

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

Part I

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The creation of a full-fledged, nationally recognized law school proved to be one of the most difficult tasks that President William Preston Few faced as he led in the organization of a major research university around Trinity College after December, 1924. Early in that month James B. Duke had announced the creation of the Duke Endowment and specified that the university, which Few had proposed to him several years earlier, was to be a prime beneficiary of the perpetual trust. When the trustees of Trinity College later in December, 1924, accepted the philanthropist's offer, Duke University was officially launched.¹ Although Few began almost immediately to search for an outstanding legal scholar to serve as dean and help plan and staff the law school, the search ended up taking five, frustration-filled years. Once found, the new dean of Duke's law school, Justin Miller, played the key role in getting it off to a brilliant start insofar as its faculty and program were concerned. Yet by 1934 President Few and some of his close advisers had, for a variety of reasons, grown disenchanted with the young, ambitious dean, and Miller resigned from his position at Duke in somewhat ambiguous circumstances early in 1935. Prior to that time, however, Few at one point felt that the long, careful search for a dean of the law school had ended up most auspiciously indeed. What initially justified that verdict and what happened subsequently to change it?

In launching a full-fledged law school, Duke built on a respectable foundation that had been laid in Trinity College. Although Trinity had offered an undergraduate course in law as early as 1868 and there had been intermittent attention to instruction in law after that date, not until 1904 did Trinity establish a school of law. Underwritten by annual payments from Benjamin N. Duke and his younger brother, James B. Duke, the school was headed by Samuel Fox Mordecai, a colorful teacher and strong legal scholar. At a time when many law schools required no previous college work of its

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¹For a fuller discussion of the relationship between the Duke Endowment and Duke University, see Robert F. Durden, *The Dukes of Durham, 1865-1929* (Durham: Duke University Press, 1975), 199-260.

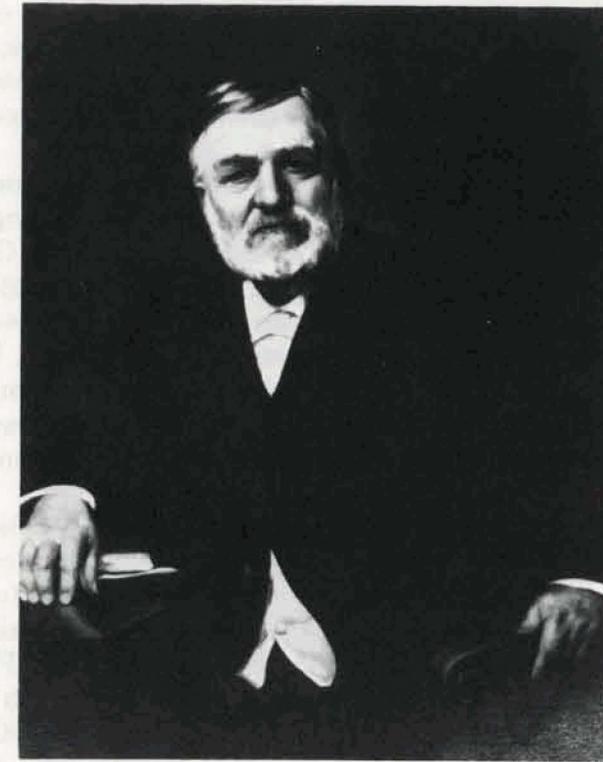
students—indeed many persons still prepared to become lawyers by “reading” law with a practitioner rather than by attending any college or law school—Trinity joined a select group in requiring from the first that entrants in the law school had to have completed two years of college work. In its second year Trinity’s law school was invited to join the new Association of American Law Schools, which then had among its thirty members only one other institution from the South, the University of Tennessee. Employing the case method that Harvard had pioneered in the late nineteenth century, Trinity’s law school remained small, but it stuck by its high standards and remained indifferent to numbers.²

With Dean Mordecai in his mid-seventies and unwell by the time Duke University was under way, Few at first took what was for him a most uncharacteristic stance: he sought a southerner to head the expanded, full-fledged law school. Few, like his predecessor at Trinity, John C. Kilgo, and like others in key faculty and administrative posts at Trinity, took great pride in Trinity’s maintaining a broadly national and “reconstructed” outlook. Shunning both neo-Confederate romanticism and embittered sectional defensiveness, Trinity College sought to exemplify forward-looking aspects of the New South. The fact that both Washington Duke and his sons were staunch Republicans who combined deep Tar Heel roots and attachments with national economic interests only served to strengthen and underscore Trinity’s orientation. Yet when Few began the search for a dean of the law school, he privately confessed: “For this particular place I feel that the preference should be given to a man of Southern antecedents or associations, though I have never before intimated this as a requirement for men in any of the posts here. In fact more than half the men on the Trinity College staff are not from the South.”³ Few never elaborated on his regional preference concerning the legal deanship, but the fact was obvious that law possessed more state and regional peculiarities and ramifications than, for example, medicine or theology. At any rate, Few would end up with a nonsoutherner, but the original preference was one factor in the long delay in the naming of the dean.

Concerning the law school, Few worked closely with William R. Perkins, legal adviser to James B. Duke and chief author of the indenture establishing the Duke Endowment. A native Virginian and graduate in law from Washington and Lee University, Perkins served as an influential trustee of Duke University. In fact, after the death of James B. Duke in October, 1925, Perkins, together with George G. Allen, became a primary inheritor of much of the late millionaire’s power and a chief interpreter of his philanthropic plans and intentions. It was no wonder, then, that Few early on informed

²Earl W. Porter, *Trinity and Duke, 1892-1924: Foundations of Duke University* (Durham: Duke University Press, 1964), 143-146, hereinafter cited as Porter, *Trinity and Duke*. For the launching of the Association of American Law Schools in 1900 and the larger national picture of legal education in the early twentieth century, see Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983), 38 and passim, hereinafter cited as Stevens, *Law School*.

³William P. Few to W. R. Vance, April 9, 1925, William Preston Few Papers, Duke University Archives, Duke University Library, Durham, hereinafter cited as Few Papers.



In establishing a law school Duke University built upon a foundation laid at Trinity College. Trinity offered an undergraduate course in law as early as 1868 and created a school of law in 1904. Samuel Fox Mordecai, a colorful teacher and strong legal scholar, headed the Trinity law school. Portrait from the Duke University Archives, Duke University Library, Durham.

Perkins, “I shall look rather especially to you for help in matters connected with the Law School.”⁴

Writing to a friend of Perkins in Yale’s law school, Few requested the suggestion of a “thoroughly first-rate man” to head up the Duke school, “a man of the calibre that you would require in a dean of the Yale Law School.”⁵ Letters soliciting suggestions also went to Huger W. Jervoy, dean of law at Columbia, and to a Harvard law professor. One of the men whose name cropped up in response to these initial inquiries actually visited Duke at Few’s request in April, 1925, but Few soon advised Perkins that, “I am not quite sure that he is just the man for dean.”⁶ Meantime as Few took the lead in the search for a dean of the new School of Religion as well as participated in the searches for various key appointees in the arts and sciences, Robert L. Flowers, Duke’s vice-president for finance and Few’s longtime associate, interviewed various law deans and prospective appointees in the North.

⁴W. P. Few to William R. Perkins, April 10, 1925, Few Papers.

⁵W. P. Few to W. R. Vance, April 9, 1925, Few Papers.

⁶W. P. Few to W. R. Perkins, April 21, 1925, Few Papers.

Another strategically placed ally was George B. Pegram, an alumnus of Trinity who served as dean of Columbia's School of Mines, Engineering, and Chemistry. At Pegram's request, Harlan Stone, associate justice of the United States Supreme Court, wrote Few with a list of suggestions for the Duke deanship.⁷

Having successfully recruited the new dean of the School of Religion, Edmund D. Soper, at Northwestern University, Few promptly requested him to seek advice from the dean of the law school there. Officials of the Rockefeller Foundation in New York, with whom Few conferred in June, 1925, also recommended the Northwestern dean as a likely source of sound advice, and Few promptly began corresponding with him. Warned of the substantial salaries being paid in top law schools, Few calmly replied that he was quite familiar with that aspect, but "still I am desirous of getting for dean here a man of just such calibre as would be required at one of these [top] places."⁸

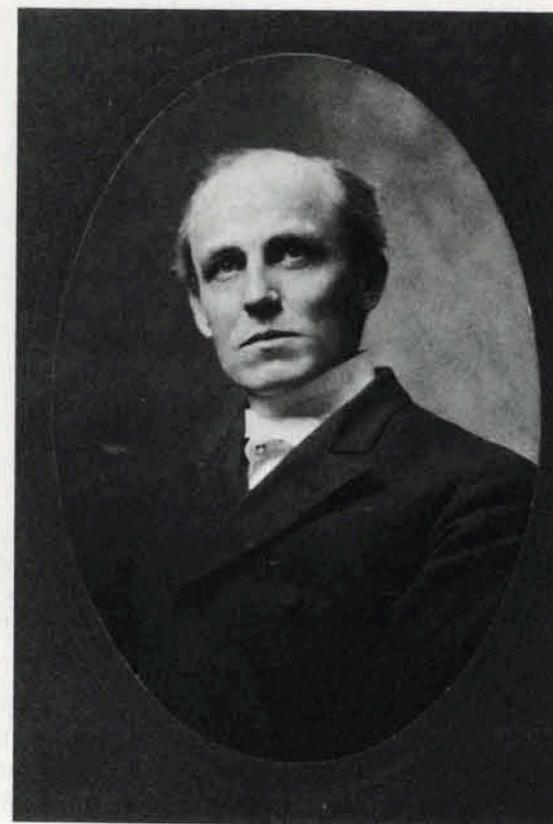
One bit of advice to which Few quietly, but firmly, paid no heed came from a Trinity alumnus in law. His premise was that various developments at Trinity College early in the century—such as President John C. Kilgo's "independent attitude" and the trustees' defense of academic freedom and unorthodox racial views in the famous affair concerning Professor John Spencer Bassett in 1903—had estranged the lawyers of North Carolina from Trinity and inspired them to criticize it as a "Northern Methodist institution." Since Duke now needed the goodwill and interest of the South's lawyers, 85 percent of whom the alumnus believed to be "in sympathy with the traditions of the Old South," Duke must "legitimately cultivate their friendship." It could only do so, he argued, by avoiding the mistake of other institutions in naming a "big, scholarly man" as dean and choosing instead a lawyer who had practiced extensively or served as a judge, one who had ability as an executive and a "publicity man."⁹

Although Few had a knack for graciously sidestepping unsolicited advice with which he disagreed, a "big, scholarly man," preferably of southern origins, was precisely what he wanted for the Duke deanship. And in the spring of 1926 he finally believed, after several false starts and disappointments, that he had found just the person to fill the bill. Huger W. Jervey, forty-seven-year-old dean of law at Columbia University, was a native of Charleston, South Carolina, and a graduate first of the University of the South (Sewanee) and then of Columbia's law school. Recommended to Few

⁷Harlan Stone to W. P. Few, June 9, 1925, Few Papers.

