.), *The Papers and Addresses of William Preston Few* (Durham: Duke University Press, 1951), 54, 137.

<sup>10</sup>W. P. Few to W. R. Perkins, December 21, 1931, Few Papers.

<sup>6</sup>Justin Miller to W. P. Few and R. L. Flowers, August 27, 1931, Miller Papers.

with George G. Allen, virtually ran the Duke Endowment. Miller invited Perkins to speak to the law students and visited him frequently while in New York. On at least one occasion Miller and his wife visited the Perkinses at their home in Montclair, New Jersey, and Miller, Perkins, and Willis Smith, another university trustee and prominent attorney in Raleigh, North Carolina, traveled together to inspect the law schools at Harvard and Yale. On at least one occasion, and possibly more, Miller sent Perkins a copy of one of his memorandums about the law school.<sup>11</sup>

If Few did not worry too much about Miller's unhappiness with the administration of Duke, one probable reason was that the harassed president agonized deeply over a period of several years about the relationship between the university and the Duke Endowment, which annually supplied about half of the money needed to run the university. While the university was a special, protected beneficiary of the Endowment, its trustees, under James B. Duke's indenture establishing it, had the power under certain conditions to withhold annual appropriations even to the university. This crucial matter became something more than theoretical when Allen and Perkins exploded furiously about the fact that Norman Thomas, the longtime Socialist leader and presidential candidate, spoke on Duke's campus late in 1930. Although Few tried his utmost to educate the powerful businessmen about academic freedom and the university ethos, he fought a losing battle and was forced to appease them as best he could. The Norman Thomas issue flared up again during and after the presidential election of 1932, forcing Few finally to look to changes in the structure of the university's governance, changes that he thought would protect the university and its vital tie with the Endowment.<sup>12</sup>

Since the public at large knew nothing of Few's problems with Allen and Perkins, one can only surmise that Miller, both as a lawyer and as a friend of Perkins, probably had a fairly clear understanding of the situation. Not only did he study and quote from the indenture, of which Perkins had been the principal author, but more than any lay person Miller would understand the full significance of the indenture's language empowering the trustees to withhold funds to Duke University if it should not be "operated in a manner calculated to achieve the results intended hereby. . . ."<sup>13</sup> That was the phrase that haunted Few and kept whatever worries he had about Miller and the law school in perspective.

If Miller had concerned himself only with the law school, matters might have been simpler. The popular, energetic Miller involved himself, however, with the life and problems of the undergraduates to a degree that was

<sup>11</sup>Justin Miller to W. R. Perkins, June 22, 29, 1931, and Miller to Willis Smith, September 8, 1931, Miller Papers.

<sup>12</sup>These matters are dealt with in greater detail in Robert F. Durden, "Crises in University Governance: The Launching of Duke University, 1925-1935," *North Carolina Historical Review*, LXIV (July, 1987), Part I, 294-319; (October, 1987), Part II, 416-437, hereinafter cited as Durden, "Crises in University Governance."

<sup>13</sup>James B. Duke's indenture of December 11, 1924, is reprinted as an appendix in Robert F. Durden, *The Dukes of Durham, 1865-1929* (Durham: Duke University Press, 1975), 268-280; the quoted phrase is on p. 274.

unusual for a dean of a professional school. As much in demand as a speaker on the campus as he was off of it, Miller, for example, addressed a dinner meeting of Trinity College freshmen on "Law as a Profession," a group of seniors on choosing their vocations, and a Sunday afternoon vesper service on "Blasphemy and Contempt of Court"—all in about a two-week period.<sup>14</sup> This pattern continued during much of his stay at Duke. In addition to the speaking, Miller agreed to serve on several committees that dealt with various aspects of student life. He worked with a group that helped screen student candidates for various leadership positions in Duke's Woman's College, and in 1932-1933 he conceived the idea of a joint committee of students and faculty that might, as he put it, focus on student problems and the adjustment of student difficulties while also fostering friendly relationships between faculty members and students. Alice M. Baldwin, the dean of the Woman's College, agreed to meet with this group, but when she attended one of the early meetings she was bothered by the fact that one of the undergraduate men present "quite bitterly" attacked William H. Wannamaker, dean of the university and Few's chief officer in charge of both student and faculty matters in Arts and Sciences. After the meeting she protested to Miller that if Wannamaker and his methods were to be the subject of discussion and criticism, then she thought he should be present. If not, "she would not be a member of any group acting in such an unfair way." Baldwin therefore withdrew from the group, though Miller apparently continued to hold the meetings.<sup>15</sup>

Aside from knowing and working with students on various committees, Miller had an opportunity to come into contact with a wide cross section of the Duke community through an interesting recreational group that was active in the early 1930s, the Explorers' Club. This loosely organized group of students, faculty, and staff formed in 1931 under the leadership of Ernest Seeman, director of the Duke University Press. An idiosyncratic, self-educated, and multifaceted man, Seeman had become the first full-time director of the press in 1926 primarily because he was a writer who knew well the world of printing and because his father had founded Seeman's Printery in Durham, a firm with which first Trinity College and then Duke University had a long, close connection. From early on Seeman had a certain amount of trouble at the press because he had no patience with various, influential professors, whom he regarded as "pedantic" and uncooperative. After continuing trouble about Seeman's frequently getting "things mixed up," Flowers in September, 1933, used the university's serious budgetary difficulties at that time as the opportunity to give a year's notice of contract termination to Seeman.<sup>16</sup> Before that happened, however,

<sup>14</sup>*Chronicle*, November 18, 25, 1931. The *Chronicle* is the student newspaper at Duke.

