

Intro:

This is Michael Cowen, and welcome to Trial Lawyer Nation. You are the leader in the courtroom, and you want the jury to be looking to you for the answers. When you figure out your theory, never deviate. You want the facts to be consistent, complete, incredible. The defense has no problem running out the clock. Delay is the friend of the defense. It's tough to grow a firm by trying to hold on and micromanage. You've got to front load a simple structure for jurors to be able to hold onto. What types of creative things can we do as lawyers, even though we don't have a trial setting? Whatever you've got to do to make it real, you've got to do to make it real. But the person who needs convincing is you. Welcome to the award-winning podcast Trial Lawyer Nation, your source to win bigger verdicts, get more cases and manage your law firm. And now here's your host, noteworthy author, sought after speaker, and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, I'm happy to have my friend Stefano Portigliatti. Stefano's a great lawyer out of Jacksonville, Florida, and he recently got a 14.6 million verdict on a really tough trucking case. And he's nice enough to come on and talk to us about how he did it, in the hope that the rest of us can get those kind of great verdicts too. So how you doing today?

Stefano Portigliatti:

I'm great. I'm happy to be seeing you.

Michael Cowen:

Before we jump into the case, I want to talk a little bit about you. So tell me a little bit about your background.

Stefano Portigliatti:

Sure. So I'm Italian, grew up in Brazil. My family was a pretty traditional Latin family with a very hard working dad, a mom that was our guardian angel. I have a brother and a half sister, and my brother and I were only a year and three months apart so he was my best friend, my whole life. He still is. And he's actually the reason I'm a lawyer. Before law school I was running some family businesses with my dad and I had a romantic relationship that kind of woke me up to some priorities that I needed to address. And my brother was in college and had a plan to go to law school. And I said, "You know what? I need to focus on completing school and doing things the right way." Because I was making a lot of money, but young and spending a lot too and thinking I knew more than anybody because I was doing so well, relatively speaking for a young guy.

Stefano Portigliatti:

So I dropped everything. I said, "Bruno, I'm going to come over to Tampa. And he goes, "Oh great. Yeah. I'll pull out the couch." And he goes, "No, no, I'm coming to Tampa to go to school with you and finish school." And he's younger. Right? But he had caught up to me in terms of credits at that point. And sure enough, I moved out there. We finished college together. He was going to law school, and I said, "Heck I'll go with you. Wherever you end up. I'll make sure I'll get in as well and we'll do law school together." And halfway through, I had a chance to work on a really cool PI case, Personal Injury case. And I was, you know, the bug bit me. And my brother had no more interest in law. We completely switched. He now runs all of our family businesses out in Orlando and I'm practicing law full time.

Michael Cowen:

That's awesome. Now just in talk, because I've known you for a long time, you've had some business experiences that have had application to your law practice.

Stefano Portigliatti:

Yeah, yeah. So one of the businesses we have based out of Orlando is a human behavioral research group. So we have an university called Florida Christian University. Inside that university we have this lab group, whatever you call it, where we study human behavior, communications, motivation, personality, from different fields of study, from social studies all the way through neurosciences. And before law school, a big part of what I did was consult with businesses like IBM, L3, AT&T, Marriot, you know, big Fortune 500 corporations on how to build high performance teams, leadership, executive coaching. And we actually train a lot of professionals in the area of mental health and coaching psychology on how to use some of the tools that we've developed. And at it's very core, the primary tool that we have, which is a personality assessment tool, affects what we care about and how we communicate.

Stefano Portigliatti:

So for example, if we're talking about sales, right, the same car has different values to different people. Some people may appreciate the flashiness and the status of it. Some people may appreciate the reliability of it. Some people may appreciate the power. Same car, different values. So it's very much the same in the case that we're trying. Same case, different values to different people. Some people are very concerned with the fact that a rule was broken. Some people would be very forgiving of someone breaking a rule if there's good reason for it. Some people can really feel, sympathize, with the social effects of injuries, of physical or mental limitations, and other people aren't as driven by that. They want to see numbers.

Stefano Portigliatti:

So actually I often, during jury selection, I'm not leading voir dire. I'm sitting there taking notes of every little cue I can to get everybody's personality assessment figured out the best I can without putting them through an assessment. And then once I get into opening, I'm already speaking to different people based on first, the way that they like to hear things, and the subject matter that they care of. And we try to be mindful of that through trial.