⁸W. P. Few to Edmund D. Soper, June 30, July 14, 1925, Few Papers. See also W. P. Few to J. H. Wigmore, July 29, 1925, Few Papers.

⁹George P. Pell to B. S. Womble, November 27, 1925, enclosed in Pell to W. P. Few, November 28, 1925, Few Papers. As a young historian at Trinity College in 1903, John Spencer Bassett wrote an article in the *South Atlantic Quarterly* deploring the calculated exploitation of the race issue by the North Carolina Democratic party and such newspapers as Josephus Daniels's *Raleigh News and Observer*. Daniels whipped up public opinion against Bassett and demanded that Trinity fire him. The trustees, adopting a statement of academic freedom, refused. Porter, *Trinity and Duke*, 96-139.



According to some critics, various developments at Trinity College—such as President John C. Kilgo's "independent attitude"—had estranged the lawyers of North Carolina from Trinity. As a result, one of the college's law alumni warned Duke University President William P. Few to cultivate the goodwill of the state's attorneys in selecting a dean for the law school as he began organizing the university in 1925. Photograph of Kilgo from the Duke University Archives.

by various persons as well as by his prestigious position and geographical origins, Jervey negotiated—or perhaps dallied—with Few about the post at Duke over an unusually long period. A visit to the campus in March, 1926, had to be canceled because of Jervey's illness. Then when Few subsequently tracked him down in June, 1926, at the Mayo Clinic where Jervey was being treated for an ulcer, Jervey preferred that Few not make the trip out to Minnesota but wait until Jervey traveled to Charleston for a rest. Since his health had become problematical, Jervey felt that tackling a new job would be impossible. "Get your dean," he urged Few, "and if some day he and you feel that you would like a Southerner to teach Constitutional Law to Southerners, it may be that the urge to go back to the South would be more than I could resist, although a thousand things might happen between now and then to make it impossible." The transplanted Charlestonian asserted his belief that, although his conscience fought against his leaving Columbia, the "South is the critical point of a good deal of our national development

today." Duke had a "glorious opportunity" and, frankly, "selfish feelings lead me to wish I could have shared in it."¹⁰

Was it a yes, no, or a maybe? Few, unfortunately as it turned out, interpreted the letter as a maybe and replied that Jervey was "the only man I know who is at once thoroughly familiar with our field and with the problems of a first-class modern law school." Few therefore looked forward to talking with Jervey when he returned to the East and felt like conferring.¹¹ That time was slow in coming, for in July and August, 1926, Few could not locate his elusive quarry. By the time Few finally reestablished contact in November, 1926, his own sense of urgency about the law school was on hold, at least temporarily.

The less important, transitory reason for Few's slowing down about the law school was that the building program for Duke's physical plant was unusually vast as well as complex. The old Trinity campus, beginning in the late summer of 1925, was to be totally rebuilt, with eleven new red-brick structures of neoclassical or Georgian design added to a few of the older Trinity buildings that were to be retained. Upon the near completion of that campus, work was to begin on the even more extensive Tudor Gothic buildings on the new campus a mile or so to the west of the old one. Until that campus was ready for occupancy (in September, 1930, as it turned out), the old Trinity campus had to house Duke's undergraduates, male and female, as well as the growing number of graduate and professional students, not to mention the burgeoning faculty. In short, when the first phase of the building program fell somewhat behind schedule in 1926, Few and his associates found themselves increasingly short of space on a crowded, construction-filled campus. Few admitted to Perkins, that under the circumstances, Duke was probably fortunate not to have "a budding law school" on its hands in September, 1926.¹²

A more substantial and long-range reason for Few's temporary and partly accidental decision to slow down on the law school was that money was not actually as abundant at Duke as a dazzled public, including many at Duke and in its constituency, long and erroneously believed. The truth was that Few had sold James B. Duke on a most ambitious plan: two undergraduate colleges (one for men and one for women), a graduate school of arts and sciences, and professional schools in theology, law, business, and medicine. (Schools of nursing and forestry were not in the original plan but were added later.) Like Trinity earlier, Duke University was committed to excellence and, in words used by James B. Duke in his indenture creating the Duke Endowment, to "attaining and maintaining a place of real leadership in the educational world. . . ." Concerning the law school, Few in an early and still optimistic phase had privately boasted that funds had been allocated to make Duke's "the best endowed law school in this country; and a large amount has already been set apart from the building fund for the purchase

¹⁰Huger W. Jervey to W. P. Few, June 15, 1926, Few Papers.

¹¹W. P. Few to H. W. Jervey, June 28, 1926, Few Papers.

¹²W. P. Few to W. R. Perkins, August 9, 1926, Few Papers.



Pictured here is the Duke University law faculty and class of 1925-1926. Photograph from the Duke University Archives.

of a great law library."¹³ The embarrassing truth about inadequate funding gradually became clear, but, unfortunately, only after James B. Duke died in October, 1925. Two years later Few privately confessed to one of his advisers:

I am frankly worried. It was just as clear to me the day Mr. Duke died as it is now that we do not have either in hand or in sight sufficient resources to develop the other departments of the University as Mr. Duke expected us to develop them and also support the sort of medical school and hospital that the public expects of us and that all of us want to see here.¹⁴

One possible solution to the painful dilemma was to seek additional endowment in the form of gifts. Given the tremendous, even if often misleading, publicity concerning J. B. Duke's very great generosity to the university, Few could hardly go public with his campaign. Behind the scenes, however, he quietly canvassed among a number of the wealthy

¹³W. P. Few to W. S. Barnes, June 15, 1926, Few Papers.

¹⁴W. P. Few to Dr. Watson Rankin, September 16, 1927, Few Papers.

businessmen in New York who had been associated in one enterprise or another with J. B. Duke. One who greatly assisted in this effort was Clinton Toms, the president of the Liggett and Myers Company and longtime, staunch friend of both Few and Trinity-Duke. In response to Few's appeal for help, Toms advised that he liked Few's memorandum concerning the law school, and if C. C. Dula, chairman of Liggett and Myers' board of directors, showed no interest in helping with a school of business, then Toms would talk with him concerning the law school. Many months as well as many conversations and letters later, Few supplied a more fully developed statement about the law school for Toms to use with Dula: "A million now and a million in his will might do it," Few coolly suggested, "if he can't be brought to give all now."¹⁵ Dula fell short of having Duke's law school named for himself, for Toms could only secure from him a gift of stock worth \$200,000.¹⁶

While searching, mostly in vain, for substantial new endowments, Few temporized concerning the law school. The law students had to be taught, however, and Mordecai's death in 1927 left a void. Few took one measure to alleviate the situation by making two appointments. The first in July, 1927, was W. Bryan Bolich, a Trinity alumnus who had gone on to take, with high honors, degrees in jurisprudence and civil law at Oxford University before entering the practice of law in Winston-Salem, North Carolina.¹⁷ The other appointment was Thaddeus D. Bryson, a graduate in law from the University of North Carolina who had become widely respected in the state as a judge of superior court. Bryson's appointment was partly a bid for recognition and support for Duke's law school from the North Carolina bar and, as such, it worked indeed well. Among others who praised the appointment, Angus W. McLean, governor of North Carolina, considered Bryson one "who understands fully the genius of our people" and the appointment "most fortunate for Duke University and the State."¹⁸

Still pursuing Huger Jervey, Few had consulted him before making the two new appointments. Few's efforts to confer with him in the spring of 1928 failed, but when Jervey finally visited the Duke campus in June, 1928, he was still ambivalent about the Duke post; that is, he stated that he would like a professorship in the law school but remained uncertain about serving as dean. Moreover, he was worried about an adequate law library as well as proper support from the trustees. Few continued to hope that Jervey would at least give the deanship a try without making a final commitment.¹⁹ By late 1928, however, Few was clearly losing patience; and, though the record

¹⁵Clinton Toms to W. P. Few, May 16, 1927, and Few to Toms, November 1, 1927, Few Papers.

¹⁶Clinton Toms to W. P. Few, December 5, 1927, Few Papers. See also Few's letters about the proposed medical school to Bernard M. Baruch, May 17, 1927, and Baruch's noncommittal reply, May 20, 1927, Few Papers.

¹⁷W. Bryan Bolich to W. P. Few, March 15, 1926, July 13, 1927, Few Papers. Few also consulted with B. S. Womble and other prominent Trinity-Duke alumni in Winston-Salem concerning the appointment. See Few to Womble, May 28, 1927, Few Papers.

¹⁸Robert L. Flowers to W. P. Few, August 3, 1927; Few to Thaddeus D. Bryson, August 30, 1927; and Angus W. McLean to Few, September 2, 1927, Few Papers.

