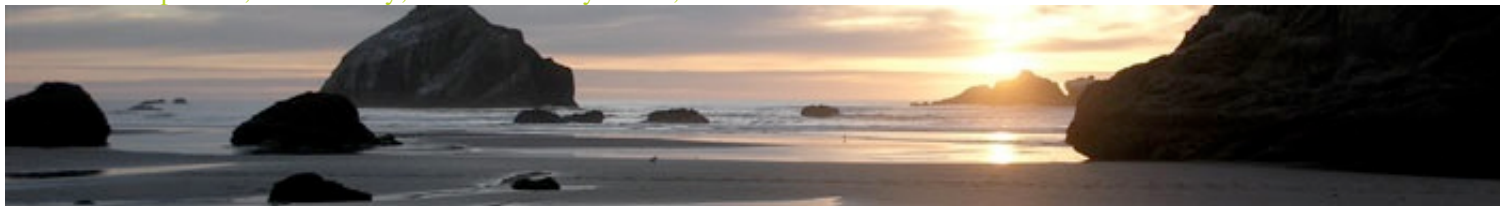


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## The American Legal System Is Broken: Can It Be Fixed?

3 01 2011



By [Timothy D. Naegele](#)<sup>[1]</sup><sup>[2]</sup>

I have been an American lawyer for 44 years. I am a member of the bar of the United States Supreme Court, the District of Columbia Bar, the State Bar of California, and the bars of other federal courts. I have been a U.S. Senate lawyer and a lawyer at the Pentagon, and have represented more than 200 banks and other financial institutions. I have purchased banks for our clients, and advised two States; and I testified as an expert on behalf of the FDIC in a failing bank case. I have done essentially everything that I ever wanted to do in the law, except work at the White House; and I have attended meetings there. In these and countless other ways, I have seen the American legal system “up close and personal.”<sup>[3]</sup>

I have two law degrees, from Berkeley and Georgetown, at opposite ends of this great country.<sup>[4]</sup> I can say without any hesitation, reservation or equivocation that the finest education I received was at Berkeley’s law school *par excellence*, Boalt Hall. I was taught—to think analytically, and to write—by outstanding professors<sup>[5]</sup> who instilled in my fellow students and me a belief that the law is sacred, sacrosanct and pristine, “a shining city upon a hill.” Since then whenever I have encountered what I perceived as legal injustices and incompetence, I have taken umbrage and railed against them, albeit generally in my own quiet ways.

John Lennon probably said it best: “Life is what happens to you while you’re busy making other plans.” I

never truly wanted to become a lawyer; that was not my life's ambition. I wanted to be a businessman instead, and buy and sell companies, but the Vietnam War intervened and changed my life forever.<sup>[6]</sup> I never *dreamed* of being a lawyer, like so many of my law school classmates at Berkeley did, which may explain why I view the profession—which so many Americans have come to despise—with a certain degree of detachment and healthy skepticism. For example, I would not recommend the practice of law to anyone. Among other things, the time demands and stress on young lawyers are a “family-killer,” which is why there is a high rate of divorces among members of the profession.

When my son wanted to attend law school, I encouraged him to get both a JD and an MBA, to “hedge his bets” and give him options. When he was nearing graduation with both degrees in hand, I did my best to talk him out of practicing law.<sup>[7]</sup> Friends of mine, who have practiced law for many years and have been very successful at doing it, feel much the same way and have told their kids and others not to pursue a legal career. Indeed, some of these friends and I have joked that we should give lectures to graduating college seniors and entering law school students, telling them what the practice of law is *really* all about. If we told them the unvarnished truth, many might decide not to enter the profession.

Despite a healthy contempt for many lawyers, and judges—who are often egotistical, callous, mean-spirited, power-hungry, arrogant, self-righteous, condescending and incompetent—I have had wonderful friends over the years who are lawyers and even judges. I have worked with them, and some have represented me, and I will always respect and be deeply indebted to them. They are special people, who stand head-and-shoulders above others in the profession; and they are nice people as well—which may be what distinguishes them from the others.

