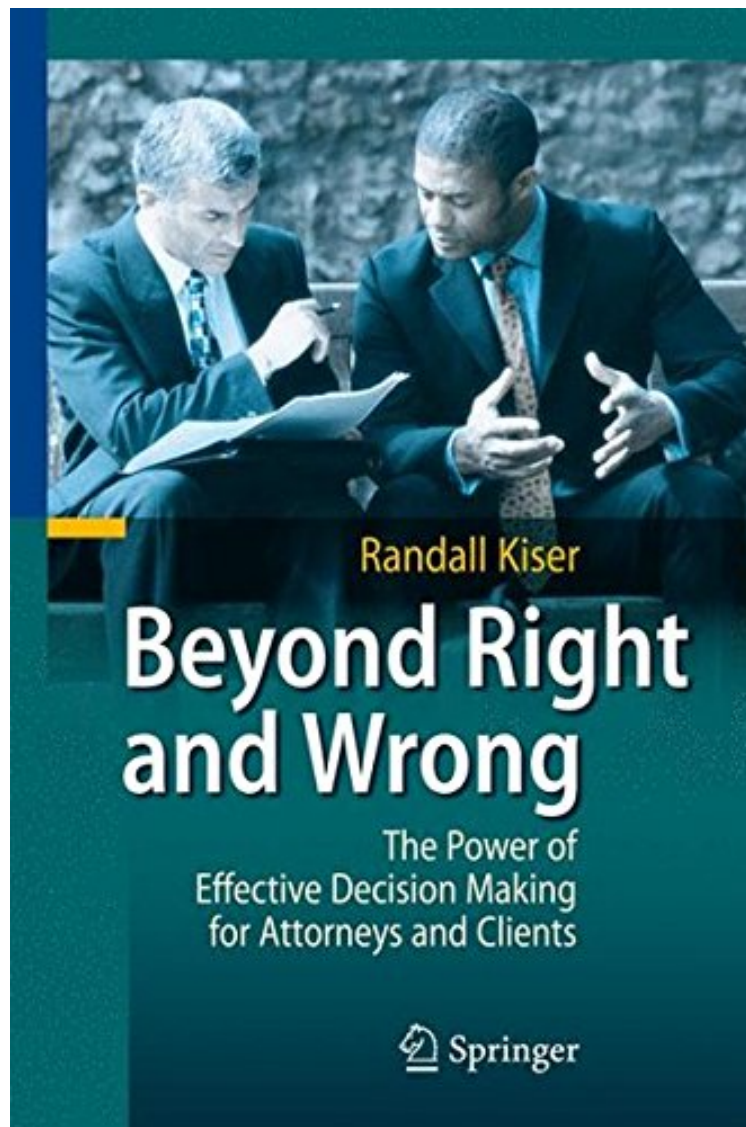


[Library ebook] Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients

## **Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients**

*Randall Kiser*

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**Randall Kiser : Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients** before purchasing it in order to gage whether or not it would be worth my time, and all praised Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients:

1 of 1 people found the following review helpful. OutstandingBy CamberThis book is a treasure - one of the best

books I've ever read on any topic, and an added bonus is that the author is a superbly lucid writer. I read this book cover to cover, and found it difficult to put down. As a non-attorney who has worked with attorneys as both a client and consultant, I found the insights and advice in this book to be very practical, and sometimes eye-opening. The author shows with extensive empirical evidence that attorneys and their clients often make poor decisions due to various subconscious cognitive biases and other psychological factors operating at individual and group levels. The consequences often include substantially suboptimal outcomes for clients, as well as malpractice liability for attorneys themselves. The author then goes far beyond most other books on pitfalls of decision-making by presenting literally dozens of methods for \*improving\* decision-making. Some of these methods were familiar to me from other reading, but many were new to me. The author applies these methods specifically to the legal context, but the methods can (and should) certainly be generalized to other decision-making contexts as well. This book is a must-read for attorneys, their clients and consultants, and anyone else interested in decision-making. The author has clearly done a tremendous amount of work in writing this book, and thereby has made an important contribution to improving decision-making in legal and other contexts, provided that enough people discover this outstanding book and read it.

