

## BOOK REVIEW

# You, Too, Can Be a Superforecaster

A Review of *Superforecasting* by Philip Tetlock and Dan Gardner

Reviewed by Michael Palmer

“Prediction is very difficult, especially about the future.”

Niels Bohr

As a group, lawyers are not good at predicting litigation outcomes. Research conducted by Randall Kiser and his colleagues confirms that when plaintiffs reject a settlement offer, 64% of the time they get worse results at trial (not counting the additional fees and expenses), and defendants end up paying on average \$1.4 million more than the plaintiff’s last demand in 24% of the cases that go to trial.<sup>1</sup>

What if you could get much more accurate forecasts of litigation events, including the eventual outcomes of cases you’re working on right now? Would you as a litigator or mediator be willing to invest at least as much time as you now spend preparing for any major legal event? Or do you feel the quest is illusory? After all, we don’t have a crystal ball.

Meet Philip Tetlock, the man with a crystal ball. In his new book, *Superforecasting*, Professor Tetlock tells the story of normal people who became superforecasters. These people repeatedly make highly accurate predictions about very specific questions, such as “Will conservatives retain their majority in the Majles after Iran’s upcoming parliamentary elections?” and “Will Montenegro become a NATO member in 2016?”

Superforecasters are not subject matter experts but people who know next to nothing about Iran’s parliamentary elections and might not even be able to find Montenegro on a map. Yet, time and again, they make highly accurate predictions about the answers to questions like these. Their record is not the result of a string of lucky guesses, like getting heads five times in a row when flipping a coin. Rather, their numerical probability assessments are routinely much closer to the eventual outcome than those of others. (More about this later.)

So, do superforecasters have some special gift?

No, superforecasters are not freaks of nature. They are freaks of *method*.

If you want to learn how to make or how to help others make more accurate predictions of what the judge will decide on a potential motion to dismiss, whether the jury will find for or against the plaintiff on liability, and, most importantly, how much the damage award will be if it does, then use a method designed to produce such predictions.

That is the overall lesson of *Superforecasting*. The superforecasters Professor Tetlock describes in the book are intelligent and comfortable with numbers. But most of all, they find information and funnel it into a method that helps them overcome the subconscious biases and intuitive shortcuts that make accurate forecasting so difficult.

Why are the rest of us so bad at predicting the outcomes of complex events such as the outcome of a trial three years hence? Why do plaintiffs and defendants make the settlement errors Randall Kiser writes about in *Beyond Right and Wrong*?

The answer can be found, in part, by looking at how our minds make decisions.

Our brains are biased against thinking because conscious, directed thought is costly and inefficient. It takes time, burns energy, and diverts us from vital work such as finding food or getting shelter from the storm. As a result, our brains’ basic command—our cognitive default mode—is Don’t Make Me Think.

If we had to use directed thought to make every decision, we could scarcely get out of bed in the morning. If your adversary asks a leading question, not only must you correctly identify it as such, but you must also determine whether you’re better off objecting or letting it slide—all before the witness answers the question. You don’t have time to ponder the right answer.

To help us avoid costly thought, evolution equipped our brains with a system of built-in judgments together with the ability to add thousands more encapsulated judgments. It’s a system of stored-up judgments, making judgments from our ancestors as well as from our own experience available to us without our having, in each instance, to figure it out anew. We call the built-in judgments cognitive biases and intuitive shortcuts (heuristics).<sup>2</sup> Habits and rules are the encapsulated judgments we acquire through culture and experience.

All of it together makes up an automatic predictive judgment system that steers us away from reflective thought and achieves remarkably good results. This system enabled our ancestors to quickly conclude that a crooked stick might be a snake and jump out of the way, reflexively.

Better to be wrong about the stick than to mull it over and get bitten by the snake. (Those who dithered didn't get to pass on their analytically biased genes.)

Thanks to our automatic prediction system, we can get out of bed in the morning, object to leading questions when we should, and otherwise get on with life.<sup>3</sup>

But despite its value in most decisions throughout the day, the automatic prediction system is really bad at making predictions about events with multiple contributing factors that take place weeks, months, or years from now—decisions involving a high degree of uncertainty and complexity. For the task of predicting the eventual outcome of a large, multi-party lawsuit, our automatic prediction system is worse than useless. It misguides us, leading us to think we know what will happen, when we really don't.

Then how do superforecasters get such good results when the rest of us get trapped by the biases and intuitive shortcuts bequeathed by evolution?

