

TLC BOOK CLUB

Reviews and recommendations from TLC alumni

Note: The TLC Book Club invites readers to submit reviews of books that have touched, taught and challenged them. Readers may review books that directly bear on trial practice; or books that are not directly “about” trial practice, but explore concepts that are relevant to TLC teachings; or even just a novel that is a good read and an interesting example of storytelling methods. The Warrior will keep a running list of reviewed books. Please share your recommendations for a book that can expand existing insights or lead us to new perspectives.

Reviewer: KEN LEVINSON ('08 TLC Grad from the 7-Step Program)

Book Review Buffet Style

I have been inspired by many lawyers, such as Rex Parris, to continue my growth by reading books that would help me better represent clients. In the Winter 2008 edition of The Warrior, Rex gave a great recommended reading list. Since we have all read the standard trial strategy and “legal” books—I want to share some books not typically found on the shelves (or in the Kindle) of most trial lawyers. With that in mind, I selected a variety of topics that will hone a mix of vital skills—from decision-making to story-telling to practice management tips. Happy reading.

Thinking, Fast and Slow, by Daniel Kahneman

Though this is one of the more sophisticated books available on heuristics (how we think), Kahneman’s basic premise is our thinking is done one of two ways: System 1 (fast, intuitive) or System 2 (slow, deliberate). Understanding the differences between the two, and how to engage each of them, can help us trial lawyers better understand how jurors think and how they make decisions.

The two Systems have their pros and cons. System 1 operates automatically and quickly, with little or no effort, and is very good at rapidly assessing a familiar situation and formulating a response; however, it is able to do this because it is based on

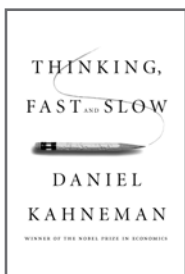
innate biases and prejudices, as well as short-cuts. System 2 involves reason, controlled thinking, and, importantly, energy and maintained focus. Although System 2 allows us to think deeply and formulate answers, it is easily disrupted and can lead to an increased risk of reverting to System 1.

Aside from understanding the differences between Systems 1 and 2, it is helpful to know that the mind readily seeks to substitute System 1 thinking to resolve a System 2 problem. For example, when confronted with “should I invest in Ford stock?” people actually answer “do I like Ford cars?” As seen elsewhere, this is the foundation for metaphors and subliminal triggers—and why we trial lawyers should learn to use them.

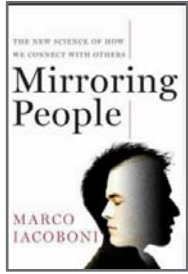
Understanding how and when the two Systems work can help us form our tribe at trial. We have all been in a *voir dire* situation where a panelist makes an outlandish statement, maybe that all seven-figure verdicts are unreasonable. That person is using System 1 to respond to the issue. Using our TLC training we can better learn how to cope with and respond to those initial reactions. Conversely, System 2 is more aligned with reasoned, time-consuming ways of solving problems, which can be vital for reversing roles with jurors (think jury deliberations).

Mirroring People: The New Science of How We Connect With Others, by Marco Iacoboni

Monkey see, monkey do. Literally. While discussing a neu-



rological study of monkeys, Iacoboni describes how “mirror neurons” act as a means of helping monkeys “understand” the actions of others by simulating—mirroring—those actions within the brain. Similarly, children learn behavior (hopefully, good behavior) by mimicking behaviors and mannerisms they see in adults. Likewise, expressions involving actions (e.g., the kiss of death) activate the motor areas of our brain involved in the action (e.g., the motor neurons activated when you kiss someone). Moreover, studies show a strong link between mirror neurons and empathy; people can share an experience or an emotion simply by mimicking physical actions.



We know the importance of having jurors form a tribe; understanding how mirroring works can provide an advantage for trial lawyers. If they are sitting stone-faced during emotional testimony or a powerful closing, they are not mirroring. If they are not mirroring, we know they are not connecting with our case on a neurological level. Though you should be cognizant of mirroring from the moment you meet the jury, be careful it is not superficial “copying,” which jurors will see right through it.