<sup>15</sup>See Justin Miller to C. N. Nison, June 12, 1934, Miller Papers, for the committee's purpose; Alice M. Baldwin, "The Woman's College, as I Remember It" (unpublished typescript, 1959), p. 83, Duke University Archives.

<sup>16</sup>R. L. Flowers to J. F. Rippey, August 24, 1932, and Ernest Seeman to H. R. Dwire, September 19, 1933, Robert L. Flowers Papers, Duke University Archives. The fullest information on Seeman may be found in Susan S. Rose, "Idealist or Iconoclast: Ernest Seeman at Duke University, 1925-1934" (unpublished master's thesis, Duke University, 1987).



Aside from being dean of Duke University's law school and working with various causes and committees, Justin Miller met a wide cross section of the Duke community through the Explorers' Club, a recreational group active in the 1930s. Miller and his wife (leaning against the automobile fender) are shown in this photograph of a club outing on May 28, 1933. The woman seated on the bumper is Mrs. Ernest Seeman, wife of the founder of the organization. From the Duke University Archives.

Justin Miller and Seeman had become good friends from the earliest outings of the Explorers' Club among the heavily forested hills around the rocky rivers that traversed the northern part of Durham County.

If Seeman had grievances against Duke's leadership by the fall of 1933, Miller had been cultivating—and expressing—his own complaints for a much longer period. After the expensive addition of the new faculty members and even with the large number of tuition scholarships, Miller was embarrassed in the fall of 1931 that the total enrollment in the law school of seventy-one students actually fell below the figure for the previous year, which had been seventy-seven. "There is no use disguising the fact," he confessed, "that I am keenly disappointed in our first-year registration [of thirty-four]." He had counted on an entering class of at least one hundred students, he explained, and could only believe that the increase of the tuition from \$200 to \$250 had discouraged a number of graduates of Duke and other neighboring institutions from attending Duke rather than the less expensive law schools at the University of North Carolina and Wake Forest.<sup>17</sup>

<sup>17</sup>Justin Miller to W. P. Few and R. L. Flowers, September 21, 1931, Few Papers. W. R. Perkins, G. G. Allen, and W. B. Bell, another trustee of the Duke Endowment, had pushed for a total fee of \$300 for the law school as early as June, 1930, on the ground that the \$200 then charged made it appear there was "something the matter" with the school. Copy of W. B. Bell to G. G. Allen, June 9, 1930, and G. G. Allen to W. P. Few, June 11, 1930, Few Papers. By early 1932 George Allen agreed that because of the depression the tuition increases should be halted.



The "Chief Hillbillie" of the Explorers' Club, Ernest Seeman, appears here (center, with necktie) at the fortieth hike of the group on October 1, 1933. Seeman was the first full-time director of the Duke University Press. He and Justin Miller became good friends as a result of their association in the Explorers' Club. Photograph from the Duke University Archives.

To Miller's chagrin, Few urged and got the appointment of a committee charged with the task of trying to increase enrollment in the law school. Even more frustrating for Miller was the fact that by the spring of 1932, Duke was finally beginning to feel the pinch of the depression from the falling income of the Duke Endowment and therefore of the university's operating funds. Having been given virtually a blank check about expenditures during his first year and a half at Duke, Miller sought in vain for approval of travel money for the law librarian and noticeably chafed under restrictions that began to be applied in 1932. Few and Flowers explained that, in order to avoid the salary cuts that were already in effect at most American colleges and universities, Duke planned first to cut expenses relating to travel; then expenditures for all equipment, even including books for the libraries, were to be curtailed; and finally, as a third phase of the retrenchment, faculty and staff vacancies that might occur were not to be filled. "It is hoped, by means of all these methods," Miller's memorandum of the meeting concluded, "to avoid salary cutting or the discharging of men now on permanent appointment."<sup>18</sup>

Stung both by one of his first monetary rebuffs and the inclusion of a member whom he did not want on the enrollment committee, Miller fired off another of his angry communications to Few and Flowers. Regarding the low enrollment, Miller pointed out that he had asked initially for a liberal

<sup>18</sup>Justin Miller, Memorandum, April 12, 1932, Few Papers.

scholarship policy, one that included a stipend as well as tuition, but had only gotten the latter. Now the depression had intensified the law school's problems. The small student body was "urged against me, particularly by Dr. Few, as an evidence that our law school is failing to develop as it should, and as an argument against putting further money into its development along the lines which were promised to me when I came here." Miller added that he had felt constantly during his nearly two years at Duke that "ideas prevailing in the minds of the members of the Administration about the development of the law school were based largely upon their experience with the sub-standard law school" that Trinity-Duke had maintained in the earlier era. Miller concluded by asserting, somewhat vaguely, that he approved of neither those methods nor attitudes, and regardless of the depression, "we cannot build a law school unless some of these difficulties are corrected."<sup>19</sup> The day following this pronouncement Miller sent a memorandum requesting three new staff members for the law library, an appropriation of a minimum of \$50,000 for the purchase of books, and immediate consideration of the problem of providing additional space for the library staff and shelving for books.<sup>20</sup> Miller could no longer get everything he requested, of course, but even as salaries at Duke finally had to be cut for 1933-1934, Few and Flowers approved the plans for the two legal quarterlies that Miller and his colleagues had proposed.

The atmosphere at Duke in the fall of 1933 was a strangely mixed one. The enrollment in the law school did jump to ninety-five students, but Miller's battle with the administration only intensified. Even though Duke, compared to the great majority of educational institutions, had come late to salary cuts—and still managed to avoid the layoffs that many schools were forced to make—there was grumbling on the part of some of the faculty. One highly paid law professor (not Miller) threatened to sue the university for breach of contract because of the temporary salary cut, which lasted only one year as it turned out.