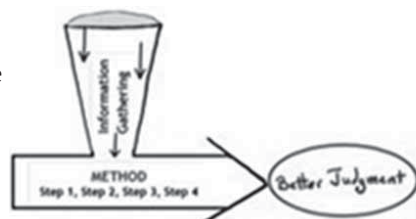
Superforecasters don't rely solely on the subconscious automatic prediction system to predict whether Montenegro will join NATO in 2016. Instead, a superforecaster would probably first google Montenegro to gather some information about it and then take a look at the Wikipedia article on NATO or perhaps go to NATO's website. If she had access to LexisNexis or Westlaw, she might run some queries on the subject. At the end of this process she would have collected relevant facts along with some conjectures of various people in positions of leadership.

Sound familiar? This is the same kind of thing litigators do in lawsuits. In fact, if the lawsuit were about what happened to *prevent* Montenegro from joining NATO, we would pose discovery requests to find out what our adversary knows, store the information in binders, folders, and special software programs such as CaseMap or MasterFile, and have it available when needed for motions, direct and cross examinations, and arguments to the jury.

So, if superforecasters and litigators do the same kind of evidence gathering, why aren't litigators superforecasters? Why are litigators, like experts in other professions,<sup>4</sup> not better at predicting case outcomes?

First, litigators gather evidence to be able to show what happened, not what is likely to occur in the future. We use the evidence and law to build a theory of the case, but it's all be about what happened in the past.

Second, superforecasters use a method to make use of the information they gather for the express purpose of making predictions.



Superforecasters do not always use the same method, but, according to Professor Tetlock, their methods tend to have certain features in common, which he summarizes at the end of the book as the 10 Commandments of Superforecasting:

1. Triage. Focus on questions where your hard work is likely to pay off. Doug Hubbard advises much the same when he suggests we consider the Expected Value of Perfect Information (i.e., weigh the costs of getting the information against its benefits for the task at hand).<sup>5</sup>
2. Break seemingly intractable problems into tractable sub-problems.
3. Strike the right balance between inside and outside views. Until we achieve a minimum level of competency, we can't see what we can't see or know what we don't know. We get must outside ourselves, meaning bring in other perspectives. Otherwise, we will (a) be blinded by our own biases and intuitive shortcuts and (b) fail to see what is around the corner but which others who already are around the corner could tell us about.
4. Strike the right balance between under- and over-reacting to evidence. This is related to the saliency and recency effects, i.e., remembering and giving undue emphasis to salient or recently viewed evidence, a problem that plagues litigators, since we tend to focus more on the evidence supporting our case than that which our adversary has fallen in love with. (This tendency is broadly known as the confirmation bias, which distorts litigators' judgment as well.)
5. Look for the clashing causal forces at work in each problem. This is litigation 101. Extraordinary litigators—people like David Boies, Ron Olson, Irving Younger, and John Edwards—understand the opposing side's evidence and legal arguments at least as well as the opposing lawyers do. But we often neglect to give full weight to this part of the case when making estimates about future outcomes.
6. Strive to distinguish as many degrees of doubt as the problem permits but no more. "[Y]our uncertainty dial needs more than three settings [certain, maybe, and impossible]. Nuance matters. The more degrees of uncertainty you can distinguish, the better a forecaster you are likely to be." As you become more adept at forecasting litigation outcomes, you will increasingly appreciate the wisdom of this rule.
7. Strike the right balance between under- and over-confidence, between prudence and decisiveness.

8. Look for the errors behind your mistakes but beware of rearview-mirror hindsight biases. Own your mistakes; don't try to justify or excuse them. "Conduct unflinching postmortems: Where exactly did I go wrong?" And, equally important, conduct premortems to discover the blunders you might make.
9. Bring out the best in others and let others bring out the best in you. The best forecasting is produced by diverse teams that avoid groupthink.
10. Master the error-balancing bicycle. "Implementing each commandment requires balancing opposing errors. Just as you can't learn to ride a bicycle by reading a physics textbook, you can't become a superforecaster by reading training manuals. Learning requires doing, with good feedback that leaves no ambiguity about whether you are succeeding."<sup>6</sup>

Alas, Professor Tetlock omitted from this list perhaps the most important rule: *Always express your probability statements in numbers, not words.* Professor Tetlock discusses the basis for this rule at length (pages 53-65) and comes back to the point repeatedly throughout the book. It cannot receive too much emphasis. "We've got a good shot," "there's a decent chance," "it doesn't look good," "we're likely to win (lose)," and similar phrases are not only vague and ambiguous, they lead to serious miscommunication. Whenever a lawyer says "there's a good chance we will win," all the typical clients hear is the word "win." They believe the lawyer has told them they definitely will win the case. Of course, the lawyer did not say and does not mean they definitely will win the case. Even in slam dunk cases, there is always the possibility, as the late Phil Saxer put it, of a gross miscarriage of justice. But the client doesn't hear the hedge, even if you tell him that nothing is certain.<sup>7</sup>

On the other hand, if the lawyer expresses any doubt at all about winning, the client will often look for another lawyer, one who "believes in the case."<sup>8</sup>

The solution to this dilemma is not to lie about the probability of winning. Rather, the solution is to prepare for the conversation: (1) Use a transparent method for making predictions, one that can be laid out in detail for the client. (2) Express probability estimates in numbers, not words.