0 of 0 people found the following review helpful. Must-read for lawyers and law school deans  
By Stephen Cavanagh  
This is an exceptional book. Through laborious empirical research, Mr. Kiser has come up with a number of insightful observations about the training of lawyers and the practice of law. In the last several weeks, I have been reminded of the quality of his analysis by several articles in the New York Times that have covered some of the same ground. Mr. Kiser's main thesis is that lawyers receive little or no training in the art of making sound decisions and that when they enter practice, they're often not very good at it. To demonstrate his conclusion, he looked at several sets of data from the courts of California and New York. He compared the outcomes at trial with settlement offers that, had they been accepted, would have avoided a trial. The stunning results were that about 60% of plaintiffs and 25% of defendants would have been better off to accept the pre-trial offer made to them. In the case of defendants, while the incidence of error is lower, the cost of each error (to the client) was, on average, substantially higher. In the book, Mr. Kiser discusses various factors that might contribute to the poor quality of lawyers' decisions. In so doing, he draws on the work of Daniel Kahneman (author of the bestselling "Thinking Fast and Slow") and others. He critiques the creaky "case method" of legal education and makes a convincing argument that it is time to reconsider the model. (This was one of the book's topics that was recently the subject of a New York Times article.) The author suggests some ways in which the system could be improved. Finally, it's worth noting that the book is very well-written. Mr. Kiser has all of the statistical data and a command of the math, but has presented the topic in a very readable and entertaining style. I'm looking forward to reading his subsequent book, "How Leading Lawyers Think".

2 of 2 people found the following review helpful. Lawyers, Buy This Book!  
By Michael Palmer  
This is an important book. It is important first, because it reports thoroughly on the research showing that lawyers and their clients routinely make bad decisions when settling cases. 61 percent of plaintiffs who reject offers and go to trial recover an average of \$43,100 less than the last offer in settlement negotiations. 24 percent of defendants are hit with judgments averaging \$1,140,000 more than the plaintiff's last settlement demand. And these figures do not include the additional litigation expenses and grief that each side bears when going all the way to a jury verdict. Everyone associated with litigation--lawyers, business executives, law professors--should read this book. The book is important second, because it provides a useful summary of the results of 35 years of research by psychologists and economists in the judgment and decision making field and shows how it is relevant to litigation and settlement decisions that lawyers and clients make. The book is important third, because it gives us an extensive discussion of the malpractice consequences of the bad litigation and settlement decisions of courtroom attorneys. And the book is important fourth, because the author describes a series of strategies and techniques for overcoming the problems that have been described in the previous parts of the book. It has immediate, practical value. As Randall Kiser points out, despite hundreds of thousands of lawsuits and numerous lawyers and law professors, we have a dearth of research on litigation decisions and outcomes. He and his colleagues (Martin Asher and Blakely McShane) helped fill part of that void with their important article, "Let's Not Make a Deal," published in September 2008. This book now constitutes a great leap forward. In a sense, *Beyond Right and Wrong* is part of the larger effort in the business community to base decisions on real evidence rather than conventional but frequently wrong wisdom. (See, e.g., Davenport and Harris, *Competing on Analytics* and Pfeffer and Sutton, *Hard Facts, Dangerous Half-truths, Total Nonsense*.) When Ignatz Semmelweis discovered in mid-19th Century that childbed fever, often resulting in the death of the mother, could be prevented if the obstetrician and attending nurse simply washed their hands between deliveries, his colleagues at Vienna's General Hospital and elsewhere scoffed, treating him as some kind of crackpot. It would be unfortunate if the response of the legal profession to this book were similarly disdainful. Given the prevalence of the Overconfidence Bias (in everyone, not just lawyers), however, such a response, sadly, would not be surprising. Let's hope this is not so. In any event, *Beyond Right and Wrong* will make its way as professors adopt it for use in law and business school courses and as corporate legal departments discover its value in reducing the cost of litigation. My only quibble is with the title, which does not seem to convey what the book is really about. But the content is sufficiently strong to overcome that defect--if, indeed it is one.