¹⁹W. P. Few to Clinton Toms, June 23, 1928, Few Papers.

is not clear, either he abandoned the pursuit early in 1929 or Jervey finally rejected the offer unequivocally. At any rate, by that time Few was fortunately primed for another line of attack on the problem of the law school deanship.

An old friend of Few's from his years at Harvard's graduate school, Francis G. Caffey, had become a prominent lawyer and then federal judge in New York. Caffey wrote Few about a chance conversation with William Draper Lewis. Formerly dean of the University of Pennsylvania's law school, Lewis had become the founder and director of the American Law Institute, a prestigious organization of academic lawyers and practitioners who were undertaking to produce authoritative restatements concerning various aspects of the law. Lewis expressed interest in advising Few about the planned expansion in law at Duke.²⁰ Few, pursuing other leads, and particularly Huger Jervey, at the time of Caffey's letter, did not promptly follow up on the suggestion about William Draper Lewis. There was correspondence, however, and early in 1929 Few and several of his associates conferred with Lewis in Pinehurst, North Carolina. When Few rejected Lewis's proposal that Duke's law school become primarily a research-oriented affiliate of the American Law Institute, Lewis suggested that a committee of leading figures from the law schools and legal profession might be assembled to advise Duke about its law school. Few liked the idea and requested Lewis to engineer "the whole thing for us, of course allowing us to pay the expenses." Few recalled that an official of the Rockefellers' General Education Board had made a similar suggestion concerning Duke's proposed medical school, and the ensuing conference at Johns Hopkins University in 1927 had resulted happily in the naming of Wilburt C. Davison as the first dean of Duke's medical school.

Among the half dozen prominent legal scholars whom Lewis recruited to write advisory statements concerning Duke's law school were the law deans at Minnesota, Pennsylvania, and Southern California as well as prominent professors of law at Harvard, Yale, and Columbia. While emphases varied in the statements, there was among them agreement that Duke's law school should be kept small (which quite suited the traditional Trinity-Duke preference for quality rather than large numbers) and that a carefully selected faculty of legal specialists should be expected both to teach and to do scholarly research.²¹ A dinner at the Mayflower Hotel in Washington, D.C., in May, 1929, brought together Few, Lewis, and various members of the advisory panel.

The immediate upshot of the procedure that Lewis had arranged was that Few considered one of the advisers, Professor Noel T. Dowling of Columbia,

²⁰Francis G. Caffey to W. P. Few, November 3, 1926, Few Papers. Regarding William Draper Lewis and the American Law Institute, see Stevens, *Law School*, 144n.

²¹William Draper Lewis (comp.), "Reports in Regard to the Establishment of the Law School at Duke University," Law Library, Duke University; unsigned memorandum, April 13, 1929, Few Papers; Glen J. Carter, "The Rise to National Stature of the Duke University Law School, 1927-1935" (unpublished seminar paper, 1978), Duke University Archives, hereinafter cited as Carter, "The Rise to National Stature of the Duke Law School."



Following the death of Samuel F. Mordecai in 1927 President Few made two appointments to the Duke law faculty. W. Bryan Bolich (above) was a Trinity College alumnus who also had degrees in jurisprudence and civil law from Oxford University and practiced in Winston-Salem. Thaddeus D. Bryson (adjacent page; photograph, 1939) had graduated in law from the University of North Carolina and served as a respected superior court judge. Photographs from the Duke University Archives.

as a possibility for the Duke deanship. Dowling indicated, however, that he could not work a visit to Duke into his schedule in the immediate future, so Few abandoned the idea.²² He confessed to W. R. Perkins that he was beginning to feel a sense of urgency about the law school deanship.²³

Loyal alumnus as well as admirer of Harvard, Few turned once more to distinguished leaders there for whatever assistance they might give about his law school problem. He prefaced his request with the explanation that he and his associates at Duke had had five strenuous years since the university was launched: "In that period we have done worlds of building, have taken on eighty new men, have dealt with fundamental problems in the government and administration of the institution, and have all along continued to widen and strengthen the financial foundations here." Few felt fairly well

²²W. P. Few to George G. Allen, June 18, 1929; Few to W. R. Perkins, July 11, 1929; Noel T. Dowling to Few, November 8, 1929, Few Papers.

²³W. P. Few to W. R. Perkins, November 13, 1929, Few Papers.



satisfied with what had been accomplished, but now he needed help in resolving "the problem of organizing the Law School." He requested three names, in order of preference, for the deanship of the law school. "The Law School here will have an extraordinary opportunity," Few concluded, "if the man who ought to head it up can be found and secured."²⁴

Even as Few wrote again seeking help in Cambridge and elsewhere, he sadly confessed to his old Harvard contemporary, Judge Caffey, that he doubted that Duke's law school dean would be a Harvard man. "You and I were at Harvard about the time the University of Chicago was being set up," Few recalled. "I distinctly remember at Cambridge an indifferent or high-hat attitude towards the great new undertaking at Chicago." Having only recently visited the University of Chicago, Few thought Harvard's influence there was still conspicuous by its absence. "We are certain to see here in Durham the largest university development in the country since the establishment of Chicago," he continued. "Am I mistaken or am I not, in the feeling that there is about Harvard a less real understanding of our situation

²⁴W. P. Few to Dean Roscoe Pound, Harvard law school, November 30, 1929, Few Papers. Few sent virtually the same letter to President A. Lawrence Lowell and Professor Samuel Williston, both at Harvard; to Dean Charles E. Clark at the Yale law school; and to President Robert M. Hutchins of the University of Chicago, whose inauguration Few had recently attended.

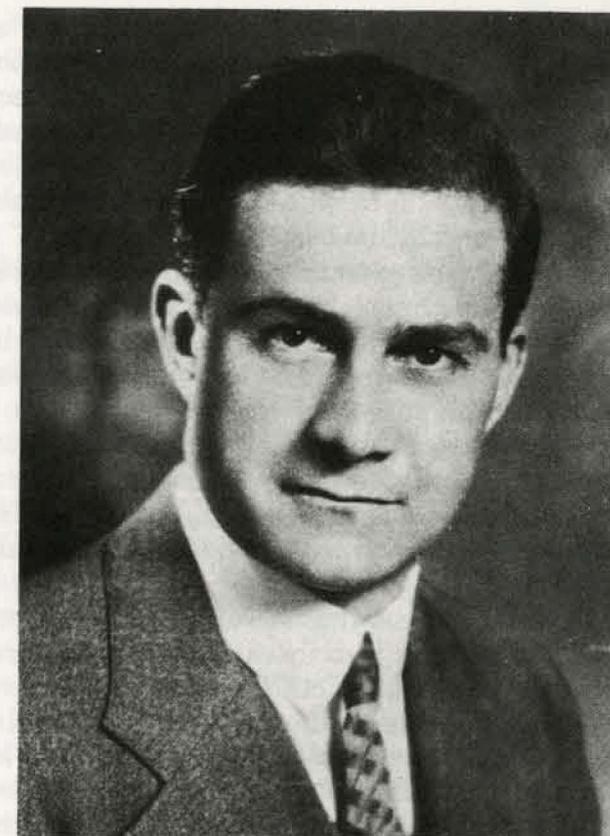
than in other university centers? And is this partly my fault?" Few asserted that he had always felt that as Harvard should have led in Chicago's development, so it should be a great factor in the building of Duke. "I am puzzled about all this," the obviously frustrated Harvard alumnus concluded, "and am anxious for light as well as for light on our Law School problems."²⁵

Ironically, while Few continued to hope for light from the East, he was about to find the new dean for the law school in the Far West. Even before writing to Dean Roscoe Pound at Harvard and to the other eminent educators, Few had arranged for another member of Lewis's panel of advisers, Justin Miller, dean of the law school at the University of Southern California, to visit Duke around Christmas time, 1929. Shortly afterward, Few, both relieved and hopeful, practically exulted in reporting to Perkins that he believed "that for us, everything considered," Miller was "the best man I have seen and I do not except Jervey."²⁶

Waiting to learn Miller's decision about the Duke offer, Few undertook to answer the questions that Miller had posed in a letter. Few explained that while Duke had inherited Trinity's "obligations to the Methodist church," everybody clearly understood that "we are in no way undertaking to build a denominational university." Both the board of trustees and the executive committee were free from outside interference, and "there are no religious tests of any kind prescribed in our charter or statutes." In short, Few believed that Duke possessed "as good form of ultimate control as any university in America."

After reassuring the weather-conscious resident of southern California about North Carolina's equitable climate, which included "much open weather" even in winter, Few explained that both students and faculty came from a wide geographical area; that "a man with ability to get on anywhere can get on here"; and that Miller need not fear any trouble on account of not being a southerner. When, in a subsequent letter, Few reported that \$10,000—over half of the \$18,000 total for student aid that came from the Angier B. Duke Memorial Scholarship fund—would be available for fifty tuition scholarships in the law school, Miller accepted the post.²⁷

A native Californian, Miller was forty-one when he arrived at Duke in July, 1930. A Stanford undergraduate, he had obtained a law degree at the University of Montana and then a doctorate in law at Stanford. Moving upward rapidly through a series of jobs, both as a practicing lawyer and public official, he had taught in the law schools of the universities of Oregon, Minnesota, and California before becoming dean of the law school at the University of Southern California in 1927. Obviously as able, ambitious, and energetic as he was handsome, Miller was definitely a rising star in the legal world. A specialist in criminal law, he chaired the American Bar Association's Section of Criminal Law and Criminology. He had, in fact, led in revitalizing the section's work by involving it in cooperative endeavors



After an extensive search, Few selected Justin Miller as dean of the Duke law school in 1929. Miller, a reform-minded specialist in criminal law, had become dean of the law school at the University of Southern California two years earlier. Photograph of Miller from the Duke University Archives.

with the American Prison Association, the American Medical Association, and various psychiatric and social-work organizations. Problems relating to the parole and probation system, to police work, and to juvenile delinquency and rehabilitation interested Miller, and he served as vice-president of the National Probation Association and was actively involved in a large number of similar organizations. His membership on the fourteen-person executive committee of the National Crime Commission—he was the only law dean in the group—brought him into contact with such prominent figures as New York's Governor Franklin D. Roosevelt, who was also a member of the executive committee. After attending one of the Crime Commission's meetings in the spring of 1931, Miller, who kept a low profile politically while at Duke but had earlier been a progressive Republican, reported that Governor Roosevelt had made a "splendid address" and that many North Carolinians would be happy to support him for the presidency if the opportunity should arise.²⁸ Miller, as one admiring chief of police

²⁵W. P. Few to Francis G. Caffey, December 24, 1929, Few Papers.