Michael Cowen:

So what are some things you do to try to figure out what motivates different kind of people? Your car example one worked for me because I bought a nice red convertible sports car recently and people come up like, "What kind of engine does it have? Does it have a V12? Does it have this?" And they ask me all these questions. Like, "I don't know, it's red and it's pretty. And the top goes down and it looks ... you can drive it around." I don't know the details. I mean ...

Stefano Portigliatti:

That's a great example. My wife, for example, wanted to make sure we had a third row and I'm like, "For what?" "Well, in case someone comes to visit and we can fit everybody." I'm like, "Brittany, that's not going to happen. We have two strollers. We have car seats. We could have five rows. We're not going to be fitting people into our car." Anyways. Yeah.

Stefano Portigliatti:

So very generally speaking, right? So there are two primary behavioral tendencies that separate us into four quadrants. The first one is assertiveness. So more assertive people tend to be more extroverted, more outwardly inclined. The way I define it very simply is they have a need to influence the environment according to what they think, feel and believe.

Stefano Portigliatti:

So a very quick example is my dad. My dad is the ultimate assertive person. We could be in my car, driving around my town, going to do something I need to do. I'm driving somewhere I'm very familiar with, he's never been to before. But the moment I get into a parking lot, I'm about to turn into a parking spot. He's going to be like, "Oh, that's not a very good spot. Why don't you park a little bit down there?" Right? Some people would know that it's not a good spot and recognize it, but have no need to express the disagreement with my selection of a parking spot. But some people know. They have the need to express that and influence the environment around them.

Stefano Portigliatti:

On the other hand, you have people that look to the environment for cues as to what they should think, feel, and believe. They're mindful of what are the protocols, what are the rules? What are the expectations? And oftentimes you have people that won't even leave a position or start something unless they know that they're not going to violate, right, the norms in that environment. So that's first spectrum, right? From taking your cues from the environment and imposing your cues on the environment.

Stefano Portigliatti:

And then the other continuum that interacts with this prior one is your responsiveness. What do you respond to? Let's put it simply. Are you more task, objective oriented, or are you more people or human oriented? So for example, you have people that come to a meeting and they've got paper and pen and what they need to get done, and they're ready for business. And then you have people that come in and they're prancing around and checking on everybody. And, "Oh, I forgot a paper or a pen. I didn't realize we had to take notes." It's like, what are you doing, what are you here for? They're here for the interaction, right?

Stefano Portigliatti:

So that's a very simplistic way to put it. But if you put those two continuum, right on top of each other, one going left to right, the other one top to bottom, you now have four quadrants. And not everyone is just one of those quadrants, we're a combination, but I can confidently say about 70% of our behavior comes from two of those.

Michael Cowen:

So how do you assess during jury selection where people fall in those quadrants?

Stefano Portigliatti:

Yeah. So I'm looking for ... I'll give you an example from this case. I had this one potential juror. She was number five. So she was very high up on the list of potential jurors that are going to be sitting on the panel. She sued her sister because of an estate issue. And we typically ask, has anyone been involved in

litigation or anything like that? And so, "Yeah, I sued my sister." She had no qualms about it. She said, "Yeah, we always got along and everything worked, you know, was fine. But when I came down to it, I didn't agree with what she was doing. It was more of a principle thing. And we sued her and I won. Everything that I said was right, or wanted, you know, the judge agreed." So clearly not someone that's as concerned with the human aspect of a case and that they're going to be with what's right or wrong and all the consequences. We don't care, you know, as long as we get the right and wrong.

Stefano Portigliatti:

So there are cues like that that you look for. So even the way that people interact, some people are more assertive and they get up and they grab the mic. And the way that they carry themselves is a little bit more outwardly. And others are not as outward. Right? They, "What was the question again?" Or, "What can I, what would you like me to say?" Type thing. They're looking for you to tell them what to do. That's more of a non assertive person.

Stefano Portigliatti:

And then whether they're more task oriented or people oriented. I could just give that example. That's actually, to me, the easier part of it. We ask them what are they into? What do they like to do? Their work oftentimes will tell us what they're into. We ask people, what do you value at work? Because this case involved wage loss, a client no longer being able to operate a semi. So some people love meeting people from all over the world. Others like that there's no limit to how much I can make.