Miller's estrangement from the university's administration reached a head in 1933-1934 when he attempted to take advantage of student unrest to discredit Few, Wannamaker, and others. Probably only at the periphery of events, unlike Ernest Seeman, who helped instigate student mischievousness, Miller nonetheless tried to embarrass Few. In the fall of 1933, Miller sent W. R. Perkins a copy of a student satire entitled "King Paucus," which portrayed Duke's administrative leaders in an unflattering light. Miller told Perkins the satire showed the "disorderly condition" and "unruly situation" at Duke. When students accused Dean Wannamaker of autocratic and insulting treatment in February, 1934, and issued a call for a mass protest meeting, Few responded adroitly. He organized an assembly of students, administrators, and faculty to hear student concerns, and a grievance committee was formed. Miller kept a low profile during the latter episode, but his name was touted in various newspaper stories as one who would

<sup>19</sup>Justin Miller to W. P. Few and R. L. Flowers, April 14, 1932, Few Papers.

<sup>20</sup>Justin Miller to W. P. Few and R. L. Flowers, April 15, 1932, Few Papers.

make a "progressive" president. Few, never given to paranoia, had no doubt that "some people here not students . . . are seeking for their own purposes to get control of the University." Throughout the difficult year, however, Perkins's support for Few never wavered.<sup>21</sup>

At the time of the unrest at Duke, a former Duke student, who had worked with Miller in 1932-1933 on the committee dealing with student problems, wrote back to Miller saying that he hoped the committee's work was continuing. "You do hold the confidence of any students that ever had the advantage of knowing you," this admirer declared, "and a large number of the faculty of the university, unless I'm all wrong." The Duke alumnus concluded by saying that he looked forward to the day when Miller could "do for the whole of Duke University, unfettered, what you have done for the Law School."<sup>22</sup> Miller replied to this admiring Duke alumnus that since the committee had not proved too popular (he did not say in what quarters), he and the others involved had felt it wise to hold no meetings at all during the 1933-1934 year. During the recent unrest at Duke, Miller continued, "there has been some intimation, I understand, that perhaps this group may have been in some measure responsible for the uprising." Miller concluded, however, that the former Duke student would be able to answer that question better than he could.<sup>23</sup>

Miller may have been only tangentially involved with Duke's student-protest movement in the spring of 1934, but it, coupled with Miller's ongoing criticisms of the Duke administration, finally led Few quietly to search for a way to curb if not oust, the popular dean. Perkins, regardless of his earlier cordial relations with Miller, did not like either *Law and Contemporary Problems* or the law school's involvement with then current socioeconomic problems. While Miller privately described himself as a Republican as late as February, 1933, he was very much in the mold of the western, progressive Republicanism of Theodore Roosevelt's era and would later easily make the transition to become a New Deal Democrat. Perkins, on the other hand, represented an eastern, Old Guard Republicanism that anathematized Franklin D. Roosevelt and his program.<sup>24</sup> William P. Few was not interested at all in either Miller's or Perkins's politics, but he was concerned about his leadership of Duke University and happy to have Perkins as an ally in tackling the problem of the dean of the law school. Inviting Willis Smith also to serve on a special and confidential committee, which would also include John F. Bruton, the chairman of the trustees, Few explained that Duke had been built up rapidly and many additions had been made to the staff. "In the nature of things some misfits have been inevitable," Few added, and the changed financial conditions in the country also made "some readjustments" necessary. Few wanted the committee to take both of those

<sup>21</sup>For a discussion of the 1934 "student revolt," see Durden, "Crises in University Governance," 428-434.

<sup>22</sup>Clement Doyle to Justin Miller, February 6, 1934, Miller Papers.

<sup>23</sup>Justin Miller to Clement Doyle, February 20, 1934, Miller Papers.

<sup>24</sup>For Miller's description of himself as "merely a Republican" in a Democratic state, see Justin Miller to W. A. Wiltberger, February 21, 1933, Miller Papers.

circumstances into account and "in due course propose such suggestions as they may see fit."<sup>25</sup>

Since Perkins went abroad for several weeks in the spring of 1934, the special committee was delayed in its work. Before it could meet, Miller, like many other academic lawyers in the New Deal era, received an invitation to spend a year in Washington, in Miller's case as a special assistant in the office of the Solicitor General of the United States. Few promptly informed Perkins that he and Flowers thought the invitation might be "a godsend for us." Whether Miller should return to Duke after the "reconstruction" of the law school was carried out would be for him to decide. "With this out of the way," Few continued, "I think our smaller difficulties can be gradually cleared up." If Perkins and George Allen agreed, then there would be no need for the former to hurry down to Duke. "We can name our own man to serve as Dean and I think cure many of the difficulties now existing in the Law School," Few concluded.<sup>26</sup>

Responding quickly, Perkins noted that he "had been coming more and more to the opinion that Dean Miller was trending more towards participation in public affairs than confinement to a law school. . . ." Perkins and Allen therefore welcomed the idea of Miller's being on leave in Washington for the year and hoped he might "get permanently located where things will be more congenial to the outlook he has on life." Perkins added that he assumed that Few would call on H. Claude Horack, Thaddeus D. Bryson, and Malcolm McDermott to help in "recasting the Law School," and he urged Few to let "such men as [David] Cavers, and several others whose names will come to your mind, pass out as not being of the type we desire for the best interest of the students."<sup>27</sup>

Although Few's own, private agenda for change in the law school was much more limited than that of Perkins's, saying so was hardly politic, and the skillful president kept his own counsel—and secrets. When Miller shortly announced, to Few's dismay, that he had decided not to accept the offer from Washington, Few noted that he "felt called upon to speak very frankly to him about the whole Law School situation." Perkins too, in a telephone conversation with Miller, urged the acceptance of the federal post.<sup>28</sup>

With the whole matter still up in the air, Few met with the faculty of the law school in late May, 1934, and, as the minutes cryptically record, opened the meeting with a brief statement on matters of policy concerning the law school and the university.<sup>29</sup> Exactly what Few said in that meeting is not known. Normally soft-spoken and gentle, Few could be tough and hard when he felt he had to be. But the chances are that he was not really quite as steely on that particular occasion as he made himself sound in his report to Perkins:

<sup>25</sup>W. P. Few to Willis Smith, March 6, 1934, Few Papers.

