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## The Law School 1930-1941

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The  
Golden Gate University  
Story

*Volume One*

NAGEL T. MINER

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*Nagel T. Miner*

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Chapter Seven

The Law School  
1930-1941

The faculty of the Law School in 1930 was comprised of Dean J.E. White, who had served as dean on a part-time basis since 1914, and twelve part-time instructors, as listed below. All faculty members were engaged in legal work; ten were practicing attorneys; twelve were graduates of nationally accredited law schools, including five from the University of California, three from Stanford University, and two from Hastings College of the Law.

The usual teaching load was one subject taught once a week between 6:30 and 9:30 p.m. Compensation was \$7.50 per evening session.

<u>Name</u>	<u>Degree</u>	<u>Law School and Affiliation</u>	<u>Period of Teaching</u>
J.E. White,	LL.B.	Hastings College of the Law	1914-1933
Warren H. Pillsbury,	J.D.	University of California Deputy Commissioner, U.S. Employee Compensation Commission	1914-1965
H.C. Kelsey,	J.D.	University of California	1915-1935
Donald Pearce,	J.D.	University of California Assistant Commissioner of Corporations, California	1923-1964
Southall R. Pfund,	J.D.	University of California	1923-1933
David Lener,	LL.B.	Stanford University	1924-1934
Forrest W. Pearce,	J.D.	University of California	1925-1933

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<u>Name</u>	<u>Degree</u>	<u>Law School and Affiliation</u>	<u>Period of Teaching</u>
Edward L. Peterson,	LL.B.	University of South Dakota, Escrow Officer, California Pacific Title Insurance Company	1926-1951
Joseph J. Geary, John W.	LL.B.	San Francisco Law School	1927-1935
Dinkelspiel,	LL.B.	Harvard University	1927-1933
Kenneth Ferguson,	J.D.	Stanford University	1928-1935
Elmer Collett, George N.	LL.B.	Hastings College of the Law	1929-1941
Crocker,	J.D.	Stanford University	1929-1941

It was surprising that a law school with such a faculty would be facing several difficult problems. To understand these problems we need to consider the philosophy and objectives of the school from the time of its origin in 1901, the educational opportunities in San Francisco during the early years of the century, and the changing conditions of legal education from the time of the 1906 earthquake to 1930.

Many of the early lawyers in California had received their legal education in the East. Some young men in California took correspondence courses; some exchanged law office work and a small salary for instruction in law by an attorney or a judge. Such procedures were far from satisfactory, but several very successful and highly respected attorneys were "self-educated" by one of these methods. One who comes to mind was the distinguished San Francisco attorney, the Honorable John L. McNab, one of the first trustees of Golden Gate College. Mr. McNab was the man selected by Herbert Hoover from all the members of the Republican Party to put his name in nomination for the presidency. For most persons, however, preparation for the legal profession was very difficult without the guidance of an organized curriculum, directed reading, discussions of legal cases, and the stimulation and instruction of qualified and experienced

instructors.

The New York Law School, a private school not affiliated with New York University, began giving evening classes in the latter part of the nineteenth century. A number of distinguished lawyers, judges, congressmen, senators, and diplomats were among the alumni of that pioneer evening law school. As noted before, news of that school had reached a young man in San Francisco, Charles Baer, who came to Henry J. McCoy, General Secretary of the YMCA, and to A.A. Macurda, Educational Director, requesting that the YMCA provide an opportunity for young people to study law in their evening school.

The YMCA Law School opened in 1901, the first evening law school and the third law school in Northern California, preceded only by Hastings College of the Law and Stanford. Faculty members were recruited from Hastings. James Ballentine, a Hastings professor, became the first dean of the YMCA Law School.

The original objective of the law school, according to Dean Ballentine, was to provide an opportunity for the study of law to everyone who had the ambition, energy, and willingness to spend the time required for preparation and class attendance. Opportunities for an education beyond high school were few and far between in San Francisco in 1901. The YMCA Law School set up no prerequisites to restrict admission. As former Dean Ballentine pointed out, however, there was nothing easy about the program. Evening students took the same subjects as students at Hastings, although four years or more were required to complete the course, instead of three. This open door policy on admission was still in effect when Gustav White was Director of the YMCA School in the years prior to World War I.

