

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.¹

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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¹See, 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."²

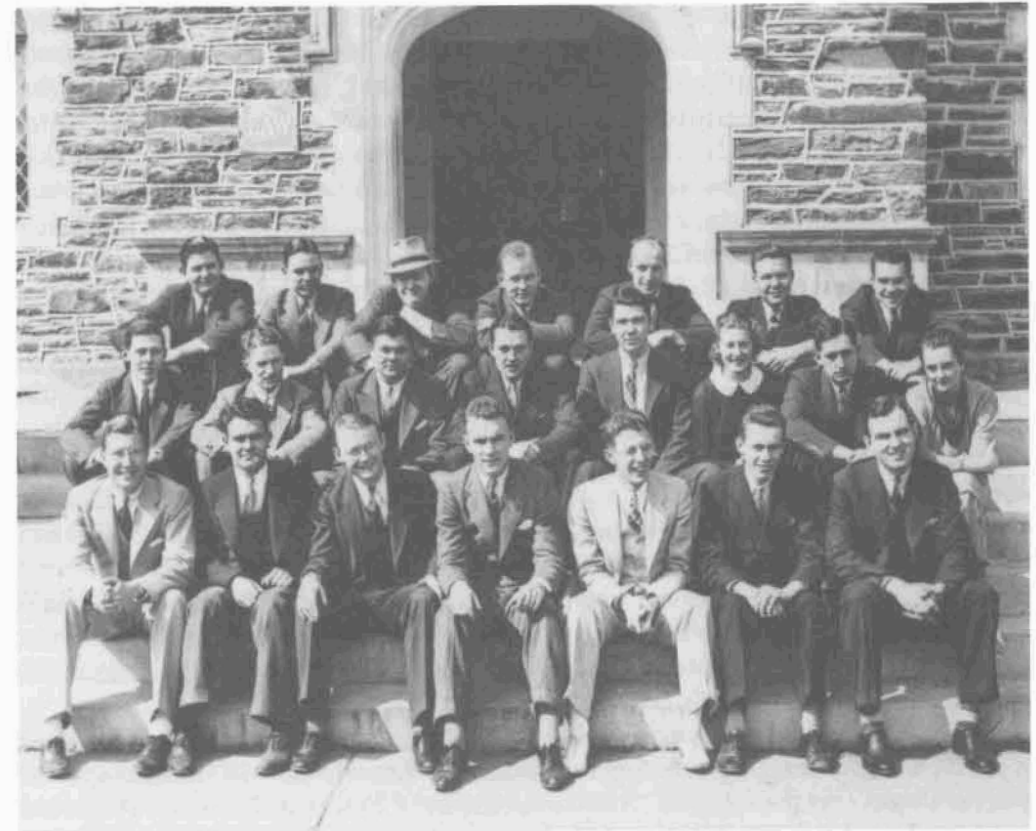
Getting what he wanted for the library as well as in the way of appointments to the faculty, Miller launched a battle in May, 1931, about one of academia's favorite bones of contention—space. Both faculty offices and classrooms were in short supply on Duke's two campuses in the 1930s, and especially 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."³ 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).⁴

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

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

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

⁴W. 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."⁵

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

⁵Justin 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.⁶

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

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

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.⁷

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.⁸ 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.⁹

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."¹⁰

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,

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

⁸Author's interviews with various members of the faculty who worked with Few.

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

¹⁰W. P. Few to W. R. Perkins, December 21, 1931, Few 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.¹¹

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.¹²

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. . . ."¹³ 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

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

¹²These 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."

¹³James 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.

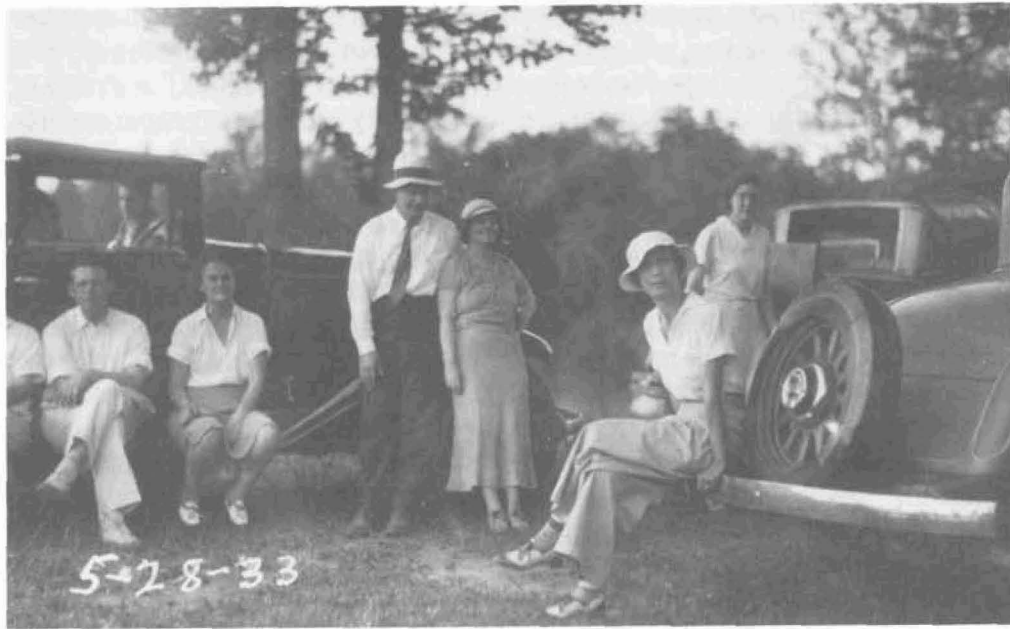
unusual for a dean of a professional school. As much in demand as a speaker on the campus as he was off of it, Miller, for example, addressed a dinner meeting of Trinity College freshmen on "Law as a Profession," a group of seniors on choosing their vocations, and a Sunday afternoon vesper service on "Blasphemy and Contempt of Court"—all in about a two-week period.¹⁴ 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.¹⁵

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.¹⁶ Before that happened, however,

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

¹⁵See 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.

¹⁶R. 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.¹⁷

¹⁷Justin 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."¹⁸

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

¹⁸Justin 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."¹⁹ 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.²⁰ 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

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

²⁰Justin 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.²¹

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."²² 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.²³

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.²⁴ 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

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

²²Clement Doyle to Justin Miller, February 6, 1934, Miller Papers.

²³Justin Miller to Clement Doyle, February 20, 1934, Miller Papers.

²⁴For 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.