<sup>26</sup>W. P. Few to W. R. Perkins, May 14, 1934, Few Papers.

<sup>27</sup>W. R. Perkins to W. P. Few, May 16, 1934, Few Papers.

<sup>28</sup>W. P. Few to Willis Smith, May 17, 1934, and W. R. Perkins to W. P. Few, May 18, 1934, Few Papers.

<sup>29</sup>Minutes of the Faculty Meeting of the Law School, May 25, 1934, Few Papers.

I opened the way for no discussion, saying that I was there merely to tell them, and in addition I invited any of them who cared to come to see me. Those who most needed to come have already come. I have now with the faculty as I already had with Dean Miller as complete an understanding as seems possible between human beings. I cannot, of course, guarantee immediate results. The school will be different next year or we must have a complete overhauling of it.

Few thought Cavers might leave, which Few said had been the trend of his advice to him, but added "although he is personally agreeable and, to me, likeable." If Cavers left, Few surmised, that would probably be the end of *Law and Contemporary Problems*. Soliciting Perkins's advice, Few asked the trustee if he thought it possible, either with or without Cavers, to continue to operate the journal under the supervision of an editorial committee made up of Miller, Horack, and McDermott, the committee "to decide upon the 'problems' to be discussed and their general outlines." Even with that arrangement, the cautious president warned, "we must perhaps be prepared for articles from time to time that most of us would not fully or at all approve of. But this liability inheres in the nature of such a publication, or for that matter in the nature of any journal of opinion." Explaining that he had not discussed the matter with anyone at Duke, Few requested Perkins's opinion.<sup>30</sup>

Although Few was actually misleading Perkins a bit, since *Law and Contemporary Problems* already had the editorial board in place and functioning, Perkins rose to the bait nicely and expressed approval of Few's idea. "For my part," Perkins advised, "I prefer to see them restricted to the scope of the law and keep away from social problems, just as I hope to see the Law School restricted and those connected with its faculty." Perkins hoped that Cavers, Paul Bruton, and "those of a like type" would leave, thus reducing the cost of the law school, but then those were matters for Few's "good judgment in connection with the Committee on the running of the Law School."<sup>31</sup>

Actually, as subsequent events made clear, Few had no intention of muzzling *Law and Contemporary Problems* or forcing Cavers or any other faculty member to leave. Few did want Miller to leave, however, and felt immense relief when the dean, after more shilly-shallying, finally decided in June, 1934, to accept the post in Washington and take a year's leave of absence from Duke.<sup>32</sup>

Few promptly named Claude Horack, not acting dean, but dean of the law school for 1934-1935, a subtle difference by which Few may have been trying to give a signal to Miller. At any rate, only two members of the law faculty

<sup>30</sup>W. P. Few to W. R. Perkins, May 28, 1934, Few Papers.

<sup>31</sup>W. R. Perkins to W. P. Few, May 29, 1934, Few Papers.

<sup>32</sup>President Franklin D. Roosevelt to W. P. Few, June 15, 1934, requesting Miller's services for a year, and Few to Roosevelt, June 18, 1934, Few Papers. As Miller's note to Willis Smith makes clear, Duke University agreed to supplement the salary of \$9,000 that Miller would receive in Washington by paying him \$6,000 (plus \$750 on a pension fund), so that Miller would receive the equivalent of his Duke salary. Justin Miller to Willis Smith, ca. June 10, 1934, Willis Smith Papers, Manuscript Department, Duke University Library, Durham, hereinafter cited as Smith Papers.

resigned in the aftermath of all the strange goings-on about the law school: young Gordon Dean, Miller's assistant, and Leslie Craven, the highly paid specialist in utility regulation whom Miller had brought to Duke. Craven went on record, at least privately, about his personal reaction to what had happened and explained to a friend on the faculty that he had resigned because of an important opportunity in Washington offered to him by the federal coordinator of transportation. Craven added that he could have remained at Duke despite the administration's attitude toward the law school and its treatment of Miller. "But with it I have no sympathy whatever," Craven continued, "and its inconsistency with such standards as I have learned at Stanford, and even in the hard boiled business world, made me doubt whether Duke University, as the expression of the old South, is apt to stand for the changes which I have thought it was the mission of Duke University to give to the South." Craven concluded that, in any event, he felt "absolutely out of sympathy with the immutable orthodoxy and its domination of both individual thought and action."<sup>33</sup>