Classes were relatively small. Among the first students were Charles Baer, Charles Prichard, Joseph Webb, Chalmer Munday, and Jacob Gorfinkel. Jacob Gorfinkel had been a mail clerk on the Southern Pacific Railroad on the run to Reno. He got a job on the midnight shift in the San Francisco post office, so that he could study law in the new school. His son, John Gorfinkel, taught law at Golden Gate College and served as Associate Dean, and later as Dean, for many years during the most critical times in the school's history. Joseph Webb, the son of a judge, was born in Salinas in 1878. He attended the YMCA Law School and was admitted to practice in 1904. He became a leader in efforts to establish a self-governing Bar and served

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as the first president of the State Bar of California in 1927.<sup>1</sup> Lyle T. Jacks was also a student at that time, but graduated later. Mr. Jacks became a popular San Francisco Superior Court Judge.

John Gorfinkel has a menu of a 1905 banquet signed by graduates and students attending. The names included Henry Schmidt, H.N. Duben, F.J. Bauer, H. Fourness, J.D. Millar, Jellett, Griffin, Goldsmith, Larsh, Small, Earley, Stanley and also Professors James A. Ballentine, James T. Burcham, and Dorety.

Information got around by word of mouth. The late Justice Julian Goodell of the Appellate Court of California told how he was studying law in a lawyer's office in San Andreas when a young law clerk came up to deliver some legal papers. As the two young men talked, he learned that the law clerk was studying at the YMCA Law School. By the next summer Goodell was working in a law office in San Francisco, waiting for the fall term to open. A similar story of coming from Shasta County to study in San Francisco was told by the late Jesse W. Carter, Justice of the California Supreme Court, when he brought his son, Oliver Jesse Carter, from Redding to enroll him in Golden Gate College. Oliver had attended Stanford, and his father wanted him to work in a law office and study law at night as he had done. The following year, however, Oliver transferred to Hastings, became an attorney, a state senator, and a United States Judge. He is now deceased.

As previously related, the earthquake and fire of 1906 destroyed the YMCA building. In the uncertain years that followed, some members of the faculty set up an independent law school, and a number of the students followed them. That was the beginning of the San Francisco Law School.

The Honorable A.P. Black, Assistant United States District Attorney, became Dean of the Law School in 1907. The seven graduates in 1909 included: Council Julian Goodell, who became a Justice of the Appellate Court of California, George J. Steiger, Jr. who became a Superior Court Judge, and five who became practicing attorneys—William Doud, Theodore Chester, Waldo Postel, Arthur Eddy and William Siegel. The YMCA Law School, which had been meeting at 1220 Geary Street, moved into the new Central YMCA Building at 220 Golden Gate Avenue in the fall of 1910. The Law School was incorporated as a degree-granting institution in that same year.

The School of Jurisprudence of the University of California, better known as Boalt Hall, came into being in 1912. An evening law school was opened at St. Ignatius College in San Francisco in 1912, and a law school was also instituted at Santa Clara University that year. A private school, Lincoln University, began a law school in San Francisco in 1919.

The law schools of Stanford and the University of California came to regard their mission to be that of professional schools, principally interested in the education of lawyers, judges, and professors of law. Gradually they began requiring more and more pre-legal studies, higher grades for admission, and strict and uniform standards for grading; more students were dropped for scholastic deficiency. Hastings had class schedules between 8:30 a.m. and 12:30 p.m., so that students could work in the afternoon. Eventually, Hastings changed into a more professional school and discouraged part-time work. St. Ignatius College became the University of San Francisco in 1930, and the following year opened a day division of their law school, which soon followed the trend of the other day schools.

The three schools of the YMCA—Law, Accounting, and Traffic—were incorporated as Golden Gate College in 1923. By this time, high school graduation was required for admission, although some exceptions were made for older persons with business or other experience indicating maturity and self-education.

The power to admit candidates to practice law resided in the Supreme Court. In the early days, the justices gave written and oral examinations themselves. Practically everyone completing a law school course passed, including the graduates of the YMCA Law School. As the number of applicants increased, the Court delegated the administration of the examinations to members of the Bar, who graded the papers and recommended candidates to the Court. When the State Bar of California was organized in 1927, a Committee of Bar Examiners was appointed to give the examinations. The Justices discontinued the oral examination about that time. The preparation of the examinations and the uniformity of grading received expert guidance from the Secretary of the Committee of Bar Examiners.