Perhaps the most disturbing qualities about lawyers and judges are their arrogance and abuse of power, and their lack of empathy and innate legal and life skills to deal with vital human issues that come before them. For example, lawyers who are prosecutors are often less interested in fairness and justice than they are in winning at all costs, and exercising their raw power and hurting others in the process—such as those who are innocent but are convicted anyway.<sup>[8]</sup>

Similarly, lawyers are trained in law schools to be advocates. When they represent clients in divorce proceedings, the last things that estranged couples need are their respective lawyers “stirring the pot” to earn greater fees, and increasing the acrimony that already exists. Also, male lawyers prey sexually on their distraught and vulnerable female clients, which should give rise to immediate disbarments but it does not. The American legal system is broken today, *inter alia*, because it has often attracted the wrong type of people.<sup>[9]</sup>

Can our legal system be fixed, and will the American people come to trust and respect lawyers and judges again, and believe that justice not only exists but *prevails* in this great nation? Maybe . . . if the profession is restructured, and if it attracts those people who believe that the law is sacred, sacrosanct and pristine—truly a shining city upon a hill—and they put such principles into practice. The profession does not require saints, but it does need something different than “Law West of the Pecos by Judge Roy Bean.” And it needs people who are different than it has been attracting: who are often driven, ruthless, unprincipled, money-hungry, and power-hungry.

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Urban Affairs, and chief of staff to Presidential Medal of Freedom and Congressional Gold Medal recipient and former U.S. Senator Edward W. Brooke (R-Mass). He practices law in Washington, D.C. and Los Angeles with his firm, Timothy D. Naegele & Associates, which specializes in Banking and Financial Institutions Law, Internet Law, Litigation and other matters (see [www.naegele.com](http://www.naegele.com) and [http://www.naegele.com/naegele\\_resume.html](http://www.naegele.com/naegele_resume.html)). He has an undergraduate degree in economics from UCLA, as well as two law degrees from the School of Law (Boalt Hall), University of California, Berkeley, and from Georgetown University. He is a member of the District of Columbia and California bars. He served as a Captain in the U.S. Army, assigned to the Defense Intelligence Agency at the Pentagon, where he received the Joint Service Commendation Medal. Mr. Naegele is an Independent politically; and he is listed in Who's Who in America, Who's Who in American Law, and Who's Who in Finance and Business. He has written extensively over the years (see, e.g., [www.naegele.com/whats\\_new.html#articles](http://www.naegele.com/whats_new.html#articles)), and can be contacted directly at [tdnaegele.associates@gmail.com](mailto:tdnaegele.associates@gmail.com)

[2] The issues addressed in this article are discussed further in a partially-completed book of mine entitled, "Never Become A Lawyer." Its chapters include but are not limited to the following subjects: law schools, law firms, divorces, bar associations, Congress, lobbying, mergers and acquisitions, litigation, law enforcement, state governments, the federal government, judges, federal courts, the U.S. Supreme Court, politics, abuse of power, justice, lawyer scams, and other careers.

The book's last chapter starts with the words:

I began writing this book with the idea of thoroughly trashing the legal profession of which I have been a member for more than 40 years, as well as the American "system of justice"—and God knows there is plenty of support for that approach. However, the United States has many fine lawyers, including former classmates of mine at Berkeley and friends who have tried to do their very best to help others, such as those lawyers who have helped me. Thus, in the final analysis, I endeavored to present a somewhat objective view of the profession. . . .

I assume my assessment will remain the same, or close to it, when the book is finished and published.