With Craven's resignation, Few predicted to Perkins, correctly as it turned out, that there would be no more attrition in the law faculty, and he thought that "under all the circumstances perhaps that will be well." He considered the school "at the present time in very bad shape" but added that "it must be pulled out of the hole and with the least possible delay."<sup>34</sup> To help the morale of the law school as well as fill vacancies, Few would soon authorize new appointments to the faculty. But there were lingering problems concerning Justin Miller's situation. Aside from the inevitable gossip on campus, there was speculation in the newspapers about Miller's future. "Nobody who has come to North Carolina in a great many years has brought more 'class' than Dean Miller," a reporter commented in the *Greensboro Daily News*, and people were wondering about his leave of absence from Duke. "There is an unmistakable Miller party over there [at Duke]," the story continued, "that is to say, a big student and faculty group which has set its heart on his ascension in time to the presidency of this great university."<sup>35</sup> Such newspaper comment probably did not disturb Few, but when the education editor of *Time* magazine made inquiries, no doubt in response to a tip from someone at Duke, Few thought it important to head off unwelcome publicity that might be harmful to Duke. With Willis Smith as intermediary, Few drafted a letter for Miller to send to the editor of *Time*. In it Miller was to explain that he was on leave of absence from Duke and that Leslie Craven could have remained at Duke if he had wished, and that Ernest Seeman had been at Duke in a "purely business" rather than faculty position. "No teacher at Duke, or at Trinity before Duke, has ever been in any way disciplined for opinion's sake," Few's draft continued, and if anyone claimed otherwise, names and facts should be offered. Miller was to state further that some of the trustees of the Duke Endowment might well have

<sup>33</sup>Leslie Craven to A. S. Pearse, July 14, 1934, Few Papers.

<sup>34</sup>W. P. Few to W. R. Perkins, July 6, 1934, Few Papers.

<sup>35</sup>*Greensboro Daily News*, July 1, 1934.



Willis Smith, Duke University trustee and prominent Raleigh attorney, assisted Duke University President William Preston Few in his efforts to "curb if not oust" the popular Dean Miller, who eventually resigned amid controversy in February, 1935. This photograph shows Smith (left) shortly before he won a U.S. Senate seat in 1950 by using race-baiting and other vicious tactics to defeat incumbent Frank Porter Graham in a runoff election. From the files of the Division of Archives and History.

disagreed at certain points with the university's administration but that he had "reason to believe that no one of them has ever attempted to force his opinion upon the administration of the University."<sup>36</sup>

Miller, closely following Few's draft, promptly wrote to the editor at *Time* and even threw in a reference to Trinity's stand for academic freedom in the affair of 1903 concerning Professor John Spencer Bassett. In closing, Miller conceded that there had been problems at Duke, problems made more difficult by the unsettled economic and political conditions in the world, but such a large undertaking as a new university necessarily involved difficulties that called for "the exercise of patience and understanding." Miller concluded by declaring that Duke had made great progress and that "all of us who are connected with the institution are well aware of the fact that we still have a large work to do."<sup>37</sup>

Few thus managed to divert *Time*, though as the concluding passage in Miller's letter revealed, the absent dean had by no means come to regard

<sup>36</sup>W. P. Few to Willis Smith, September 13, 1934, Few Papers.

<sup>37</sup>Justin Miller to Patricia McKeefe, assistant to the education editor of *Time*, September 18, 1934, with Willis Smith to W. P. Few, October 3, 1934, Few Papers. In a note to Willis Smith, Miller also attacked Few as, among other things, a "jealous psychopath." Justin Miller to Willis Smith, ca. June 18, 1934, Smith Papers.

himself as permanently dissociated from the Duke law school. As the months passed and Miller kept silent about his plans for the future, Few again sought advice from Perkins and Allen. He advised them that Horack, who seemed to be doing a good job as dean, favored notifying Miller no later than February, 1935, that he would "not be kept here next year." What did Perkins and Allen think about the situation? Perkins promptly urged Few to give notice to Miller, for "the sooner we can properly have a complete understanding for the future in this respect the better for all parties concerned."<sup>38</sup>

Whether Miller was merely awaiting clarification of his status in Washington or seriously considered returning to Duke is not known. At any rate, in February, 1935, he submitted his resignation as dean. Few, in accepting it, wished him well in the public service for which he was "extraordinarily well fitted." Thanking Willis Smith for the service he had rendered to Duke in the matter, Few observed, "So far as we are concerned we are from now on Miller's good wishers and will keep with him friendly relations so far as we can."<sup>39</sup>

Although Miller observed certain formal proprieties, he had rather little to do with the Duke law school after going to Washington. At the time of his resignation, Horack sent a handwritten note in which he expressed his sorrow that the relationship he and Miller had established while Miller was at Southern California "could not go on as we had contemplated."<sup>40</sup> Subsequently when Horack received a confidential inquiry about Miller in connection with a university presidency—and specifically as to why Miller had left Duke—Horack politely refused to discuss the subject because he found it "quite embarrassing to go into all the matters about which you have made inquiry."<sup>41</sup>

Horack thus maintained a discreet silence about Miller, but Ernest Seeman went public with a vengeance. In a bitter attack in the *New Republic* on Duke University and its administrators, Seeman described Duke as, among other unflattering things, "the tail on the [Duke Power] utility kite." Concerning Miller and the law school, Seeman charged that when certain trustees of the Duke Endowment howled about the first issue of *Law and Contemporary Problems* and demanded that all New Deal-leaning law professors be ousted, Miller had resisted only to be "hounded from office and eventually forced to resign. . . ."<sup>42</sup>

Seeman included a wide variety of other charges in his article, but those concerning Miller and *Law and Contemporary Problems* brought a swift,

<sup>38</sup>W. P. Few to W. R. Perkins, January 2, 1935, and Perkins to Few, January 4, 1935, Few Papers.

<sup>39</sup>W. P. Few to Justin Miller, February 15, 1935, and W. P. Few to Willis Smith, February 15, 1935, Few Papers. The *Durham Sun*, February 13, 1935, printed Miller's letter of resignation.