A number of evening law schools came into existence during the prosperous 1920's—Oakland Law School, McGeorge in Sacramento, Balboa in San Diego, Southwestern, Pacific Coast, and Los Angeles

University in Los Angeles—and concern was expressed that there would be too many lawyers for the population. The number was increasing more rapidly than in many states, but the population of California was increasing more rapidly also. In 1927 there were 9,521 lawyers, or 196 for every 100,000 of the population; 1 for every 539 persons.<sup>2</sup> Actually, some states had a higher number and some had fewer. One fear was that too many were entering the profession without an adequate legal education. The only control was the bar examination. Any person of good moral character could take the bar examination if he could show that he had studied law diligently and in good faith for four years. That included study in a law office, by correspondence, or by any other method. There was a growing feeling that better control over preparation was needed before the bar examination. Articles appeared in the *Reporter* and other legal publications on “the overcrowded condition of the Bar.”

At this time, 1930, there were four evening law schools in San Francisco. Lincoln University, a private school, had good classrooms in the Flood Building on Market Street, near Powell. The University of San Francisco Law School, on Fulton at Clayton Street, near Golden Gate Park, and over two miles from the business center, was less convenient to students living in other parts of San Francisco and for those living in the East Bay and on the Peninsula. The school had the advantage, however, of being part of a large Catholic university of good reputation. Both schools had more law students than Golden Gate College, but we did not feel any competition. San Francisco Law School was another matter. It occupied excellent facilities in the Call Building on New Montgomery Street, next to the Palace Hotel. Secretary Robert Johnston and Dean Robert McWilliams had assembled a strong faculty and had attracted capable students. The library, offices and classrooms of the San Francisco Law School were spacious; the location was definitely superior. Tuition charges were comparable. A person working in the downtown business center could walk to the school for information on his lunch time. I presume that the school was more selective in its admission policy and more effective in excluding students for scholastic deficiency than Golden Gate was at that time. It had the best record in the bar examinations. It seemed clear that students with the best qualifications—high grades in high school and college—would be attracted to the schools with the best

reputation. Able students should do well in the bar examinations. That, in turn, would attract better students, thus setting up a vicious circle from which it would be very difficult for a school with an inferior reputation to escape. Such a trend appeared to be well underway.

Dean White, the Board of Governors, and most members of the law faculty were not alarmed. My concern was shared by Director Mack and by four of the recent additions to our faculty, but found little support from others. They pointed with pride to the successful practitioners among the alumni, to the business executives, and especially to Judge Lyle T. Jacks, Judge George Steiger, Judge George Schonfeld, Judge Julian Goodell, and to the District Attorney of Shasta County, Jesse W. Carter. They noted that the enrollment was holding up during the first year of the Depression, 1930, and that there were competent law students in the school.

My first assignment, when I became Associate Director, was to improve the law school. I had each instructor outline his course, and a bulletin on the school was mimeographed. I became Director on January 1, 1931. Admission requirements for regular students were raised from high school graduation to completion of 30 units of college work on July 31, 1931. They were raised again in September, 1932, to 60 units. No limit was placed, however, on the admission of special students. Only in extreme cases were persons admitted with less than high school graduation. Requirements for the LL.B. degree had been satisfactory completion of 60 units in law. This was raised to 65 units in 1931. Three summer sessions of nine weeks each were added to the curriculum, and in January, 1933, the LL.B. requirement was increased to 75 units. In 1935, special students were required to be 25 years of age or older.

The fall and spring semesters were eighteen weeks in length. Classes were held from 6:30 to 9:30 p.m., usually on Monday, Wednesday, and Friday evenings to permit a night between classes for study and library reading. The annual cost was \$140 (\$127.50 for tuition and \$12.50 for fees). Books were extra. A small discount was given for payment in full, but most students paid \$40 down and made ten monthly payments of \$10 each. Frequently it was necessary to approve more liberal terms. This was the period of the Great Depression, and money was very tight. If a student lost his job and wanted to continue in the school, we carried him indefinitely; usually, in time,

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we received full payment.