Using numbers does not necessarily mean using a mathematical formula. The numerical estimate is not an objective measure. Rather, it is a way of refining and

expressing our subjective estimate as closely to the eventual truth as possible. To get maximum value from this method, consider using a visual tool such as the following scale.

In this case, the person who gave the eventually losing plaintiff a 22% chance of winning was much more accurate than the person who pegged it at 43 and worlds apart from the person who thought 94 was the right number. Notice that both 22 and 43 thought the plaintiff would lose.

But 22 was much closer to the eventual truth. Degree of accuracy matters, as you will learn when you read *Superforecasting*.

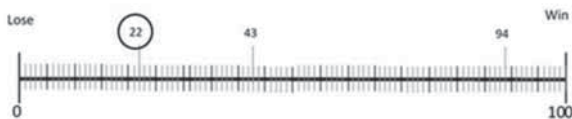
Take heart. You too can learn how to make more accurate predictions. A good way to start is by keeping a log of predictions in which you record the prediction and then record what eventually happens. For example, if you have a brief to write, spend 10-15 minutes thinking about what you must do to complete and file the brief, break the process down into components (e.g., research, outline, drafting each section, revising, proofreading, printing, photocopying, binding, and filing), and estimate the time it will take to complete each component. Enter your time for each component as you go. After you file the brief, compare the estimates with the actual times, perhaps noting what you failed to consider that resulted in your having to spend less or more time on a given component than estimated.

By using a process like this, you are calibrating your predictive judgment system. Participants in the Good Judgment Project routinely get this kind of feedback, allowing superforecasters to calibrate their judgment and make even more accurate predictions next time.

*Superforecasting* makes a significant contribution to the small but growing shelf of books on forecasting.<sup>9</sup> Putting its lessons into practice will help litigators and mediators overcome the settlement error problem studied by Randall Kiser, saving them and their clients money and grief.

## Endnotes

1. See Randall Kiser, *Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients* (New York: Springer, 2010).
2. For more than 50 years, scientists have studied the overconfidence bias, the confirmation bias, the accountability effect, the sunk cost bias, the anchoring effect, the endowment effect, the saliency effect, recency bias, risk aversion, risk seeking, and more through numerous, creative experiments. See Daniel Kahneman, *Thinking Fast and Slow* (New York: Farrar, Straus & Giroux, 2011); *Beyond Right and Wrong*, *supra*, at 89-139. To date, the definitive resource for lawyers on this subject is Paul Brest and Linda Hamilton Krieger, *Problem Solving, Decision Making, and Professional Judgment: A Guide for Lawyers and Policy Makers* (Oxford: Oxford University Press, 2010).
3. Cf. Marc Jeannerod, "Consciousness of Action as an Embodied Consciousness," Chapter 2 in Susan Pockett, William P. Banks,