<sup>40</sup>H. Claude Horack to Justin Miller, February 20, 1935 [copy], Records of the Duke University Law School, Files of H. C. Horack, Duke University Archives, hereinafter cited as Horack Papers.

<sup>41</sup>Claude Horack to A. J. Farrah, dean of the law school, University of Alabama, November 4, 1935, Horack Papers.

<sup>42</sup>Ernest Seeman, "Duke: But Not Doris," *New Republic*, September 20, 1936, pp. 220-222.

public rebuttal from David Cavers, Lon Fuller, and Douglas Maggs. They informed the readers of the *New Republic* that Seeman's statements and interpretation were "wide of the truth." That Miller had been at odds with the Duke administration over matters "wholly unconnected with academic freedom" was common knowledge on the Duke campus, they pointed out. Moreover, Seeman had been "an active partisan of Dean Miller in the dispute." The three professors explained that Miller had, in fact, informed the law faculty that an Endowment trustee had objected to certain material in the first issue of *Law and Contemporary Problems* and had urged that the periodical avoid topics related to the New Deal. President Few, however, had assured the law professors that their freedom of speech and action would not be interfered with, and the outcome of the incident, they believed, was "precisely that which would be dictated by the best university practice." In short, contrary to Seeman's assertion, they insisted that there had been no infringement on academic freedom at Duke.<sup>43</sup>

Miller himself kept quiet as these charges and refutations appeared. Perhaps he chose to forget about Duke and his four years there. As crucial as they had been for the Duke law school, they were, after all, only one more episode in what had been for Miller a fast-changing, upward career. With his very marked abilities and excellent connections in the legal world, Miller easily found a new outlet for his talents in Washington as he served as a special assistant to the United States attorney general. That he had become a New Deal Democrat is illustrated by the fact that he testified before a congressional committee in 1937 in favor of President Roosevelt's proposal to expand the Supreme Court. Later in that year Roosevelt appointed Miller to the prestigious United States Court of Appeals in Washington. He would after World War II become president of the Association of American Broadcasters.<sup>44</sup> Long after Miller left Duke, however, most of the faculty whom he had recruited remained there, and the Duke law school largely retained the curriculum and program he had given it until World War II and the draft brought lean days and drastic changes for all law schools.

No mover and shaker in the Miller style, Claude Horack apparently envisioned the deanship as largely consisting of mediation and conservation. Given the innovativeness and yet general soundness of the program that Miller had launched at Duke, perhaps stability and preservation were the wisest choices for any successor-dean to make. At any rate, Horack worked harmoniously both with Few and, after Few's death in October, 1940, with President Robert L. Flowers; and Horack also enjoyed, as had Miller, cordial relations with his colleagues in the law school. Horack began to suggest as early as 1936 that even with the law school's modest enrollment, which remained around 100 students until World War II, the law building was not adequate and that a new building, possibly with a

<sup>43</sup>David F. Cavers, Lon L. Fuller, and Douglas B. Maggs, "A Communication: The Duke University Law School in Rebuttal," *New Republic*, October 21, 1936, pp. 311-312.

<sup>44</sup>*Who Was Who in America* (Chicago: Marquis Who's Who, Inc., 1973), V, 499-500. Miller died on January 17, 1973, at age eighty-four.

dormitory attached, would be highly advantageous.<sup>45</sup> That particular dream, which later deans would push more urgently, would not be realized for a quarter-century or so, but Horack met with greater success in seeking the appointment of new faculty members.

The first of these, in September, 1934, was Charles L. B. Lowndes, who was appointed in the field of taxation. After receiving his undergraduate degree from Georgetown University, Lowndes graduated from law school at Harvard and then entered private practice before returning to Harvard for a doctorate in law. He would remain at Duke for many years and serve at one point as acting dean of the school.

Another appointment that Horack sought to make in 1934 was not finally made until 1936, and though Horack appointed him, J. Douglass Poteat was actually another of Miller's finds. With both undergraduate and law degrees from Furman University, Poteat had practiced law before returning to teach law at Furman in the late 1920s. Whether he sought a job at Duke or merely asked for advice from Miller is unclear, but on Miller's urging Poteat did graduate work in law at Yale. Thurman Arnold reported early in 1933 that he and his colleagues at Yale considered Poteat one of their best men. "He contains [combines?] a very high degree of intelligence with very charming manners," Arnold noted, "which is something which you don't always get. Personally I would grab him if I had a place."<sup>46</sup> Miller, in fact, much wanted to grab Poteat, but Duke's hiring freeze at that time prevented the offer. After Poteat had returned to private practice in Greenville, South Carolina, Horack first tried to lure him with a visiting professorship, for which Poteat felt he could not abandon his partnership. Finally, after Arnold had again highly endorsed the South Carolinian and Horack had visited him in Greenville, Duke succeeded in hiring him in 1936. "Picking teachers is like selecting futurity winners for a horse race," Horack confessed, but he felt convinced that in Poteat "we have a good man with lots of possibilities in him for the future."<sup>47</sup>

The first graduate of Duke's own rebuilt law school to be named to the faculty, Paul H. Sanders, came in 1936. A Texan who graduated from Austin College before attending the Duke law school, Sanders achieved a strong record at Duke and then worked for the American Bar Association for two years before returning to Duke to teach criminal law, among other things, and to assist Cavers with *Law and Contemporary Problems*. Cavers, to whom other law schools frequently but unsuccessfully beckoned, carried an "enormous burden," according to Horack, and Sanders was a possible "understudy who may save our lives in an emergency."<sup>48</sup>

<sup>45</sup>Claude Horack to Willis Smith, chairman of the trustees' committee for the law school, January 7, 1936, Horack Papers.