There seemed to be a lack of enthusiasm and spirit on the faculty. Perhaps it was because of the hard times, including the reduction in teaching fees from \$7.50 to \$5.00 per evening session. Dean White did not appear to be coordinating the efforts of the faculty. There were few faculty meetings, and no attempt was made by Dean White to encourage uniform methods of teaching or grading. He did not visit classes. He taught Constitutional law, for which he was paid the usual fee, but the position of dean was honorary and without salary. The dean was available in his law office for consultation; he officiated at Commencement; and he represented the school at meetings of the Bar Association. Dean White had several problems on his mind. He was greatly concerned with the financial plight of the William Taylor Hotel Methodist Church Complex, of which he was the attorney and a principal sponsor. The hotel barely had a chance to open before it was on the verge of bankruptcy, having opened at the beginning of the Depression. Dean White was also troubled by the lack of respect of young people, including his law students, for the Prohibition Law. I felt these matters were of greater concern to him than the problems of the Law School. He strongly believed that the school was doing a good job in fulfilling its mission and should continue as it was indefinitely. Nevertheless, a sweeping change in the philosophy of the school and in the professional leadership appeared to me essential. It seemed almost too late.

The lack of success of our law students in the bar examinations was very discouraging. The results of the 1932 examination, reflecting teaching for the previous four years, were most depressing. It was in 1932 that the Committee of Bar Examiners began the practice of publishing bar examination results. The figure that attracted the most attention and was widely quoted was the percentage of graduates passing on the first attempt. The published results were as follows:<sup>3</sup>

Golden Gate College	passed 4 of 19 or 21.1%
San Francisco Law School	passed 14 of 21 or 52.4%
University of San Francisco	passed 24 of 57 or 42.1%
Hastings College of the Law	passed 42 of 50 or 84 %
Lincoln University	passed 3 of 25 or 12 %

Although we had an idea of how our students compared with the students in other law schools, it was something of a shock to see such

comparative statistics in the daily newspapers. Soon there were rumors that some law schools tried to improve their percentage by failing weak students in the last year, to prevent them from taking the examination as graduates. One school in Southern California, it was said, went so far as to advertise that no graduate had failed to pass the bar examination—an impressive statement until it was found that one requirement for graduation was the successful passing of the examination. In time, to prevent such shenanigans, the rule was changed to charge each school with each student admitted to the last year of instruction, whether the student finished the program, graduated, or was failed in the last year.

By 1934 the Committee of Bar Examiners were publishing statistical reports of the cumulative results of the examinations in a three year period. They were printed in detail in the *Recorder* and summarized in the daily newspapers. The statistic that received the most publicity was the passing percentage over a period of three years of the graduates and non-graduates of each school who took the bar examination for the first time. The cumulative statistics for the San Francisco Bay Area law schools for August 1933 to March 1936 were:<sup>4</sup>

	<i>Taking</i>	<i>Passed</i>	<i>Failed</i>	<i>Percentage</i>
<i>(Evening Classes Only)</i>				
Golden Gate College	23	6	17	26.1
San Francisco Law School	40	19	21	47.5
Lincoln University	5	0	5	0
<i>(Day and Evening Classes)</i>				
University of San Francisco	90	36	54	40
<i>(Day Classes Only)</i>				
University of California	190	135	55	71
Hastings College of Law	160	104	56	65
Stanford University	122	93	29	76.2

In 1932 the State Bar of California arranged for a survey of California law schools to be made by Professor Will Shafroth, Adviser to the Section on Legal Education of the American Bar Association, and by Dean H. Claude Horack of Duke University Law School.<sup>5</sup> They visited and made a detailed study of each California law school and published their report on January 16, 1933. The survey pointed

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out our obvious deficiencies: the noise from the gymnasium over four classrooms, the small library, the lack of financial support. The school was, however, complimented on several findings, for example:

Careful examination of the records confirm the fact that out of the first year class of 44 in 1930-31, 11 were excluded for deficient scholarship . . . out of the total enrollment of all four classes of 120 students in 1931-32, 14 were forced out for the same reason . . . The record of the school in this particular must be considered as very good. Its policy of strict standards of scholarship, the raising of entrance requirements . . . and the separation of the first year class into two groups, smaller and easier to work with, are all commendable. . .<sup>6</sup>

General observations were critical. For example:

In spite of these facts, however, the law school at the present time gives a better impression on paper than it does in reality. Its results in the bar examinations have been far from outstanding. While the men on the faculty are practicing lawyers of ability, they apparently do not give enough time and thought to their obligations as teachers.