²⁶W. P. Few to W. R. Perkins, January 3, 1930, Few Papers.

²⁷W. P. Few to Justin Miller, January 23, 29, 1930, Few Papers.

²⁸Justin Miller to Louis M. Howe, March 20, 1931, Records of the Duke University Law School, Files of Dean Justin Miller, 1930-1934, Duke University Archives, hereinafter cited as

wrote, was clearly "not the ordinary type of academician." Being "down on the ground with both feet," he had at one point, according to the police chief, been "one of the most famous prosecuting attorneys of this country" before becoming a professor of law; then Duke had heard of him and "doubled the salary paid to him by the University of Southern California. . . ." Miller, the chief concluded, was simply "foremost in the ranks" of those seeking to reform criminal procedure in the nation.²⁹

One explanation for Miller's prominence in so many national organizations related to the law and crime is that he obviously enjoyed speaking in public and apparently did it most proficiently. One of his friends at Harvard's law school wrote teasingly that he hoped Miller would have time to reply "between the interstices" of his speechmaking. "I suppose a professional orator like yourself," the friend continued, "has to make a move every three or four years like the Methodist ministers, so you can take the old sermons out of the barrel and use them over again." The friend just hoped that Miller's "stuff" would go over in "the tobacco country" as well as it had elsewhere.³⁰

The Harvard friend need not have worried, for Miller plunged enthusiastically and successfully into intensive speechmaking at Duke, in Durham, and in North Carolina and other southern states as well as on the national circuit with which he was already familiar. (In fact, Miller regarded being closer to that national circuit at Duke than he had been at Southern California as one of the many advantages of his new job.) Invited to address the Florida Conference on Social Work in March, 1931, Miller noted that he had spoken eight times in two and a half days; a few weeks later he commented that for the past two or three weeks he had been speaking on an average of once a day.³¹

In order to participate more effectively in the work of the local and state legal organizations, Miller promptly joined the North Carolina bar, and he and his wife became members of Duke Memorial Methodist Church, Durham's second oldest church of that denomination and the church that had been organized and long supported by members of the Duke family.³² Within less than a year of his joining Durham's Rotary Club, Miller was elected to membership on the board of directors, and by 1933 he was elected to the presidency of the North Carolina Conference of Social Service.³³

Aside from Miller's own dynamism, his early and extensive involvement in campus as well as local and state activities was facilitated by the fact that

Miller Papers. Biographical data concerning Miller (1888-1973) is available in *Who Was Who in America* (Chicago: Marquis Who's Who, Inc., 1973), V, 499-500, and is scattered throughout the Miller Papers.

²⁹August Vollmer, chief of police in Berkeley, California, to J. A. Gerk, December 13, 1930, Miller Papers.

³⁰Thomas R. Powell to Justin Miller, September 22, 1930, Miller Papers.

³¹Justin Miller to N. Rea, March 26, 1931, and Miller to C. L. Chute, May 20, 1931, Miller Papers.

³²Justin Miller to T. C. Ridgeway, October 22, 1930, and W. A. Stansbury to Miller, July 30, 1931, Miller Papers.

³³*Chronicle*, May 3, 1933, Duke University Archives. The *Chronicle* is the student newspaper at Duke University.

he seems genuinely to have liked becoming a Tar Heel. After several months in North Carolina, he declared to a California friend that he liked the people he found himself among. "They are just the same sort of folks as those who live out in California," Miller suggested. "They have a good deal of the Western freedom of manner and kindness of spirit, which is so lacking in the New England states and to a greater or less extent also throughout the Middle West."³⁴ As for the country itself, Miller quickly became a strong booster for the state that would much later advertise itself as "Variety Vacationland." To a friend in Los Angeles, Miller reported that he was "particularly pleased with the living and working conditions" that he had found in North Carolina. "When I consider the beauty of this country and the splendid climate which prevails here," Miller added, "I can easily understand how much oversold California is in the minds of the folks who live in this part of the United States."³⁵ And to a friend who worked in publicity for Los Angeles, Miller wryly noted that if there were "two or three hundred good Los Angeles boosters here [in North Carolina], my impression is that the whole middle and western part of the state would be sub-divided before long into city lots and sold to [people in] the Middle West and the North."³⁶

As for Duke and its leaders, Miller initially was equally enthusiastic. He liked the fact that Duke's law school, rather than enroll large numbers of those who would become average practitioners, instead would train leaders on the bench and at the bar. "President Few is about as liberal in his attitude toward independent work upon the part of members of his faculty as any university president I have ever known," Miller declared. Few, according to Miller, frankly urged the faculty "to feel that we are engaged in a piece of pioneering work and that he wants us to have the courage to go our own way." Miller concluded: "I have the feeling that I have come into this country just on the eve of a new and substantial industrial and intellectual development which will be noticed and remarked upon by the rest of the country."³⁷

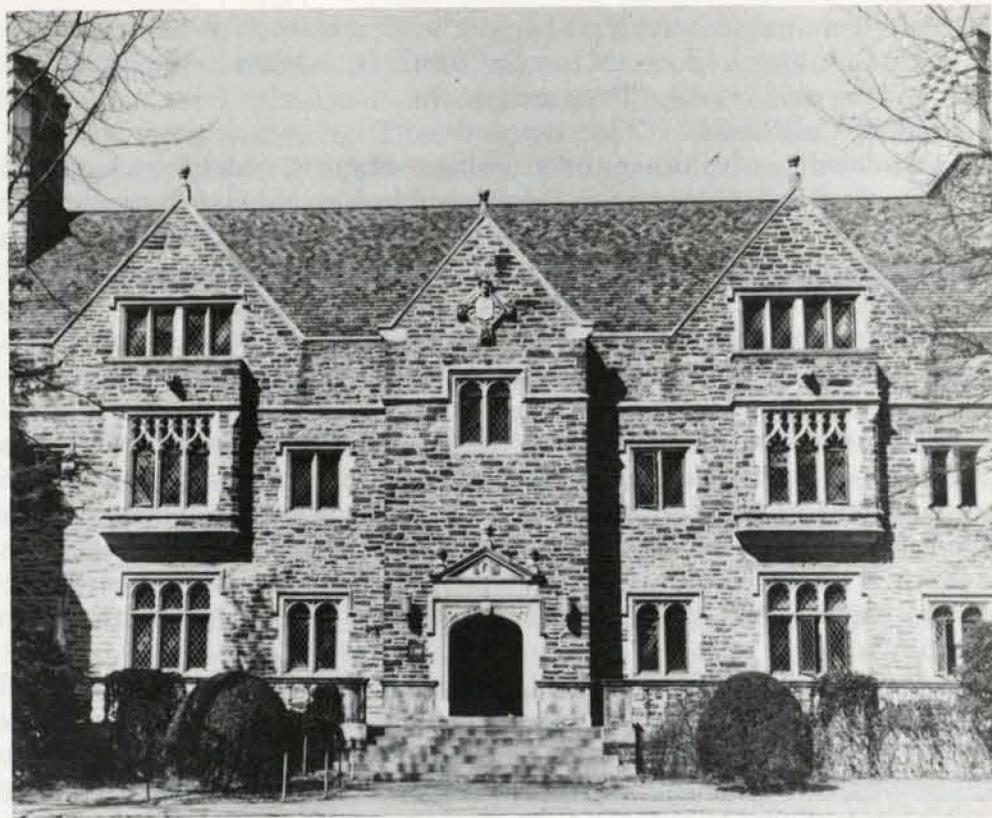
The mood of awakening and pioneering that Miller noted was no doubt enhanced, at least on the Duke campus, by the fact that in September, 1930, Duke's undergraduate men, now constituting the students of Trinity College, as well as the Graduate School of Arts and Sciences and the Schools of Religion and Law, moved from the old Trinity campus into the new Tudor Gothic buildings on the spacious west campus, where the new medical school was also situated. The handsome new law school building stood on the main quadrangle adjacent to the general library. Few and his associates, confronted with the necessity of giving names to certain classroom and dormitory buildings that did not name themselves functionally (such as the library), reached into the institution's history to come up with such names as Carr and Bassett for two of the new buildings on what was now the east or

³⁴Justin Miller to L. E. Thomas, October 8, 1930, Miller Papers.

³⁵Justin Miller to R. H. Scott, June 2, 1931, Miller Papers.

³⁶Justin Miller to L. L. Hill, June 29, 1931, Miller Papers.

³⁷Justin Miller to W. H. Waste, October 10, 1930, Miller Papers.



In 1930 Duke's undergraduate men and the Schools of Religion and Law moved into the new Gothic buildings on the west campus. The new law school structure stood on the main quadrangle adjacent to the general library. Photograph from the Duke University Archives.

