

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

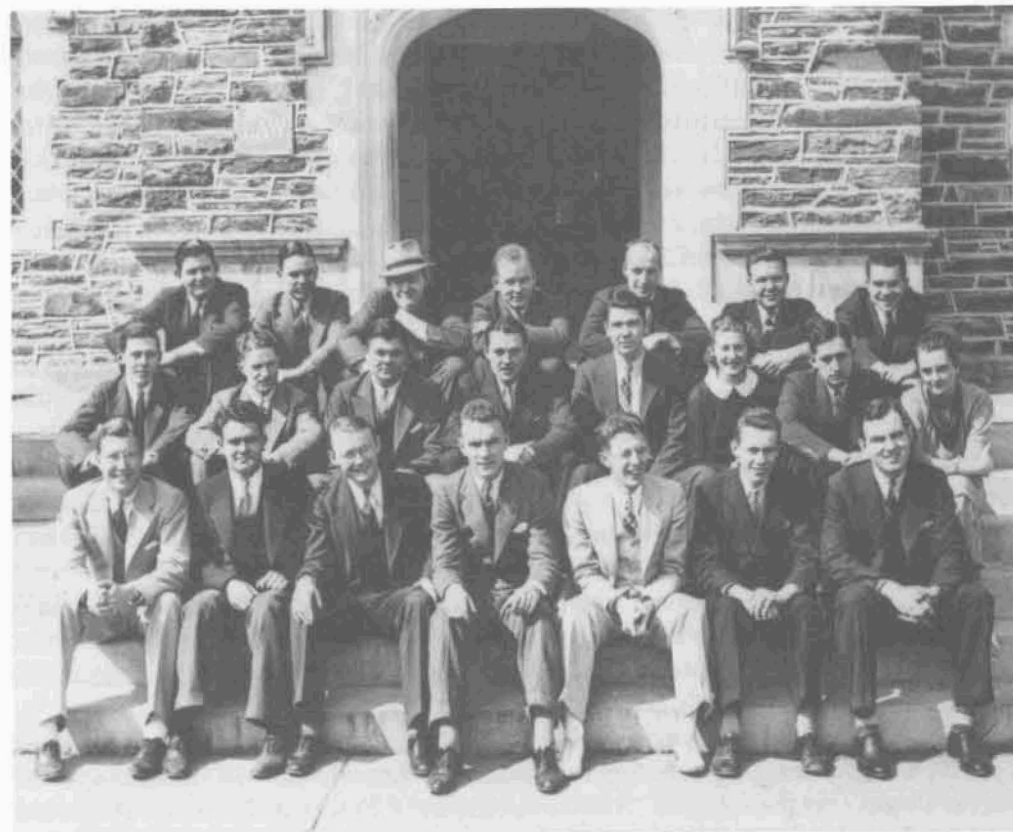
Getting what he wanted for the library as well as in the way of appointments to the faculty, Miller launched a battle in May, 1931, about one of academia's favorite bones of contention—space. Both faculty offices and classrooms were in short supply on Duke's two campuses in the 1930s, and especially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