Michael Cowen:

So how do you use ... Okay, so you're in jury selection, you're trying to size up the potential jurors on these two axis, the objective versus people oriented. And then are they putting their will on the world versus their looking to the world for cues on how to think. How do you use that?

Stefano Portigliatti:

Right. So one of the big lessons we teach in that arena of what I do is, communication is not what you say. It's what people understand. Number one. So number two, you need to communicate in the way that they understand, not that you like to. Right? So communication isn't just a matter of means, it is also a matter of substance. If I have a juror that's clearly sort of a people oriented assertive, that's typically what we call the extrovert. I'm not going to waste time trying to persuade them of some technical rule violation.

Stefano Portigliatti:

So in this case, it had rained. Everyone agreed that your speed should be reduced operating a semi on 392.14 hazardous conditions. And it wasn't the main factor that caused the crash. In my opinion, it was inattention. So I wasn't going to push it too hard. But for the people that I had on there that were rule followers, they cared about exactly what the rules were.

Stefano Portigliatti:

I wasn't going to give them that tool, or that argument to make, in deliberation. But to the individual that is not as much of a rule follower, what I'm going to talk to them about is the fact that my client didn't put out the warning triangles through the rear of a semi, all 200 feet. Because can you imagine this guy out there in the middle of 95, raining, he's gone a hundred feet, another 120, and now 140. I

mean, at some point you need to be careful. You've got to get out of the road, right? And that person is going to be more understanding of my client's decision not to go the whole 200 feet, 160 is enough and I'm going to get back into the safety of my tractor. So you also have to know in your case, what jives better with each personality style, right?

Stefano Portigliatti:

So when we're talking about radiology and whether this was a herniation or a bulge, it wasn't much of an issue in this case, but that's someone that I want to present that to the person that's more technical, typically someone that's objective, on the task focused and non assertive, right? They're going to take in, they're going to care about the little details. They're not just focused on the bottom line. Because what happens is they take that, they value that. They can also communicate that better than someone else would. So my plan or strategy is that then in jury deliberations, they come with their strong points, and there's strong ways to argue what they care about, armed with what is helpful to me. Did that make sense?

Michael Cowen:

It makes perfect sense. And so there's something you told me when you and I were talking to prepare, and it was such a brilliant quote. I want to ask you about it. One of the things, and again, this is your quote. I'm just, it was brilliant enough that I want to repeat it and ask about it. It's, talk to the juror, not the jury.

Stefano Portigliatti:

Oh yeah, yeah. We could address this at many levels. If I'm being very Frank with you, I think I've experienced fear of a jury. Actually, I think. I know I have experienced fear, but I think of a jury, and what do I mean by that? It's a group of, and I'm over here by myself. It's a group of them and they have group think and they have all these things together that I fear. And so I believe that we oftentimes forget that before they get back to deliberate as a jury, they're individuals that can't even talk about the case. They're single humans, just like my client is, just like, I am, with their own experiences, their own, everything we talk about in voir dire. And if we're not mindful of that, we talk, we communicate with them in a way that misses that total ground of humanity, right in front of you in each one of those seats. Because we just address them as a whole, before they are, oh, before they've gotten to know who they're even working with.

Stefano Portigliatti:

If you take the personality profiles that I like to assess for each one of them, or just their own life story. You could know nothing, absolutely zero about personalities. But if, you know, for example, that someone was an engineer or that someone like I had in my case was a truck driver. Well, heck, use that, right? Look at him and talk directly to him when you're talking about something that you think that he can convey and bring home when they're in deliberations.

Stefano Portigliatti:

We had, in this case, my accident with construction was he has an engineering degree, bachelor's, and then he went and got a master's in traffic engineering. He's written papers on air brakes, and you name it, he's published. Extremely, extremely well qualified. The defense expert reconstructionist was a police officer, did traffic investigations. Never completed college. Attended business school, but didn't finish.

Stefano Portigliatti:

And I normally have no problems with that. No qualms with it. But if that's an advantage that I have in the case, I'm going to maximize it. So I highlighted that, right? So this expert relied heavily on his ACTAR certification. So in the direct examination, my expert asked him, "Now, did you ever get some certifications and other, you know, other than just being a professional engineer licensed by however many states?" "Oh yeah. Yeah." "And tell me about that." "Well, I got this certification, this certification, I'm a brake inspector." "What about ACTAR? A-C-T-A-R?" "Oh, yeah. I've done that one. Yeah." "Well, what'd you have to do?" "Oh, it's like a weekend test I think I did." "And did you keep it up?" "Yeah. You know, just doing what I need to do for an engineer. I'm more than, I get more than enough credits, to keep that up. But I don't even put that on my resume."