Woman's College campus and Craven, Crowell, and Kilgo for dormitory quadrangles on the Gothic campus.³⁸ Several alumni of Trinity's law school promptly queried Few as to why the new law school building was not to be named for Samuel Fox Mordecai. One alumnus, noting that a few "bullet-headed' Preachers" had criticized the irrepressible Mordecai for using strong language and even "cussing" on occasion, insisted that "when the last great Day comes and the trumpet has sounded . . . that Mr. Mordecai will be so high above . . . some few preachers that I know he cannot even look down and see the tops of their heads. . . ." Another prominent legal alumnus, also urging that Mordecai be so honored, argued: "I have never known a man to be more imbued with the spirit of fairness and justice towards all men than Mr. Mordecai, and I don't believe I have ever seen the Golden Rule as nearly approached in practice by anyone as was true in his case." The

³⁸Julian S. Carr, Durham tobacco magnate and Methodist philanthropist, was an important trustee and supporter of Trinity College in the late nineteenth century; Professor John Spencer Bassett was the historian involved in the 1903 struggle for academic freedom (see footnote 9 above). Braxton Craven, John F. Crowell, and John C. Kilgo were earlier, important presidents of Trinity College.

alumnus admitted that Mordecai had not been much interested in the "frills and fringe that go with academic life," but he had been "at home with any assemblage of brains and was abashed in the presence of no one."³⁹

After explaining to the concerned legal alumni that only certain buildings had necessarily to be named promptly, Few went on to note that since James B. Duke had paid for and given all the buildings, his representatives had not only been consulted about the names already designated but had also agreed that "we might name the Law School as a whole for some man if he should be good enough to endow it with something like six million dollars." Few added confidentially that he was "trying very hard to get a man to do just this thing."⁴⁰

Although Few failed, despite valiant efforts, to find the separate endowment for the law school—or for any other of the professional schools—he virtually gave Justin Miller a blank check in the first year or so after he arrived at Duke. Few, along with many others, had become well aware by the summer of 1930 that the economy was badly faltering. What neither he nor anyone else knew was that the nation was gradually slipping into what would be the longest and most severe economic depression in its history. In the fiscal years from 1927 through 1930 payments to Duke University from the Duke Endowment approximated a half million dollars each year and made up roughly half of the university's total receipts. In 1930-1932, before the full impact of falling stock prices and shrunken dividends had hit, the Endowment's contribution was approximately double the earlier level; but since the size of the student body had increased and tuition had been raised, the Endowment still supplied close to half of the university's total receipts. Not until 1933-1934 would the university confront a fiscal crisis because payments from the Endowment then shrank back to their 1927 level.⁴¹ In other words, while Duke University fell far short of all the funds it actually needed for an ambitious and high-quality program, the institution's economic situation in 1930 was relatively strong. President Few, no doubt encouraged especially in this case by W. R. Perkins, meant to go first-class with the law school. And that exactly suited Justin Miller.

Having accepted the Duke deanship, Miller began immediately to recruit new members for the law faculty. "We must be sure," he admonished Few, "that our first appointments are of the most convincing possible character as the law school world and the university world generally will judge us upon the basis of those appointments."⁴² Pursuant to authorization by Few, Miller found several of his initial appointees for Duke among the faculty he had assembled at the University of Southern California. They included John S. Bradway, Douglas B. Maggs, William R. Roalfe, and Gordon E. Dean. The first three of those—Bradway, Maggs, and Roalfe—would

³⁹R. M. Gantt to W. P. Few, October 11, 1930, and Willis Smith to Few, October 13, 1930, Few Papers.

⁴⁰W. P. Few to R. M. Gantt, October 13, 1930, Few Papers.

⁴¹Questionnaire filled out for the General Education Board, February 24, 1938, Box 31, Robert L. Flowers Papers, Duke University Archives.

⁴²Justin Miller to W. P. Few, February 15, 1930, Few Papers.



Having accepted the deanship of the law school, Justin Miller began to recruit new members of the law faculty. From the University of Southern California he selected (left to right, from the top) John S. Bradway, Douglas B. Maggs, William R. Roalfe, and Gordon E. Dean. Photographs from the Duke University Archives.

remain many years at Duke and play significant roles in shaping the law school. An alumnus of Haverford College and the University of Pennsylvania's law school, Bradway acquired his interest in legal aid work in Philadelphia and became one of the foremost proponents of and authorities in that field. After starting a legal aid clinic at the University of Southern California at Miller's invitation, he did the same thing for a much longer period at Duke. One historian of American legal education has pointed to Bradway's work as one of the significantly innovative teaching methods of the era.⁴³ Maggs received a doctorate in juridical science at Harvard after completing his undergraduate work at the University of California in Berkeley. A high-spirited scholar who enjoyed intellectual

⁴³Stevens, *Law School*, 162, 165n.

combat, Maggs would be an important figure in Duke's law school and in the university generally for many years. William Roalfe, an alumnus of the University of Southern California and law librarian there, became Duke's first full-time law librarian and bore the main responsibility for the quick building of a strong legal collection. By 1932 Duke's was the largest law library in the South but, following the old Trinity-Duke policy of not relying on regional measurements alone, Roalfe led in the continuing push for the steady strengthening of the law library. Gordon Dean, who took his law degree at Southern California in 1930, came to Duke as Miller's assistant and also did a limited amount of teaching while obtaining one of Duke's first graduate degrees in law.

Another early appointment was H. Claude Horack, professor of law at the University of Iowa. In 1927 the American Bar Association named Horack as its first full-time adviser on legal education with the purpose of raising the standards of the nation's law schools and of the states' bar examinations. Horack also served as president of the Association of American Law Schools.⁴⁴ Horack would succeed Miller as dean in 1934 and remain in that post until 1947.

Having at Few's urging accepted both Bryan Bolich and Thaddeus Bryson from the original Duke law faculty, as well as Marshall T. Spears, Sr., a Durham attorney who taught part-time, Miller soon recruited Malcolm McDermott, former dean of law at the University of Tennessee and president of the Tennessee Bar Association, to head an innovative department of legislative research and drafting. While several of Miller's most outstanding finds were still to be recruited, he felt justifiable pride in his first group of appointments and also in the increased size and quality of the entering class in the fall of 1930. With seventy-seven students in all (after four who had registered dropped out), Miller thought he detected "a striking contrast" between the students entering in 1930 and those that preceded them. Coming from a wider area than ever, the first-year students were, according to Miller, "very superior" and "one of the best groups" he had ever seen.⁴⁵

Still receiving generous support from Duke's administration, Miller made significant additions to the faculty during 1930-1931. He did not, of course, get everyone he sought, despite the fact that the salaries proffered were quite competitive with the best among law schools. Roswell Magill, in tax law at Columbia University, declared initially that the work at Duke appealed to him because of its "pioneer character," but he ultimately declined Miller's offer.⁴⁶ Similarly, a handsome salary of \$12,000 plus an invitation to join Miller in establishing at Duke an Institute of Criminal Law failed to lure Albert J. Harno, dean of the School of Law at the University of Illinois.⁴⁷

⁴⁴Stevens, *Law School*, 173.

⁴⁵Justin Miller to A. B. Andrews, November 7, 1930, Miller Papers.

⁴⁶Roswell Magill to Justin Miller, November 28, December 4, 1930, Miller Papers.

⁴⁷Justin Miller to A. J. Harno, January 20, 1931, and Harno to Miller, January 27, 1931, Miller Papers.



Another of Miller's early appointments was H. Claude Horack, professor of law at the University of Iowa. Horack had been the first full-time adviser on legal education for the American Bar Association and president of the Association of American Law Schools. He succeeded Miller as dean in 1934 and remained in the post until 1947. Photograph from the Duke University Archives.

Still, if Miller could not win every time, he succeeded sufficiently to build a most impressive faculty of twelve persons by the fall of 1931.

Miller had failed to get the Illinois dean, but he succeeded in securing a bright, younger man whom he knew on the faculty there, Lon L. Fuller. With undergraduate as well as law degrees from Stanford, Fuller faced the no doubt pleasant situation of being sought by both Duke and Chicago even as Illinois attempted to hold him. Chicago offered an associate professorship at a salary of \$7,500 with an obligation to teach only contracts. In a winningly frank and detailed letter, Miller explained to Fuller that he could probably teach whatever he preferred at Duke and that while the standard teaching load in the law school was six hours of classes per week (it was officially fifteen hours in Arts and Sciences), if Fuller wished to engage in special research, a lighter load could be arranged—provided there was “a program to cover it which will be sufficiently illuminating to the President so that he will have no question about your loafing on the job.” Miller advised that there was a \$25,000 annual appropriation for the law library's purchases and that he could probably get a special appropriation for some of the European legal books that Fuller might wish to add for comparative study. Since Fuller had inquired about the others on the faculty—and he already knew Miller, Maggs, Bradway, and Horack—Miller reported that



Miller recruited Malcolm McDermott, former dean of law at the University of Tennessee and president of the Tennessee Bar Association, to head a department of legislative research and drafting. Photograph from the Duke University Archives.