The present director of the school is a very able young man with an earnest desire to find ways in which the school can be bettered, and if he is given the authority, will undoubtedly succeed in bringing about the contemplated improvements.<sup>7</sup>

I quote the above findings, in spite of the comment about me personally, because at the time it provided the help I needed in order to overcome the apathy of the faculty and the reluctance of the Board of Governors to authorize changes. That authorization was given, although with some restrictions. We were to move slowly in raising admission standards for students who wanted to study law for reasons other than professional practice. The objective of keeping the door open to all was still alive.

Dean White took me to State Bar meetings and meetings of the Deans of California Law Schools. I became fond of Dean White, but was unable to convince him that drastic changes were needed. He took any suggestions as criticism of his administration. I hoped that we could honor him and retire him on the completion of twenty-five years of service. He was unwilling to follow this plan. To tell him that we wanted him to retire was one of the most difficult things I did at Golden Gate. He took it very hard; he refused any recognition. He

retired in December, 1933. Later he was appointed a judge on the Municipal Court of San Francisco.

Several faculty changes took place in 1933. One instructor went to Alaska; two left in order to have more time for their practice. We put an advertisement in the *Recorder* stating that we were looking for evening law school instructors—the first and the last time we used that method. It was a rewarding move.

Paul Jordan, J.D., and John Gorfinkel, J.D., S.J.D., came to Golden Gate Law School in response to the advertisement, Jordan in December, 1933, and Gorfinkel in January, 1934. Both men were graduates from Boalt Hall, University of California; both became outstanding instructors, and both became deans of the Law School, each serving as teacher and dean over a long period of years. Varnum Paul, LL.B., University of California, another long-term and excellent instructor, also joined the faculty that year. Maurice Harband, another Boalt Hall graduate and a great teacher, came the following year. These four—Jordan, Gorfinkel, Paul, and Harband—joined Crocker, Ferguson, and Collett in giving moral support to a change of objective. Donald Pearce, Edward Peterson and Warren Pillsbury were won over.

George N. Crocker, J.D., Stanford, who had joined the faculty in 1929, was named dean in 1934. Dean Crocker and his faculty believed that it was essential to make a good showing in the bar examinations and to overtake San Francisco Law School. His strategy was to raise the standards of grading gradually, so that students who did not measure up to professional law school standards would be eliminated; we would decrease the number of special students when we could attract a sufficient number of well-qualified regular students to justify the operation of the Law School.

Beginning in 1932, as previously noted, the bar examination statistics were published twice a year in the newspapers. Lawyers, law students and prospective law students all knew that San Francisco Law School had the best record in the percentage of students passing the bar examinations, and that the University of San Francisco was second, with Golden Gate a poor third among the four law schools offering evening instruction. It stands to reason that most prospective law students with good qualifications would apply to the schools with the best record, and that these schools could select their students from

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those applicants. We were well aware that we were trying to choose the best of the rejects of other schools. We did have a few who selected Golden Gate for some special or personal reason, and we gave five tuition scholarships during this period, one or two a year, to strengthen our student body academically.

In 1934, Golden Gate College was still a place where a person interested in the study of the laws of his or her country was welcome. We retained the belief that the study of law could be helpful to many who might not have the ability or the interest to become professional lawyers. During this period of the Depression, comprehensive courses in business administration and management were not yet available in the evening; the study of law was still regarded as a solid training for advancement in many fields. I remember a special student admitted in this period who became the head of his labor union, another who became the director of a government agency in a large city, and a policeman who became a top official in the police department. If persons employed in insurance, real estate, or administrative work believed that the study of law would be helpful to them, we were willing to accept them.