Stefano Portigliatti:

So, that's all the defense reconstructionist really relied on in terms of his objective qualification to be an engineer or to be a reconstructionist at trial. But anyways, I see that to say this, he then gives his opinion. They're very broad. He doesn't go through any of the detailed analysis that my engineer went through, and we made sure he did it live, with a pen and paper in front of the jury. And then in closing, I turned to the youngest juror we had, which is a 21, 22-year-old guy that just moved over here from Colorado, who'd just graduated from engineering school. And after going through some of those things, I said, "You have more, Mr. Police, you have more engineering experience than he does." And they all laughed and they appreciated it. And he was nodding along with me as I'm going over the analysis, you know? So it's those those personal connections that you establish with them that draws them in. On an issue, on sort of a relational level and hopefully overall with your case.

Cowen Rodriguez Peacock promo:

Each year, the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving death or catastrophic injuries, and would like to partner with our firm, please contact us by calling (210) 941-1301, to discuss the case in detail and see where we can add value in a partnership. And now back to the show.

Michael Cowen:

That's great. I've been doing this for a long time. I never really thought that much about talking to each person individually. I mean, I try to make eye contact and talk to people, but the level of thought you put into it is really impressive.

Stefano Portigliatti:

I'll give you one more little example that, and I don't know, maybe it's not appropriate or right to do this, but we'll find out. I think ultimately every single juror was Christian and at least four of the ultimate six were very much devout Christians. Okay? And my client was Catholic. So Christian, but you know, Catholic. And one of the things I had learned from him is that now he goes to church more often because he thought he almost died. Or, he has this thing that he, God saved him. Because he was standing outside by the tractor trailer moments before the crash happened. And he, you know, "Let me go inside. I'm not feeling right right now, let go inside my tractor." And sure enough, moments later, he got hit and the tractor trailer jackknifed, was pushed over a hundred yards. So, a hundred feet. So he would've been, you know, who knows?

Stefano Portigliatti:

So one of the things we talked about is how the crash brought him closer to God. And we went over why. And you could see them appreciating that. Another thing we talked about is how we saw God's plan working out in his life. He was not married when his wife ... So my clients from Cuba, right? Him and his wife lived in Cuba with their kids. But it's a second marriage for both of them. He wasn't married when his wife was drawn out of a lottery system for her residency in the U.S. and she left Cuba.

Stefano Portigliatti:

And you live the rest of your life, hoping that maybe one day you can join her. The very next year he gets drawn. Out of however many thousands or hundreds of thousands of people, he gets strong. So we weaved sort of, God's plan and trusting and how that played out. So one of the issues we had in the case is that, what was wrong with my client's trailer that broke him down and caused him to come to a halt in the middle of 95. Not even be able to move it off the road.

Michael Cowen:

Yeah, no, let's give, when you can give a little details about what happened in the crash.

Stefano Portigliatti:

So yeah, we're putting the cart ahead of the horse here. There were some tow truck drivers at the scene. I called all of them. We spoke with all of them. None of them remembered anything, because they're doing three, four of these a day. And when we got to them, it was later, I came into the case a little bit later and they didn't, they knew nothing. So we're about to close our case, finish our case. I just finished with my client who was my last witness, and my co-counsel comes over and says, "Hey, there's a tow truck driver outside, said he's here to testify for the defense." I'm like, "What? They don't know anything. Well, let me go talk to him." So I go outside and this guy has this whole plan to sink my case, and I'm talking to him and I'm realizing he's met with the defensive branch.

Stefano Portigliatti:

They've shown him documents. He's got this whole thing. "There's nothing wrong with the trailer. I could get air through those brakes. No problem. I would've been paid more money if I had to pin the brakes. And obviously I didn't have to, it's not on the receipt, blah, blah, blah, blah, blah." I'm like, oh my God, what do I do? So I walked back in and I said, "Your honor, we called a tow truck driver that's outside, and the defense loses it. They're like, "What do you mean? That's our witness." And said, "Look, my case is still open. There's a witness sitting outside. I get to call my witnesses." And I called the tow truck driver, in an effort to mitigate what he was about to do. And it worked, it worked. But he still gave, you know, when I'm talking to him it was one thing. When the defense lawyer got to got up and started asking him questions, he could tell you where the sun was and the barometric pressure at every inch of elevation on the roadway.