This book also reveals the science behind many of the methods learned at the College. For example, we mirror body language in our active listening exercises. Imagine listening to a client sharing his most intimate fears and concerns after having his body mangled in a truck collision. His arms are open to us and his eyes are pleading for help. Can we really connect with him while behind a desk, yellow legal pad in hand, and the hard-edged persona of a police interrogator?

***Made to Stick: Why Some Ideas Survive and Others Die,*
by Chip Heath & Dan Heath**

Stemming from Malcolm Gladwell’s book, *The Tipping Point*, Chip and Dan Heath explore why some things stick when others don’t. Why are urban legends so hard to forget while some school lectures are forgotten by the time the student walks out of class? *Made to Stick* lays out six principles to follow for making an idea stick: 1) Simplicity; 2) Unexpectedness; 3) Concreteness; 4) Credibility; 5) Emotions; and 6) Stories. Following these six principles not only helps make our ideas stick, it also helps us defeat the Curse of Knowledge.



The Curse of Knowledge exists when a person with certain knowledge assumes another person shares that knowledge. That assumption creates an information imbalance that prevents the effective communication of an idea or message. Adhering to the six principles helps prevent disconnect or miscommunication—crucial to making sure the correct message sticks.

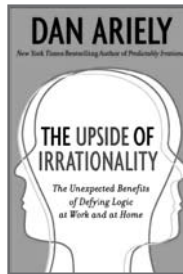
For example, when we reverse roles with jurors, be aware of the curse of knowledge. Stand in the shoes of the panelist who hasn’t been living with your case for the past three years, someone who does not yet know complex medical terms or mundane

rules. Remember experiencing the new language and nuances of your case for the first time.

Working with a local TLC group and using the lessons provided in this book are a great way to make sure a jury takes your version of the case into deliberations, because you can’t persuade a jury of your client’s position if the jury forgets your case. The principles in this book will help make your case “sticky.”

***The Upside of Irrationality: The Unexpected Benefits of Defying Logic at Work and at Home,* by Dan Ariely**

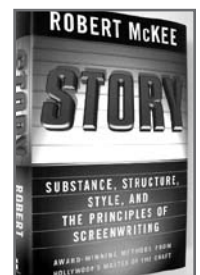
“If it ain’t broke, don’t fix it.” “We’ve always done it this way.” These axioms are tried and true—except they aren’t. It turns out people often incorrectly assume the way they do things is the only or best way to do things. Pride in ownership (people strongly favor their own ideas) can blind us from new and better methods or ideas. This bias can result in our ignoring mistakes or inefficiencies in our lives. Worse, we are often ignorant of these irrational influences. Understanding this problem is crucial to developing ways to counter “common wisdom,” routine for routine’s sake, and doing what’s easy. We must constantly experiment, push back against the norm, and question ourselves.



Perhaps the best way to test whether we are rational about our own case is to employ the skills we hone at Trial Lawyers College. For example, truly listen to those listening to you explain your case—are they understanding your case and believing you, or are they simply nodding in appeasement? Also, put your case into action to see if your position makes sense. Could the driver have really been watching the pedestrian after we have set the scene and re-enacted the incident? You may discover that defying logic and common beliefs will lead the jury to the truth.

***Story: Substance, Structure, Style, and the Principles of Screenwriting,* by Robert McKee**

Watching a movie could not be a more artificial experience: we buy a ticket (or rent a movie), we’re sitting in a room, probably having a snack, and watching people we recognize from playing other characters in dozens of other movies. We know the experience is not real. And yet, within minutes we are emotionally invested: crying at their pain, cheering on the hero, loathing the villain, and applauding the victory. The power of a well-told story (fact or fiction) is universally known. Utilizing that powerful skill to tell your client’s story to a jury is critical.



Widely regarded as one of the best books available on screenwriting, *Story* discusses the principles behind telling a story. Filled with concepts and ideas that often come across more as philosophies than rules, the book helps us understand what makes a story universal, true, and enchanting, allowing us to craft our presentations (from voir dire through closings) in a way that grabs the jury. McKee breaks down the various components of a story (scenes, acts, plot, characters, etc.) and discusses how to construct each element in the

most effective manner possible. We learn the structure of a story so we can understand where witnesses and other evidence should be sequenced to maximize the impact of our theme.

Our TLC methods are an amazing tool for discovering the scenes available to us. There are cases where I had a psychodramatist spend an entire day discovering incredibly impactful scenes with my clients and me. *Story* gives us the tools to select and sequence the best scenes, in a way that transforms our cases into compelling drama that will have the jury invested in the outcome.

