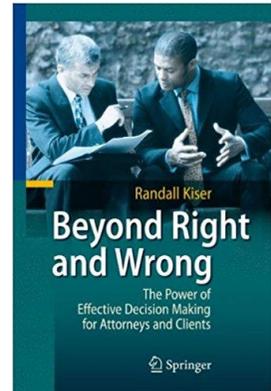


Randy Kiser, *Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients*¹

Review by Michael Palmer

This is an important book. It is important first, because it lays reports extensively 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*.)

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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, 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.