Bryson, with a high reputation among Tar Heel lawyers, was a “typical old judge type” in his standards and teaching but “very much impressed with the importance of building a law school on proper grounds and is amenable to any type of program which we work out.” He was well qualified in the specialized field of North Carolina pleading. Miller described Bolich as a person of “fine ability” and McDermott as “one of the finer representatives of law teachers in the Southern states” and “a charming fellow personally.” Fuller, refusing to bargain with Illinois, accepted Duke's offer of a professorship at \$8,000 a year and ultimately proved to be one of Miller's prize catches.⁴⁸

At the same time he was recruiting Fuller, Miller sought and landed another young legal scholar of great promise. David M. Cavers, an assistant professor of law at West Virginia University, had, after graduating at the University of Pennsylvania in 1923, served as president of the law review board at Harvard and achieved the highest three-year academic average in

⁴⁸Lon L. Fuller to Justin Miller, telegram, January 7, 1931; Miller to Fuller, January 19, 1931, Miller Papers.

his class. After practicing law in New York for three years, he served as an instructor in Harvard Law School for one year before taking the job at West Virginia. Miller explained to Cavers that, in anticipation of publishing a law review in a couple of years, Duke planned to start in the fall of 1931 a course in Current Decisions that all second-year students would be required to take. The group would be divided into sections and do pretty much the same sort of work that only the elite group of students on the staff of the law review did in the larger schools. In light of Cavers's experience at Harvard, Miller thought he might be interested in helping in such a course. That was indeed the case, though a \$1,000 increase over the \$4,500 he received at West Virginia no doubt also played a part in Cavers's decision.⁴⁹ Thurman Arnold, then a professor of law at Yale, congratulated Miller on getting Cavers, whom Arnold regarded as "one of the unusual finds running about loose in the law school world today." The most essential element in building up a law school, Arnold explained, was "the ability to pick coming men," and he thought that the case of Cavers proved that Miller had an eye for them. When Arnold concluded by warning that Yale might make it hard for Duke to keep Cavers, Miller retorted that nothing gave him greater pleasure "than to have on my faculty men who are wanted badly by other schools."⁵⁰

As many of the appointments revealed, Miller was determined to have the Duke law school in the forefront of the movement to have legal training deal with the major economic and social problems of the time. Another important appointment that suggested such an orientation was that of Leslie Craven. A friend of Miller's for a number of years, Craven had received both his undergraduate and law degrees at Stanford, the latter in 1911. Becoming a prominent railway attorney first in Oregon and then the nation, he was named counsel for the Presidents' Conference Commission on the Federal Valuation of the Railroads. When Miller pushed late in 1931 to have Craven appointed to teach in the fields of public utility law and taxation at a salary of \$14,000, an enormous academic salary for that era, Few finally balked. Miller had carefully studied James B. Duke's indenture creating the Duke Endowment, however, and reminded Few of the philanthropist's injunction that the university should secure for its faculty such persons as would "insure its attaining and maintaining a place of real leadership in the educational world. . . ." Miller then asked if the university wished to undertake a long, slow period of development or "go forward boldly with the objective of overtaking the leading schools and placing ourselves in the same group within the next few years." If the latter course was to be the choice, then the university would certainly have to spend even more than it had already committed.⁵¹

Miller could, of course, forget about the nation's economic depression. Few could not. Its impact on Duke University had been delayed but was clearly

⁴⁹Justin Miller to David M. Cavers, January 21, February 24, 1931; Cavers to Miller, February 5, March 12, 1931, Miller Papers.

⁵⁰Thurman Arnold to Justin Miller, March 30, 1931, and Miller to Arnold, April 9, 1931, Miller Papers.

⁵¹Justin Miller to W. P. Few and R. L. Flowers, December 1, 1931, Few Papers.

beginning to loom ahead by late 1931. Still, Miller found an important ally in William R. Perkins, who supported the appointment of Craven and ascertained that while he would definitely come to Duke for \$14,000 he would consider doing so for \$12,000. Craven telegraphed his acceptance of the offer at the latter figure in December, 1931.⁵²

Miller won the battle about Craven, but Few also scored a few points along another line. Miller believed that there were advantages in bringing in well-established legal scholars as visiting professors, especially during the period when he was recruiting his own faculty. During his first year at Duke, 1930-1931, Miller was proud to have the dean of Stanford's law school, Marion Kirkwood, as a visiting professor, and during 1931-1932 there were prominent, and relatively expensive, visiting professors from both Stanford and Pennsylvania. As part of a compromise about Craven's appointment, however, Few obtained Miller's promise that for 1932-1933 the visitors would be replaced by younger men at much smaller salaries.⁵³ In carrying out this policy, Miller added two younger men beginning in the fall of 1932: Warner Fuller, who received undergraduate training at the University of Oregon and his law degree at Yale, and Paul W. Bruton, who also took his law degree at Yale after undergraduate work at the University of California in Berkeley.⁵⁴

The able faculty that Justin Miller recruited was no doubt the major explanation for the attention that the law school world paid to Duke in the early 1930s, but it was not the only one. Another factor was the innovative program and curriculum of the school. In launching the legal aid clinic, Miller and Bradway had the utmost support of the general administration, for such service-oriented activity appealed strongly to Few and was, in fact, very much in the Trinity-Duke tradition. On a more mundane level, however, Miller and Bradway were careful to meet early on with the members of the Durham bar and to explain how the clinic would work and that only those persons unable to pay would be accepted as clients. Thus they won important local support for the project.⁵⁵ Personal injury cases where a contingent fee might be involved were not to be accepted as was also true of most divorce cases. Drawing on his experience, Bradway believed that most cases would involve the recovery of small wage claims, landlord-tenant difficulties, and protection of women and children in various respects. In addition to the assistance for indigents Bradway emphasized that the clinic was intended "to acquaint the student, by direct contact under faculty supervision, with certain of the problems of 'law in action' which may escape emphasis in the study of 'law in books.'"⁵⁶

After the clinic had operated successfully for almost two years out of its offices in the law school building on Duke's campus, Miller received an

⁵²W. R. Perkins to W. P. Few, December 3, 1931; Perkins to Justin Miller, December 1, 1931; and Miller to Few and Flowers, December 18, 1931, Few Papers.

⁵³W. P. Few to W. R. Perkins, December 21, 1931, Few Papers.

⁵⁴Carter, "The Rise to National Stature of the Duke Law School," 20.

⁵⁵*Chronicle*, September 16, 23, October 7, 1931.

⁵⁶*Chronicle*, September 23, 1931; John S. Bradway, Memorandum on Legal Aid Clinic, February 1, 1933, Miller Papers.

inquiry about the feasibility of such a clinic in small cities. He explained that the experience at Duke suggested an answer in the affirmative. While Durham then had a population of only about 55,000, the clinic had extended its cases widely, Miller noted, and gone into a number of fields that were not usually considered for clinic purposes. For example, in addition to the work with indigents, the clinic staff occasionally helped prepare opinions for various judges. Then there was the matter of remedial legislation, such as in the small loan area. When the Duke clinic took up a test case on North Carolina's sterilization law, which the state's supreme court found unconstitutional, the clinic helped prepare a new law that the legislature then adopted.⁵⁷

An unusually conscientious and dedicated professor, John Bradway long emphasized the service and public-relations aspect of the legal aid clinic. "As far as I can see[,] Duke University, at least during our generation, needs more than anything else," he declared, "to build up in the minds of the people of North Carolina and the South a sense of confidence and pride in its achievements." Just as Duke's medical school won friends by leaning down to individuals and showing interest in their physical well-being, he argued, the legal aid clinic could gradually build confidence in the law school. Bradway, who led the law faculty in the sheer number of publications (mostly articles) during the period from 1930 to 1935, maintained that while scholarly writings gradually reached their intended audience, "the base of public confidence [in Duke] should be broader than that." Active in Durham's community welfare program as well as in the State Conference of Social Work, Bradway built a collection of photographs of prominent Tar Heel judges and lawyers as well as courthouses to display in the rooms of the clinic, asserting that he and his colleagues on the faculty could not "build a new enterprise like the Duke Law School into the general consciousness of the people of North Carolina without showing an appropriate respect for their traditions and institutions."⁵⁸

While Bradway pushed public outreach and service through the legal aid clinic, Malcolm McDermott and a small staff found a useful as well as instructionally valuable role to play through the department of legislative research and drafting. At the request of Walter P. Stacy, North Carolina's chief justice, McDermott's group undertook a study of constitutional provisions concerning county and municipal government with a view toward assembling information for the state's commission on constitutional revision. The handbook *Legislation in North Carolina* published by the department must have been useful, for requests for copies came in from across the state. Legislative research and drafting were not limited to North

⁵⁷Justin Miller to J. J. Robinson, May 2, 1933, Miller Papers. In *Brewer v. Valk*, 204 N.C. 186 (1933), the North Carolina Supreme Court ruled that sections 2 and 3 of *Public Laws of North Carolina, 1929, c. 34*, were unconstitutional. That law was replaced by *Public Laws of North Carolina, 1933, c. 224*.

⁵⁸J. S. Bradway to H. Claude Horack, August 7, September 17, 1934, Records of the Duke University Law School, Files of H. C. Horack, Duke University Archives, hereinafter cited as Horack Papers.

Carolina, however. A request from Oregon's legislature, possibly inspired by Miller's connections there, led to the drafting of a bill intended to protect public funds that were deposited in banking institutions.⁵⁹

While the legal aid clinic and the activity in legislative research and drafting obviously had valuable instructional aspects and were not commonplace among other law schools at that time, Miller's innovative plan for a course in Current Decisions was more directly related to the central purpose of the law school. Maggs and Cavers had primary responsibility for the two sections into which the second-year class was divided, but all faculty members were expected to contribute. Both the relative smallness of Duke's law school—seventy-one students in 1931 when the course was introduced—and the quality of its proportionately large faculty made it possible for Duke to give all of its law students the type of closely supervised research and writing experiences that were reserved in the larger law schools only for a handful of academically elite students. Duke's plan called for each student in the course to prepare during the year three or four short case notes and two longer comments, with the better papers to be published periodically.⁶⁰

Although Miller intended from the first for the Duke law school to have its own publication, as did virtually all of the important law schools, he wisely refused to be hasty about the matter and waited until the school had assembled its faculty and begun to attract the type of students it wanted. He had learned while dean at Southern California, he explained, that a law review, or something like it, not only could be used "in the finest sense as an honor's course," but that it also was "very stimulating to more intensive work, upon the part of both faculty members and students."⁶¹ By the spring of 1933, Miller and his colleagues were ready to launch plans for the publication of not one but two journals, and therein lay another aspect of the distinctiveness that characterized Duke law school under Miller's leadership. Moreover, the fact that the administration, that is, Few and Flowers, supported these plans despite the severe budgetary restrictions under which the university had to operate by 1933-1934, is further evidence of the strong commitment that the university's leaders continued to make to the law school.