***To Sell is Human: The Surprising Truth About Moving Others*, by Daniel H. Pink**

When the author asked people to describe the first picture they thought of when hearing “sales” or “selling,” the overwhelming response was a used car salesman. Though that may elicit a nod and a chuckle, bear in mind that we trial lawyers are in sales. The book redefines the “ABC” of sales (Always Be Closing) as Attunement (the ability to align one’s actions and outlook with other people), Buoyancy (positivity—believe in what you’re selling), and Clarity (streamline your message so it is easy to understand). Knowing sales (i.e., persuasion) strategies lets us implement known and proven methods to convince jurors to “buy” our client.

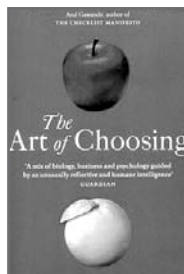
Pink’s concept of Attunement should resonate with every Warrior. It is the reason we conduct listening exercises. We are best in a position to sell our case when we are best attuned (i.e., listening) to our clients, our jurors, our judges, our witnesses, and even our opposing counsel.

Finally, we need to remember that two of the most visceral images related to salespeople is “pushy” and Alec Baldwin’s character from *Glengarry Glen Ross*. Though we must know how to be an effective salesperson, we must also be determined not to come across as one.

***The Art of Choosing*, by Sheena Iyengar**

In an experiment, people at a casino were given a chip and allowed to choose to spend it either at a table with a single roulette wheel or at a table with two roulette wheels, even though they could only bet on one wheel, and all three wheels were identical. Why? The desire to choose is a natural and innate drive; the power of choice is inherently valuable. Simply put: when we have more control over a situation (i.e., we have choices), we tend to be less stressful. So how does this play in our cases?

We trial lawyers are constantly making decisions, from which cases to take to which panelists to keep as jurors. When it comes to choosing jurors, we must be mindful that the act of choosing is also the act of excluding. During jury selection, be cognizant that you are not inadvertently alienating jurors while forming your tribe. The last



thing you want is a tribe within your tribe—especially one that feels “chosen” against.

Once we’ve formed our tribe, though, knowing the choices they will make—and why they make the choices they do—can help us structure our trial presentation in such a way as to present jurors with options so they can feel empowered in making the choice we want them to make. People *want* to choose. We should help them.

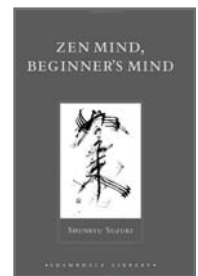
***Drunk Tank Pink: And Other Unexpected Forces that Shape How We Think, Feel, and Behave*, by Adam Alter**

The book’s title comes from a San Jose, California, detention center that painted the walls of a cell for violent drunks—hence, “drunk tank pink.” The walls’ color choice came from a study that showed participants who had stared at a pink piece of cardboard were temporarily weaker than those tested after staring at a blue piece of cardboard. In another experiment, those reviewing identical job applications favored applicants named Anne, Brad, or Greg over those named Aisha, Kenya, Darnell, or Jamal. These are but two of the examples given by Alter to show the power seemingly insignificant triggers can have on a person’s decision-making, emotions, and actions.

Drunk Tank Pink can steer us toward a better awareness that unexpected or trivial information can have a dramatic effect on our cases. Knowing this might spur you to test your case (e.g., via a focus group, your local TLC working group, or working with a psychodramatist) for hidden dangers—or benefits.

***Zen Mind, Beginner’s Mind*, by Shunryu Suzuki**

We tell our clients every case is different when they reference a “friend’s” case. And yet, we often ignore our own advice when we get in a rut approaching cases the same way: “Oh, this is a simple rear-ender, I just need to . . .” How do we avoid this? “In the beginner’s mind there are many possibilities, but in the expert’s there are few.” This is just one of the teachings in this book, which says the best way to avoid the errors associated with complacency is to clear the mind. When we approach a problem, we should do so as a child or a beginner.