<sup>46</sup>Thurman Arnold to Justin Miller, February 6, 1933, Horack Papers.

<sup>47</sup>Claude Horack to Douglass Poteat, July 20, 1934; Thurman Arnold to Claude Horack, April 20, 1936; and Claude Horack to Douglas Maggs, May 1, 1936, Horack Papers. Another graduate of Yale's law school whom Horack hired, Kenneth Rush, remained at Duke only one year, 1936-1937.

<sup>48</sup>Claude Horack to Douglas Maggs, May 14, 1936, Horack Papers.

Sanders did help with the school's widely respected publication and, at a subsequent period, so did another new appointee. Elvin R. (Jack) Latty, who would eventually become an important figure in the later history of the Duke law school, joined the faculty in 1937. An ebullient New Englander, Latty had written to Justin Miller back in 1932 and expressed an interest in teaching at Duke. He explained that he was a graduate of Bowdoin who had taught Romance languages for five years at the University of Vermont before taking his law degree at the University of Michigan in 1930, winning the law review prize in the process. He had gone into practice (in no less a firm than Sullivan and Cromwell in New York) with the specific objective of acquiring some legal experience before beginning to teach law as a career.<sup>49</sup> Since Miller had largely completed his recruitment by the time Latty wrote, nothing came of that overture. Five years later, however, Horack brought Latty from the University of Missouri to teach corporate law at Duke, where he remained until his retirement in 1973.

Just as Latty would eventually serve as dean of the school, so would Harold Shepherd. Coming to Duke as a visiting professor in 1939, Shepherd ended up remaining when an unexpected vacancy occurred in the faculty. He had received both his undergraduate and law degrees at Stanford and then taught there before being named dean of the law school first at the University of Wyoming and later at the University of Washington. Shepherd's appointment not only illustrated Duke's continuing close ties with Stanford in the field of law but, according to the dean there, meant that, with both Lon Fuller and Shepherd, Duke had two of the four men who had gone through Stanford's law school, during the previous two decades, with a straight "A" record.<sup>50</sup>

Aside from playing a key role in the making of these important new appointments, Horack made his particular contribution to the school when he conceived of a novel approach to the housing problem facing law students. Since Duke then provided no dormitories for graduate or professional students, they were often forced to scrounge for themselves as best they could in Durham and sometimes in substandard old farm houses scattered around the fringes of the west campus in the Duke Forest. Horack persuaded the administration in 1938 to erect on the northern edge of the west campus a cluster of five, large log cabins—four dormitory cabins with each accommodating eight students and a recreational cabin—where at least a portion of the law students might live if they wished. Although spartan in some respects, the cabins were equipped with electricity, indoor plumbing, and central heating that made them more comfortable than their Lincolnesque name might suggest. They attracted a great deal of national publicity, including even the newsreels of the day, and Horack reported that "the boys are enjoying them very much indeed and all are extremely enthusiastic about the cabins and the conditions of study which they promote." He confided to the chairman of the university's trustees that

<sup>49</sup>E. R. Latty to Justin Miller, n.d. [ca. December 1, 1932], Miller Papers.

<sup>50</sup>Marion Kirkwood to Claude Horack, April 1, 1937, Horack Papers.

privately he took economic need into account when assigning the cabins but publicly he emphasized that "selection has been on the basis of seriousness in law study rather than financial needs alone." Later, in attempting to fight off intrusion into the cabins by the medical school, Horack perhaps got carried away and described them somewhat grandiloquently as "the Duke version of a Law Commons, conceived in the spirit of the old English Inns of Court. . . ." <sup>51</sup>

One student who undoubtedly would have been assigned to the coveted space in the law cabins had he not graduated in 1937, a year before their erection, was Richard M. Nixon. Having seen on a bulletin board at his undergraduate institution, Whittier College in California, that Duke offered a number of tuition scholarships worth \$250 a year, the hard-working future president of the United States promptly applied and was soon notified by Justin Miller in the spring of 1934 that he had been awarded a scholarship. "In those depression years," Nixon later commented, "that was a decisive factor." <sup>52</sup> At one point young Nixon served as Horack's research assistant, being paid with funds from the New Deal's National Youth Administration, and the dean came to have great respect for his abilities. Recommending him for a job, Horack wrote that Nixon was a "very high ranking student and was president of the Duke Bar Association last year." That he was "especially capable" was also indicated, Horack thought, by the fact that Nixon was awarded the Order of the Coif, the law schools' top recognition for academic excellence. In another letter Horack described Nixon as "an exceptionally brilliant and reliable young man. . . ." <sup>53</sup> Richard Nixon missed the experience of living in Horack's cabins, but he studied law under essentially the same strong faculty that Justin Miller had so ably assembled. Citing as Miller's "major contribution to the law school. . . [the] recruitment of a superb faculty," Nixon has stated: "To study under men like Fuller, Maggs, Horack, Cavers, Bolich, and McDermott was a rare privilege for which I shall always be grateful." <sup>54</sup>

On the eve of the United States' entry into World War II, however, and then especially during and right after the war that group underwent profound change. One of Duke's major losses came in 1940 when Lon Fuller accepted a bid to join Harvard's law faculty. He had gone to Cambridge as a visitor in the fall of 1939 and vividly described some of his experiences as a teacher there in letters to Horack. Fuller admitted that, somewhat to his surprise, he found that in teaching the large classes he enjoyed "the experience of presiding over a public meeting." When Harvard asked him to remain permanently, Fuller explained to Horack that the decisive factor for

<sup>51</sup>Claude Horack to John F. Bruton, October 25, 1938, and Claude Horack to W. C. Davison, May 21, 1942, Horack Papers; the *Durham Herald-Sun*, May 15, 1938, has pictures and a story.