As David Cavers argued in a memorandum, every significant American law school, with the exception of Stanford at that time, published a legal periodical. Most of those publications followed, with "inconsequential variations," the pattern that Harvard had set in 1887 with its law review. That is, the journals usually appeared eight or so times a year, and specialized articles by established scholars on miscellaneous aspects of the law were followed by a special section that featured student work. Cavers, explaining and justifying a plan with which Miller and others on the law faculty were already in agreement, called for Duke to break from the

⁵⁹*Chronicle*, November 11, 1931, January 18, 1933.

⁶⁰Justin Miller to W. P. Few and R. L. Flowers, October 24, 1931, Miller Papers; *Chronicle*, November 4, 1931.

⁶¹Justin Miller to K. N. Llewellyn, October 23, 1930, Miller Papers.

stereotype and "strive to make a distinctive contribution to legal periodical literature."⁶²

Duke's law faculty, therefore, proposed to publish a quarterly journal, each issue of which would carry a symposium on one of the many problems of the law "which are so interrelated with problems in the other social [science] disciplines as to render their consideration from a variety of points of view imperative to their proper understanding." The journal would thereby be "a concrete manifestation of that interrelation concerning which so much is said and so little is actually done, at least in the domain of legal scholarship." It would emphasize "law in action" as distinguished from "law in books" and would, Cavers maintained, "inevitably attract the keenest interest among the law teaching profession" and place Duke among the leaders of the movement to broaden the function of the law school. Since the quarterly would deal with "living problems," Cavers believed that there was every likelihood that it would be read by subscribers rather than filed away, as he suggested was the usual fate of a law review. While there would be no special section for student work, significant and superior essays by students could certainly be included when they were appropriate.⁶³

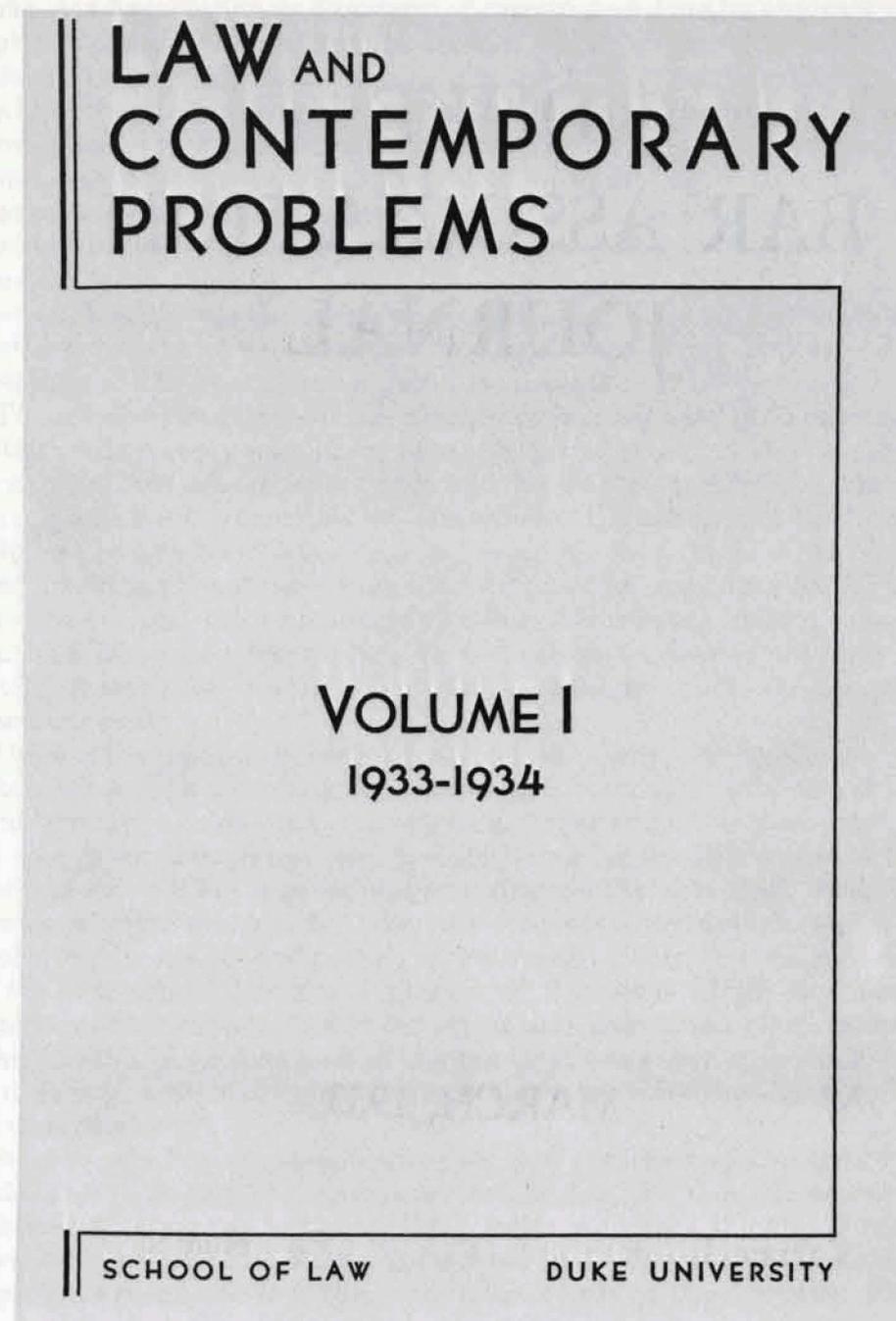
When the time came to name the new publication, faculty members played around and let their imaginations run wild. Leslie Craven came up with five possibilities, including "Inscrutability Unscrewed" and "Intimations of Infallibility." Cavers retorted with "The New Leviathan" or, certainly better, "Toots from Tugboats." After more serious discussion of various possibilities, they settled on *Law and Contemporary Problems*. The first issue, edited by Cavers and featuring as a topic "The Protection of the Consumer of Food and Drugs," appeared in December, 1933. As Cavers had predicted, it and subsequent issues indeed helped put the Duke law school on the legal world's map.⁶⁴

The first issue of the other publication, a student-edited quarterly, appeared in March, 1933, and was initially named the *Duke Bar Association Journal*. The name was not fanciful, for, following a plan Miller had first tried at Southern California, he had led the law students in organizing themselves into the Duke Bar Association, modeled closely on the structure of the America Bar Association and various state associations. That is, the student body was divided into nine sections with a faculty adviser for each, the sections consisting of legal education and admission to the bar, legislation, law school affairs, criminal law, comparative law, legal aid, constitutional amendments, grievances and professional conduct, and publications. With appropriate and sometimes distinguished visiting speakers invited by the various sections, Miller thought "the boys" were "on their toes regarding the Bar Association work" and that other members of the

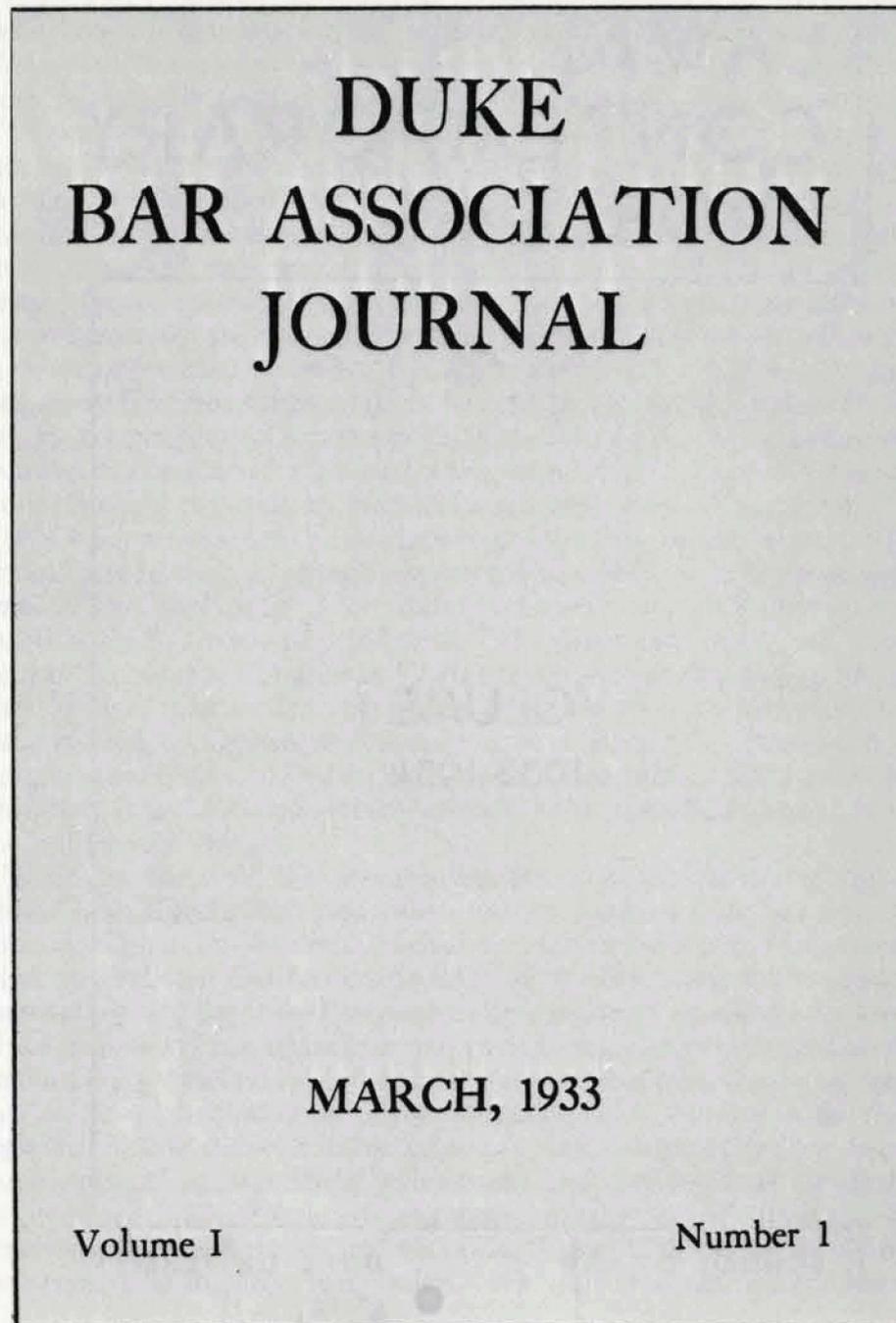
⁶²David Cavers to Justin Miller, Memorandum on Advantages to the School of Law of the Projected Legal Periodical, n.d. [March, 1933?], folder on *Law and Contemporary Problems*, Miller Papers, hereinafter cited as Cavers Memorandum.