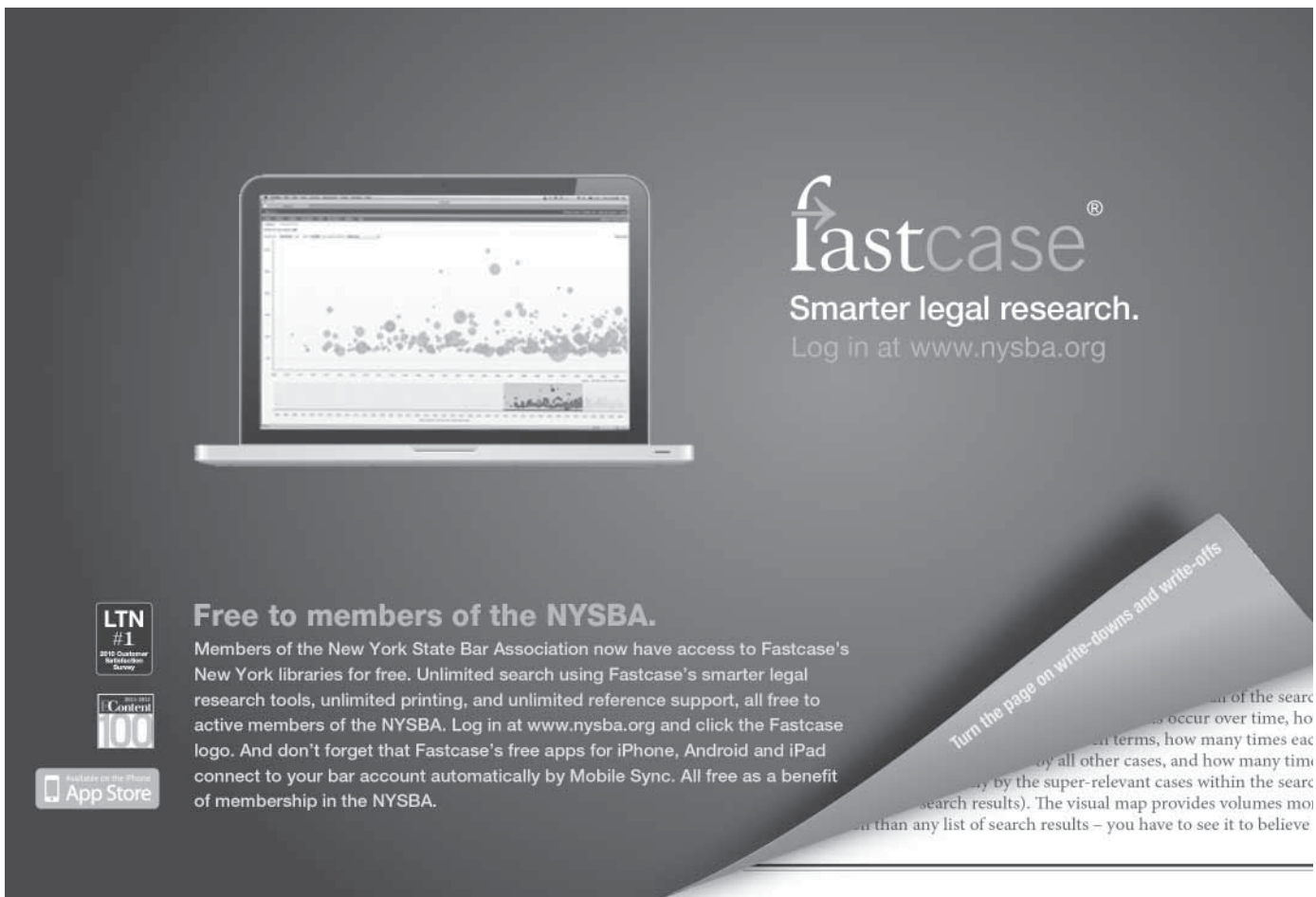
and Shaun Gallagher, *Does Consciousness Cause Behavior?* (Cambridge, MA: MIT Press, 2006).

4. See, e.g., Elizabeth Loftus *et al.*, "Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes," 16 *Psychology, Public Policy, and Law* 133 (2010); Philip Tetlock, *Expert Political Judgment: How Good Is It? How Can We Know?* (Princeton, NJ: Princeton University Press, 2005).
5. Douglas Hubbard, *How to Measure Anything: Finding the Value of Intangibles in Business* 92-93 (New York: John J. Wiley & Sons, 2007).
6. *Superforecasting*, *supra*, at 277-285.
7. There are studies on this too. See, e.g., Gerd Gigerenzer *et al.*, "A 30% Chance of Rain Tomorrow": How Does the Public Understand Probabilistic Weather Forecasts?" 25 *Risk Analysis* 623 (2005).
8. Knowing that our clients might kill the messenger if we share a pessimistic view of the chances of success, lawyers are susceptible to the accountability effect, a subconscious bias studied in depth by Professor Tetlock and other social psychologists. Oversimplified, the accountability effect leads us subconsciously to tailor our judgments to what we subconsciously assume our

audience wants to hear. We tell clients what we assume they want to hear, often without being aware that we are pandering. But, if we have no way of knowing the views and expectations of our audience (for example, when giving a speech to a diverse group of colleagues), we tend to make more balanced, objective presentations. See, e.g., Philip Tetlock, "Accountability and Complexity of Thought," 45 *Journal of Personality and Social Psychology* 74 (1983); Philip Tetlock and Erika Henik, "Accountability," in N. Nicholson, P. Audia, & M. Pillutla, (eds.) *Blackwell Encyclopedic Dictionary of Organizational Behavior* (Cambridge, MA: Blackwell Publishers, 2004).

9. See J. Scott Armstrong, *Principles of Forecasting: A Handbook for Researchers and Practitioners* (Boston: Kluwer Academic Publishers, 2001); Nate Silver, *The Signal and the Noise* (New York: Penguin Books, 2012); Rob Hyman and George Athanopoulos, *Forecasting: Principles and Practice* (Otexts, 2013).

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