[3] See, e.g., [http://www.naegele.com/naegele\\_resume.html](http://www.naegele.com/naegele_resume.html)

[4] See <http://naegeleblog.wordpress.com/2010/02/26/america-a-rich-tapestry-of-life/>

[5] They included but were not limited to Edward C. Halbach Jr. (see, e.g., <http://www.law.berkeley.edu/php-programs/faculty/facultyProfile.php?facID=44>), who became dean of the law school and gave me an "A" in Conflicts of Law during my last year at Boalt, which I will remember always; Sanford H. ("Sandy") Kadish (see, e.g., <http://www.law.berkeley.edu/php-programs/faculty/facultyProfile.php?facID=61>), who taught Criminal Law and became dean of the law school too; Barbara N. Armstrong, who was the first woman law professor at a major American law school (see, e.g., [http://en.wikipedia.org/wiki/UC\\_Berkeley\\_School\\_of\\_Law](http://en.wikipedia.org/wiki/UC_Berkeley_School_of_Law)); Richard W. Jennings (see, e.g., <http://www.universityofcalifornia.edu/senate/inmemoriam/richardwjennings.htm>), who taught Securities Law and came to Washington when I was a young attorney with the Senate Banking Committee, and we shared stories; and Michael ("Mike") Heyman (see, e.g., <http://www.law.berkeley.edu/php-programs/faculty/facultyProfile.php?facID=52>), from whom I never took a class, but I will always remember his smiling face, and that he was a "force" for excellence at the law school and beyond (e.g., he ran the Smithsonian in Washington, D.C. for many years). A giant in the law of Torts, William L. Prosser (see, e.g., [http://en.wikipedia.org/wiki/William\\_Prosser](http://en.wikipedia.org/wiki/William_Prosser)), was at Boalt too; however, he left shortly before I

arrived—although his spirit was still there.

[6] As a result of enrolling in Army ROTC as an undergraduate, I had a commission as an officer when I graduated from UCLA in January of 1963. I wanted to attend a business school; however, I needed to work from January to September at two jobs, to earn enough money so I could afford any graduate school. Even though UCLA's business school had classes that I could begin right away, in January—whereas, law school classes only began in September—my choice became a law school. The Vietnam War was raging; and the Army would defer me for law school, but would not let me work for the same amount of time before entering a business school, which is the graduate education that I really wanted to pursue.

Having become a lawyer, however, I have always tried to do my very best, and believe that I have done so. Also, reading endless legal decisions at Boalt Hall and later at Georgetown, I learned the English language in ways that were unfathomable at the time, but have proved to be quintessentially-invaluable with respect to any skills that I have today as a writer.

The great American poet, Robert Frost, wrote a wonderful poem about life choices entitled, “The Road Not Taken,” which perhaps says it all:

Two roads diverged in a yellow wood,  
And sorry I could not travel both  
And be one traveler, long I stood  
And looked down one as far as I could  
To where it bent in the undergrowth;

Then took the other, as just as fair,  
And having perhaps the better claim,  
Because it was grassy and wanted wear;  
Though as for that the passing there  
Had worn them really about the same,

And both that morning equally lay  
In leaves no step had trodden black.  
Oh, I kept the first for another day!  
Yet knowing how way leads on to way,  
I doubted if I should ever come back.

I shall be telling this with a sigh  
Somewhere ages and ages hence:  
Two roads diverged in a wood, and I—  
I took the one less traveled by,  
And that has made all the difference.

See, e.g., [http://en.wikipedia.org/wiki/The\\_Road\\_Not\\_Taken\\_\(poem\)](http://en.wikipedia.org/wiki/The_Road_Not_Taken_(poem))

[7] I was adamant that neither of my kids would work on Capitol Hill, because of what I had witnessed there.

See <http://naegeleblog.wordpress.com/2010/09/24/washington-is-sick-and-the-american-people-know-it/>

[8] A federal official with reason to know told me that between 15-20 percent of the indictees in federal courts are probably innocent. Some are seniors who have been charged with cheating the Social Security program, and they are scared to death, so they agree to plea bargains rather than fight for their innocence.

[9] This is true of many judges, who serve for life and cannot be removed if they are federal judges.

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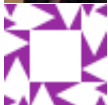
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