We tried to accept as law students only those who appeared to be intelligent and had a reason for studying law. We took time to point out that an evening course in law required attendance in class three nights a week from 6:30 to 9:30 p.m., with outside preparation of approximately two hours for each hour in class, and that the program took 45 weeks a year, including the summer session, for three years, and 36 weeks in the fourth year. In addition, there would be strenuous preparation for the bar examination in reviewing the four-year course, if one aspired to become a lawyer, and there remained the possibility after that of not passing the examination. There was also the cost, at least \$160, including books, per year (in terms of 1979 money about \$800), sufficient to discourage anyone without a goal. Only persons of strong will and rugged health could hope to survive such a schedule while earning a living through full-time employment. If knowing those facts did not discourage the individual, we gave the applicant a chance to see what he or she could do, if he or she was 25 years old, or had completed 60 college units.

We tried to hold all of our students to the standard of students preparing for professional practice. That was difficult. Some of the

older instructors were inclined to grade too high. Dean Crocker, and Messrs. Jordan, Gorfinkel, Paul and Harband graded on a standard similar to that of the university law schools, but when others gave higher grades, some students who should have been disqualified made the minimum passing average.

San Francisco Law School and the University of San Francisco had been improving their reputations by limiting the admission of special students and by selecting students with good grades and two or more years of college or university work. This prevented good college students from applying to Golden Gate, with a few exceptions, but it increased the number of applications from special students. The only way left open to us to win back a reputation for Golden Gate Law School was to equal and surpass the other schools in the bar examinations. For the most part we would have to do this with our "special students." The addition of Jordan, Gorfinkel, Paul and Harband did wonders for faculty morale. They became dedicated to a goal of creating an outstanding law school. Their infusion of enthusiasm for achieving such a goal was of the utmost importance at that time.

Many critical and disparaging remarks have been made about the quality of the students in the 1930s and early 1940s. A few years ago, a former instructor said, "I didn't have a single student in my class who would be admitted to Golden Gate Law School today." Another remarked, "If the body was warm and the student had the tuition fee, he was admitted." While this opinion may have been justified for some admissions, it was unfair to many of the students, who were entirely competent to study law.

As it was, we had beginning classes starting out on a four-year program with fewer than 25 students. We were selecting from those who were available. We could have used the same standards as we do today. If the above-mentioned instructors had been right, we would not have had any students and there would not be any Golden Gate University Law School now. We did charge tuition, but the amount received was totally inadequate to meet the cost of the Law School, and a substantial part of the cost was carried by the other schools of the college, usually without complaint.

Bar statistics were based on a three-year period. The attempt to overtake the two leaders was a great challenge to the law faculty. No one blames anyone for wishing that there had been superior students

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to teach. But, we *did* catch up to both San Francisco Law School and the University of San Francisco Law School, although it took ten years. It was done, for the most part, with "special students," and in spite of the war years of 1942 to 1945, and the loss during that time of several of our best law instructors. In the October 1944–April 1946 statistics. Golden Gate passed eight out of ten or 80%, San Francisco had 66.7%, University of San Francisco had 70%.<sup>8</sup> That was not a "flash in the pan;" in the next four reports Golden Gate had 85.7%, 90.0%, 87.5%, and 90.0% respectively. See Chapter Sixteen for additional statistics.

### *First Accreditation Rule*

In 1937 the Committee of Bar Examiners adopted its first accreditation rule. Thirty percent of the students of a law school would be required to have passed the examination on their first attempt in three consecutive years, in order for a law school to be accredited. The 30% requirement would move up 5% a year until it reached 60%. Because of the uncertain conditions brought on later by the war, however, the percentage moved up more slowly. Students attending an unaccredited school under the new rule would be required to pass a first year law examination before being admitted to second-year studies.

The battle of the percentages began in earnest. Even among the most prestigious schools there was rivalry. At the time of the new rule, Golden Gate Law School was below the required percentage, and for two years our students took the "baby bar;" 90% passed, and by 1940 we were back on the accredited list. The years 1940 and 1941 showed increased enrollments.

In the fall of 1941 Dean Crocker resigned, and for a time the administrative policies were referred to a faculty committee with Donald Pearce as chairman. John Gorfinkel served as Acting Dean at the Commencement Exercises in 1942.

The United States had entered the war on December 7, 1941. The period 1942 to 1943 will be discussed in Chapter Twelve, The War Years, and the period following the war will be covered in Chapter Sixteen, The Law School, 1944 to 1950.