Let us endeavor to see things as they are, and then enquire whether we ought to complain. Whether to see life as it is, will give us much consolation, I know not; but the consolation which is drawn from truth if any there be, is solid and durable: that which may be derived from error, must be, like its original, fallacious and fugitive. Samuel Johnson, Letter to Bennet Langton (1758) Attorneys and clients make hundreds of decisions in every litigation case. From initially deciding which attorney to retain to deciding which witnesses to call at trial, from deciding whether to file a complaint to deciding whether to appeal a verdict, attorneys and clients make multiple, critical decisions about strategies, costs, arguments, valuations, evidence and negotiations. Once made, these decisions are scrutinized by an opponent intent on exploiting the consequences of any mistake. In this intense and adversarial arena, decision-making errors often are transparent, irreversible and dispositive, wielding the power to bankrupt clients and dissolve law firms. Although attorneys and clients may regard sound decision making as incidental to effective lawyering, sound decision making actually is the essence of effective lawyering. An attorney's knowledge, intelligence and experience are inert resources until the attorney decides how to deploy those skills to serve the client's interests. Those decisions, in turn, largely determine a case's course and outcome.

From the book reviews: Multiple research studies show that litigators are human and, as such, are subject to a whole host of biases and pressures imposed on them by their roles as advocates, client managers and strategists. A thick volume by Randall Kiser called "Beyond Right and Wrong" provides a great review of many of these studies and would be an interesting read for many litigators and litigation managers. (Galina Davidoff and Wendy L. Hufford, [thelegalintelligencer.com](http://thelegalintelligencer.com), January, 2015) In the book, Mr. Kiser discusses various factors that might contribute to the poor quality of lawyers' decisions. It's worth noting that the book is very well-written. Mr. Kiser has all of the statistical data and a command of the math, but has presented the topic in a very readable and entertaining style. (Stephen Cavanagh, [www.stephen-cavanagh.com](http://www.stephen-cavanagh.com), November, 2011) A book aimed at lawyers and law students to help them see the problem of bad decision making and learn ways to improve it. It should be of interest for professional responsibility as well as trial practice and alternative dispute resolution. (Mary Whisner, Trial Ad (and other) Notes, [trialadnotes.blogspot.de](http://trialadnotes.blogspot.de), June, 2010) This tome should be near at hand in the office of every lawyer engaged in predicting litigation outcomes.... Anyone with sufficient interest in this subject, particularly attorneys, should buy the book and keep it, if not on their night-stands, at least on their desks. ([Negotiationlawblog.com](http://negotiationlawblog.com), February, 2010) This is an important book. Everyone associated with litigation--lawyers, business executives, law professors--should read this book. It provides a useful summary of the results of 35 years of research by psychologists and economists in the judgment and decision making field. Beyond Right and Wrong will make its way as professors adopt it for use in law and business school courses and as corporate legal departments discover its value in reducing the cost of litigation. (Michael Palmer, [www.michaelpalmer.com](http://www.michaelpalmer.com), February, 2010) As part of the learning process, I highly recommend you obtain and read: R. Kiser, Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys, and Clients, Springer Science+Business Media, [www.springer.com](http://www.springer.com) (2010) "Guy Kornblum, <http://resolutionadvocate.blogspot.com/2010/08/more-on-case-for-mediation.html> About the Author Randall Kiser is the principal analyst at DecisionSet, a decision services and professional development company in Palo Alto, California. Mr. Kiser, a decision analyst and an attorney, has worked closely with litigants, insurers and attorneys in assessing risks, evaluating litigation alternatives and improving individual and organizational decision-making skills. He is the author of How Leading Lawyers Think (Springer, 2011) and the lead author of the widely read article, Lets Not Make A Deal: An Empirical Study Of Decision Making In Unsuccessful Settlement Negotiations (Journal of Empirical Legal Studies, Vol. 5, No. 3, September 2008). Mr. Kiser received his law degree in 1978 from the University of California, Berkeley (Boalt Hall), and obtained his undergraduate degree in 1975 from the University of California, Davis (Highest Honors). His legal education is complemented by the award in 2002 of a certificate in leadership from the Peter F. Drucker Graduate School of Management, Claremont Graduate University.