

Communicating Through Shared Experiences

(Part I of an Occasional Series of Deep Thoughts About Jury Communication)

A few years ago, my son went into his "dinosaur phase." All boys (and a lot of girls) seem to go through this at some point. He got books on dinosaurs and we looked at them incessantly. He learned the names of the different dinosaurs (there are a lot more of them now than when I was his age). He was probably 5 years old, maybe 4 and a half.

So anyway, one day during this time, I got the idea that it might be fun for my son and I to watch "Jurassic Park" together. It had been years since I saw the movie, but I did remember that it had dinosaurs. I mentioned this to my wife, Mollee. She and I had seen the movie together and her memories of the movie seemed to be much more vivid than mine. Mollee all but called me an idiot, but I persisted. I went to Blockbuster and got the movie.

Now, as it turns out, Jurassic Park is not a good movie for 5 year-olds. The first hint is that it takes a good hour before anything really happens. The characters talk and talk and then they're in the desert and then they talk and then they fly in a helicopter and talk and then they get to the island and talk and talk and - well, it is just kind of boring. But we stuck it out. Then, everything changes.

After the interminable build-up, the characters get into two vehicles that look like Volkswagen Things painted like either zebras or holstein cows (I can't really recall) and take off into the jungle. They get to a place where there is a 50 foot or so high cable fence which is electrified and, I guess, tie up a goat for bait. Then you see the water puddles. Ripples start at the edges of the puddles, move to the middle, and back again, telling us that something very large and very heavy is moving about. Then you hear the thuds. Faint and first, but quickly getting louder.

The characters stay, even though it is getting kind of scary. There are two children with them. They no doubt feel safe because of the high, electrified cable fence. But if you were paying attention during the talk-filled hour-long buildup, you would know that the fence was turned off by a disgruntled employee.

In an instant, the tyrannosaurus rex is there. Shrieking. Putting his head through the cable fence. Then he is through the fence. Everybody hides in the Things except for one guy, who runs to the bathroom.

I look over and my son is now standing, looking at the TV and kind of flapping his hands.

Tyrannosaurus rex chases the guy who runs and drives his head through the roof of the bathroom. He pulls his head back and now has a set of legs hanging out of his mouth.

My son is now hopping on the floor, making kind of whimpering noises, and his hands are flapping like crazy.

Then the angry dinosaur shifts his attention to the rest of the characters, who are hiding in the two vehicles, at least one of which is now flipped over on its roof. He runs up and sticks his nose into the window of one of them and then starts spinning it around. The kids are in this vehicle.

At this point, my son jumps in the air and screams, "Daddy! They eat people!"

"Told ya," Mollee says, turning off the TV. The whimpering and screaming had brought her into the room.

Now, think about what you were visualizing in your mind while you read this story. What did you see? Were you imagining my son and me watching a scary movie together? Perhaps, but my guess is you weren't. My guess is you were reliving a personal experience. You might have been remembering who you were with when you saw the movie. You were possibly imagining *your* child and *you* watching a movie (or doing something else) together. Maybe you were imagining your child and thinking of their own "dinosaur phase?" If you do not have children, then perhaps you were thinking of a niece or nephew or a friend of the family or, at least as likely, you were reliving the story as the child doing some kind of activity with your own parents.

The point is that at some level, in real life, we have all experienced the story I just told. While I am telling *my* story, chances are, you are experiencing *your own* story. You are putting yourself in my place, my son's place, or my wife's place or maybe even all three because you have been there. We are communicating through our shared experiences of children and childhood.

We do this over and over throughout the day. As we talk to people, read stories in the newspaper, watch movies, or listen to the radio, we are continuously drawing on our own experiences to make sense of what is being said. This is communicating through our shared experiences.

Jurors do the exact same thing during trials.

So what are the implications of this? Obviously, this explains why a person who has been in a DWI-related accident will not be your best defense juror in a DWI trial. But the implications are broader. What it means is that throughout the trial, jurors are going to be putting themselves in the place of the different characters in the drama, whether it be witnesses, the complainant, or the defendant. Many jurors will judge the characters based upon what they would have done in the same situation. Where a juror believes that a person's actions don't make sense or where the character's emotions are not appropriate, that belief will be based on the juror's own experience and how he believes he would act or feel in the same situation.

Two questions occur to me as a result of this analysis: (1) what kinds of life experiences do we want our jurors to have, given the type of case we are trying (and how do we get that information); and (2) how do we use shared experiences to improve our communication (and success) with juries? More deep thoughts on that to come.