<sup>52</sup>Richard M. Nixon to the author, August 20, 1987, Richard M. Nixon Papers, Duke University Archives, hereinafter cited as Nixon Papers.

<sup>53</sup>Claude Horack to John Bradway, September 4, 1936, for the research assistantship; Claude Horack to Chisman Hanes, September 4, 1936; and Claude Horack to John Harkrider, February 16, 1938, Horack Papers.

<sup>54</sup>Richard M. Nixon to the author, December 30, 1987, Nixon Papers.

him was "the chance one has here [at Harvard] to influence large groups of able students." Money, he insisted, was not the issue, for he should only expect from Harvard at least what he already made at Duke. <sup>55</sup> In the years ahead Fuller would remain at Harvard and become one of the nation's most renowned and influential legal philosophers and scholars.

In the following academic year, 1940-1941, David Cavers served as a visiting professor at the University of Chicago and ended up receiving a tempting offer there. Horack argued that Duke needed him more than Chicago did and that Duke's "chances for eventual success and for a real contribution where it is worth while are much greater than theirs." The Duke dean suggested that one of the "greatest difficulties" of the Duke law faculty was "an inferiority complex, not participated in but taken advantage of by the more discriminating portion of the law school world." He had seen the same thing at Chicago, he noted, in that school's earlier days. "Esprit de corps is very essential," Horack concluded, "and I think we have the potentialities here and have done pretty well under the circumstances to avoid the development of rival camps such as have grown up in many [law] schools." <sup>56</sup>

While Horack's arguments may have been a factor in Cavers's decision to remain on the Duke faculty, the nation's entry into World War II brought strains and pressures on the law school that no amount of letter writing or eloquence could prevent. In the first place, the draft of young men that began in 1940, and was extended even more broadly in subsequent years, drastically depleted the nation's law schools. Many male undergraduates remained in college, at least for a time, under various programs of the armed services, and medical schools were jammed as they operated on accelerated schedules. Professional schools such as law and business, however, were quickly faced with shrunken enrollments. From 123 students in 1939, the top figure for the decade, the Duke law school's enrollment had fallen to 36 by 1943 and 31 by 1944. In the spring of 1943 the law dean at Stanford reported that the school there had only twenty-nine students, and he estimated that there might be thirty in the fall—maybe fifteen women and fifteen men who had been rejected by the draft. <sup>57</sup>

The situation was sufficiently drastic at Duke as well as at Wake Forest and the University of North Carolina for there to be discussion of combining the operations of the three schools for the duration of the war. While that plan encountered obstacles and never materialized, Wake Forest's much diminished school did move to Duke in 1943 and was operated in conjunction with Duke's until after the war. <sup>58</sup>

<sup>55</sup>Lon Fuller to Claude Horack, January 15, 1940, Horack Papers. For Fuller's place in American legal history, see Robert S. Summers, *Lon L. Fuller* (Stanford: Stanford University Press, 1984).

<sup>56</sup>Claude Horack to David Cavers, January 27, 1941, Horack Papers.

<sup>57</sup>Marion Kirkwood to Claude Horack, April 14, 1943, Horack Papers.

<sup>58</sup>On the failure of the three-school plan, see M. S. Breckenridge to Claude Horack, March 27, 1943, and Horack to Breckenridge, April 2, 1943, Horack Papers.

If a large portion of Duke's law faculty had not been on leave during the war, either in military or government service, the situation would have been even more awkward than it was. A much reduced faculty, however, came closer at least to fitting the needs of a shrunken student body.

More trouble came at the war's end in 1945 when students, including large numbers of veterans, began flocking back to law schools. That happened at Duke, but unfortunately many of the original faculty members did not follow suit. David Cavers, like Lon Fuller earlier, accepted an offer from Harvard in 1945, and Douglas Maggs no doubt spoke for most if not all of his colleagues when he described it as a "big blow" for Duke.<sup>59</sup> In addition, William R. Roalfe, the able law librarian whom Justin Miller had secured back in 1930, resigned in 1946 to go to Northwestern in the same post. Douglass Poteat and Paul Sanders both resigned at the end of the war. Some of these resignations may have been inevitable because of changed career plans as a result of wartime experiences, but some may have been at least partially rooted in the fact that Duke's salaries for all faculty, including the law school, began to slip during the war and in the immediate postwar years. Whereas the salaries that Justin Miller had been able to offer, for a brief but crucial period in 1930 and 1931, had been competitive with the best, that was hardly the case by 1946.<sup>60</sup>

Thus, the law faculty that Justin Miller had so ably assembled finally underwent drastic changes. True, there were important continuities: Bradway, Maggs, McDermott, and Horack—all recruited by Miller—remained; and Bolich and Bryson from the late 1920s still served. Lowndes, Latty, and Shepherd continued on the faculty. But Judge Bryson, as he was always called, retired in 1947, and when Horack retired as dean in 1947, the Miller era, or perhaps the Miller-Horack era to be more exact, had ended. *Law and Contemporary Problems* and other aspects of the school that went back to the early 1930s still continued, but the challenge of a large-scale rebuilding faced those who led and served in the Duke law school after World War II. The shadow of Justin Miller, the dynamic Californian who had played such a key role in launching Duke's expanded law school in 1930, would not loom so large from 1945 onward.

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<sup>59</sup>Douglas Maggs to Claude Horack, May 14, 1945, Horack Papers.

<sup>60</sup>An example of this may be found in Claude Horack to Paul Sanders, June 4, October 2, 1945, Horack Papers.