⁶³Cavers Memorandum. Miller sent a copy of this memorandum to Few and Flowers.

⁶⁴Leslie Craven to Justin Miller and David Cavers, n.d. [March, 1933]; Cavers to Miller and Craven, March 28, 1933, Miller Papers.



Duke's law faculty published the first issue of its journal, *Law and Contemporary Problems*, in December, 1933. The periodical helped to establish the law school's excellent reputation. Photograph of the cover of the first volume from the Duke University Archives.



In March, 1933, students at the Duke law school began publishing a quarterly entitled the *Duke Bar Association Journal*. The publication was named for the organization of Duke law students modeled after the American Bar Association and various state associations. Photograph of cover of first issue from the Duke University Archives.

faculty besides himself were becoming more and more interested in its work. The first issue of the *Journal* contained reports of the various sections of the Duke Bar Association and reviews of current decisions by students of the highest academic standing in the second- and third-year classes.⁶⁵

Just how the students themselves reacted to the various developments in the law school in the early 1930s can only be inferred. There probably was an atmosphere of ferment and intellectual excitement, but the economic depression was a grim, grinding reality for many, probably most, of the students. Although there were at first fifty tuition scholarships for law students and then forty when the tuition was raised in 1931 to \$250, there were no fellowships or stipends that covered more than tuition. Claude Horack thought that the school's "greatest need" was help for "exceptional southern boys" who were "nearly all going on a shoestring, hoping each day that they will be able to find at least one meal the next."⁶⁶

To provide at least temporary, emergency help for hard-pressed students, Miller used an unexpected check for a talk he had given in a Durham church to start a law school loan fund, and he wanted publicity about it to encourage others to contribute.⁶⁷ The wives of the law faculty pitched in to help by giving a benefit bridge party to aid the loan fund. Miller reported that the fund proved most useful, with loans not exceeding \$20.00 being made to a considerable number of students. A third-year student suggested that the Duke Bar Association should create another small loan fund whereby loans of from \$1.00 to \$3.00 could be made for temporary emergencies.⁶⁸

Despite the obvious poverty of so many students, the smallness of the school made for a community spirit among the students and closer student-faculty relationships than characterized larger and often more urban law schools. Even though national prohibition under the Eighteenth Amendment prevented the type of beer-drinking conviviality that would later become a part of student life, Duke's law students enjoyed respites from their books, even in the dry and poverty-stricken early 1930s. The ladies auxiliary of the law school, composed largely of the wives of the law faculty, entertained both students and faculty at teas, sometimes given in the law school building, and as part of the pre-Christmas festivities in 1932 the school sponsored an informal dance in the ballroom of the Union building on west campus.⁶⁹

Whether the law students always enjoyed the lessened anonymity that Duke's small classes gave them may well be debated. The professors liked, or became accustomed to, the relatively intimate classes. Douglas Maggs, as a visiting professor at Yale's law school in 1936, commented about his experience there, and thus threw an indirect light on the situation at Duke:

⁶⁵Justin Miller to H. C. Horack, March 18, 1933, Miller Papers; *Chronicle*, April 12, 1933.

⁶⁶H. C. Horack to Kenneth Rush, December 10, 1937, Horack Papers.

⁶⁷Justin Miller to G. Dean, November 18, 1930, Miller Papers; *Duke Alumni Register*, XVI (December, 1930).

⁶⁸Justin Miller to H. C. Horack, March 18, 1933, Miller Papers.

⁶⁹*Chronicle*, December 14, 1932.

So far, I am unconvinced that the students here are better than those at Duke—to put it mildly. The usual rumors reached me that my sarcasm & shouting frightened them & made them angry—but I think they'll get over that as my classes elsewhere have. It is fun to have 65 in a class again, but I'm not sure I'd prefer it after the novelty has worn off.⁷⁰

Lon Fuller, visiting at Harvard and teaching contracts to a large class of first-year students, reported that he had had some surprises in his teaching. "In the first place, I have found it rather easier to teach large classes than I thought it would be," he commented. "To tell the whole truth, I'm afraid I rather enjoy the experience of presiding over a public meeting." On the other hand, Fuller found his Harvard students "terribly frightened and tense." He declared that he sometimes felt "like a captain addressing a few words to his men just before they go over the top." He got the impression that "their brains are congealed with fright," and while he hoped the atmosphere would change, he had heard that it actually worsened toward examination time. "It not only tends to spoil the classroom discussion," Fuller continued, "but I am also getting tired of having every student who gets off on the wrong foot in class run down to me immediately after class to explain just why he went wrong, for fear I'll put down a little demerit mark opposite his name."⁷¹ Duke law students may or may not have been as tense and apprehensive as those Fuller found at Harvard, though the probability is that they were not, mainly because they were not "lost" in a mob.

The Duke law students, when given an opportunity to make their opinions known, did complain about their work load. In response to a questionnaire about methods of study and instruction, the students hit hard at what they believed to be the excessive assignments of cases to study and brief. When Maggs, who happened to be away on leave at the time, was informed of this, he urged the dean to set himself "firmly in the way of this Bolshevistic attempt to abolish the reading and briefing of cases by students." He insisted that the "ability to tear an opinion to pieces thoroughly and rapidly, to distinguish holding from dictum (*but* to be able to use dictum in an argument or brief if it will help) is almost the biggest thing a student gets from law school." Naturally the students tired of doing that, Maggs conceded, but as with the piano, "practice—repeated and repeated—does give proficiency."⁷²

While the students groaned and continued briefing cases, the professors found their own satisfactions. Once again, it was Douglas Maggs who shed some light on why certain lawyers prefer the classroom. During World War II he found himself, as solicitor of the United States Department of Labor, presiding over a staff of about 170 lawyers. He reported that at times he enjoyed the administrative work, but at other times he did not. "In the long run, I still think teaching can't be topped," Maggs declared. "The class room

nearly makes up for the exciting moments of arguing cases, etc.—and there is real satisfaction in plugging away at one's subjects—an intellectual continuity that is lacking in private practice or government service." Maggs, already contemplating postwar possibilities for the Duke law school, declared that his experience in Washington had convinced him that "every job a lawyer has to do is unique—and that a trained mind is the thing needed most. No—one thing more—ability to write (and talk). I wonder if we could do more about ability to write?"⁷³ The students, grinding away at their lawbooks and the eternal briefing, no doubt viewed the matter somewhat differently and would have surely testified that they were already required to write quite enough.

The few women law students at Duke in the 1930s had more to worry about than their work load, for they were indeed a small minority in an overwhelmingly masculine world. In the spring of 1932, a Phi Beta Kappa senior in Duke's Woman's College applied for a scholarship in the law school. Miller consulted Few and Flowers, the other two members of the administrative committee for the school, as to whether one scholarship should be earmarked for a woman student or should she merely be allowed to compete with the male applicants. Miller added that he thought it "highly desirable that some outstanding women students should be admitted to our Law School and of course we have placed no obstacles in their way." Subsequently, the administrative committee decided that, as a matter of policy, women applicants for scholarships would be treated on the same basis as men.⁷⁴ Despite this open door, there were not many women in the 1930s to whom the law beckoned. In 1939 Horack reported that out of seventeen women who had attended Duke law school since its reorganization in 1930, nine withdrew before completing the law course.⁷⁵ He did not go on to say so, but the eight women who did receive their Duke law degrees obviously triumphed over many subtle, and quite a few not-so-subtle, obstacles.

Friendly and open to the students, male and female, and apparently enjoying quite cordial relations with his colleagues, Miller had succeeded by the fall of 1932 in building a first-rate faculty that helped attract a slowly growing but able student body. The enrollment went up about 25 percent in September, 1932, to ninety-five students, and increasingly they came from a more geographically dispersed area. In 1929-1930, 80 percent of Duke's law students had come from North Carolina. By 1934-1935, that figure had shrunk to 29 percent, and 40 percent came from outside the South. The law library of about 12,000 volumes in 1930 had grown to 33,443 volumes by the spring of 1932 and, despite the depression, was still growing. Having the largest law library in the South and only the sixteenth largest in the nation

⁷⁰Douglas Maggs to H. C. Horack, February 13, 1936, Horack Papers.

⁷¹Lon Fuller to H. C. Horack, October 10, 1939, Horack Papers.

⁷²Douglas Maggs to H. C. Horack, October 11, 1938, Horack Papers.

⁷³Douglas Maggs to H. C. Horack, June 6, 1943, Horack Papers.

⁷⁴Justin Miller to W. P. Few and R. L. Flowers, March 24, 1932, and Minutes of the Law School Administrative Committee, April 19, 1931, Few Papers.

⁷⁵H. C. Horack to C. L. Pittz, May 11, 1939, Horack Papers.

was not a situation at Duke that called for resting.⁷⁶ Why, having been supported generously by the administration and having achieved so much in such a relatively short period, would Justin Miller wish to wage an almost open campaign against President Few and the manner in which he led Duke University?

(Part II of "The Rebuilding of Duke University's School of Law, 1925-1947" is scheduled to appear in the October, 1989, issue of the *North Carolina Historical Review*.)

⁷⁶Carter, "The Rise to National Stature of the Duke Law School," 22-23.