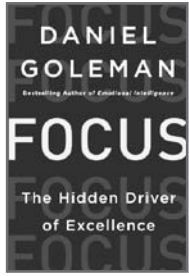


One method I’ve used is to reverse roles with a non-lawyer. I have found it works best with someone who is completely unfamiliar with the law, the details of your case, or any experience with your client’s situation. Regularly looking at our cases with fresh eyes and looking from new angles can help us avoid missing creative or inventive solutions.

***Focus: The Hidden Driver of Excellence*, by Daniel Goleman**

While dining at a restaurant, the waiter comes by to ask if the food is all right. The patron replies, “No, not yet,” assuming the waiter asked if they had finished. *Focus* focuses on the problems

that occur when we are on auto-pilot, missing moments because we react to fixed templates of assumptions about what is going on. This cruise-control life is the mind's way of dealing with the plethora of data that surrounds us. "A wealth of information creates a poverty of attention." Focus is the tonic to remedy this problem.



We Warriors know about focus: be in the moment. There are many times in trial practice where focus is paramount—taking a deposition, jury selection—where distraction can result in missing critical information. When you are deposing a witness or conducting voir dire, don't let your mind fill in a "typical" response while missing the actual response. Stay in the moment! This book offers ways to train our brains to filter out the noise so we can focus in on what is in front of us.

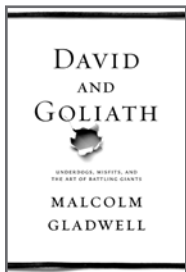
Flow, Mihaly Csikszentmihalyi

Sometimes, the ability to focus on a task can actually result in our being oblivious to the moment. *Flow* considers "a theory of optimal experience based on the concept of flow—the state in which people are so involved in an activity that nothing else seems to matter." We know this as "being in the groove," that blissful state of being where you are streaming productivity. You are so in tune with your task that you have tuned out everything other element in your environment. In today's world of e-mails, texts, cell phones, pop-up calendar alerts, and the like, we must be able to master the control of consciousness. Training yourself to be oblivious to distractions, to concentrate for extended stretches of time to achieve a goal, can lead to improved—and more enjoyable—productivity. Remember to "be in the moment."



David and Goliath: Underdogs, Misfits, and the Art of Battling Giants, by Malcolm Gladwell

Once again, Gladwell flips our preconceived notions on their head. He explores two ideas revolving around David and Goliath. First, much of what we consider worthy is born of the notion that the act of facing overwhelming odds produces greatness and beauty (we cheer for the underdog). Second, and more importantly for us trial lawyers, we regularly misinterpret seemingly lopsided conflicts; what we perceive as a giant's strengths are often its weaknesses. Identifying and understanding these weaknesses allow us to exploit them.



We can learn a lesson from the Redwood City girls' basketball team. Facing a superior opponent that had a decided size advantage, the team employed a full-court press to lead to a lopsided, upset win. Though size is generally an advantage in basketball, Red-

wood City understood that it could force its opponent to play the entire length of the court—leading to an exhausted opponent and a slew of turnovers.

The lessons of this book seem to be tailor-made for trial lawyers. We are the underdog (underfunded, outgunned, battling overwhelmingly negative public perception). We do battle against the giants (massive insurance companies, teams of corporate lawyers, limitless bankrolls). And yet, like David and Redwood City, we can learn to identify weakness in strength, and apply the rules in our favor.

Checklist Manifesto, by Atul Gawande

Life is complicated. Practicing law is substantially more so. This book offers a solution: checklists. Discussing how checklists can assist in dealing with a world that has become increasingly more complex, Gawande walks us through the benefits of two primary types of checklists: DO-CONFIRM and READ-DO. DO-CONFIRM checklists are safety nets: we utilize them after completing a task to make sure we did not miss something. READ-DO checklists are like recipes, we check-off steps as we complete them. Putting both types to use in our practices (both law firm management and litigation) can help streamline productivity while avoiding mistakes due to routine.



The book gives examples of how the different types of checklists can be implemented, as well as walking through how to create efficient checklists that will get used by everyone on your team. ☺



Ken and his wife Marianne live outside Chicago with their three boys, Spencer, Leo and Sam. Ken graduated from the 7 Step program in 2008, has been active as an F Warrior, and he currently sits on the Warrior Editorial Board. Ken enjoys attending his boys' school activities, concerts and sporting events. Ken's practice focuses on helping families in serious injury and wrongful death cases.