Stefano Portigliatti:

And anyways, here's why I'm saying that. We had eight jurors sitting, but only six get to go back. And the day before this happened, our first juror had a medical emergency and she could no longer be in the jury. So number seven now becomes number six. And who is he? That's Mr. Cummins, a truck driver, a truck driver here in town that wasn't going to sit and deliberate, but got to hear all of that evidence. And as I'm talking to this guy, I'm looking right at Mr. Cummins. And we can talk about it more a little bit

later, but he was, I think, extremely helpful because of what we had to disprove, what that tow truck driver had to say.

Stefano Portigliatti:

But in closing, I turned to Mr. Cummins and I said, "Mr. Cummins things work in mysterious ways," and you could almost hear an amen. And I said, "But I'm so darn glad you're sitting in this jury because we're going to need your common sense here." And he looked right at me. He gave me a big old smile and shook his head like, "Don't worry. I got you." So establishing that rapport with him at the individual level comes from talking to the juror, not the jury.

Michael Cowen:

So let's get a little background. Tell me about your case.

Stefano Portigliatti:

Yes. So my client ... Let's talk about liability I guess, the story there. He picks up, he's from Miami. He picks up a container in chassis at the Port of Miami in the morning. He drives up through the state, gets to Jacksonville, experiences an air loss in his trailer, the chassis, that's pretty immediate. And with that all eight wheels on the chassis, that's loaded, lock up. And he's in the travel lane of 95, just as an on ramp opens up to his right. But because there's vehicles on that on ramp, he couldn't get off the roadway. Eventually they come up a little hill and he gets stuck. He can't move it anymore. So he stopped there for a long time. If you go by some GPS data that's not 100% reliable, it's 22 minutes. If you go by when the first person called 911 as a result of the crash, it's about 25 minutes.

Stefano Portigliatti:

My client, after experiencing the brake loss and coming to a halt, gets out, puts out five triangles, but he doesn't do 10 feet, 100 feet, 200 feet like the rules say. He just goes from the truck to the next white line, to the next white line, to the next white line, to the next white line. And that's how we were able to say 160 feet because there's 40 feet between the beginning on of one and the beginning of the next. So he calls this company, tells him what happened. Meanwhile, it's raining. So he goes back in the cab and that's when the crash happened.

Stefano Portigliatti:

Fortunately, there was this lady, Ms. Davenport, that was riding alongside the defendant's semi. And she comes over this little hill, sees my client stopped up ahead. And she's going to proceed because she's in the next lane over. But she notices that the defendant semi isn't slowing down. So she's looking up and she sees that he's looking down in the cab. So she now starts to slow down a little bit. He keeps going, never brakes, never does anything until the last minute he swerves, but clips the right rear of my client's chassis and container, drags him, you know, jackknifes his vehicle, drags him up some ways and then leaves him across the road. Poor Ms. Davenport crashes into the wheels on my client's semi after it's been jacked knifed.

Stefano Portigliatti:

So all along, we knew her story and the defense didn't. So we kind of let it play out. And then after their experts had given opinions and everything, we take her deposition and she says, "He was looking down,



and I'm like, man, you're going to hit, you going to run into the, oh my goodness." And she says, and she's a minister on the weekends. And she says, "So I started braking and praying, braking and praying."

Stefano Portigliatti:

And that was one of the lines that came through and we used at trial. But my client, he spoke barely, you know, in English. He was sitting in the sleeper berth at the time of the crash, so he gets launched into the front of the tractor and busts his head open, a big old laceration from his eyebrow up his head, and suffers a really significant neck injury, and his ligaments and muscles and everything was strained up. They couldn't even figure out what to do because his neck was so hurt. Now, no herniations or anything like that at the hospital. But they noticed a retrolisthesis, right? When one level is slipped over the next one.

Stefano Portigliatti:

They had him there for three days just watching the neck. He had some dizziness right there in the end. And they, initially gets worked up like a neck case, because he ends up having neck surgery. But the dizziness doesn't go away. And then he gets better from the neck surgery, starts driving for Uber, and everyone around him noticed that his mental health suffered tremendously from being an Uber driver in Miami. And that was because he was stressing some of the neurological aspects of vision and perception and navigation that had been affected by a brain injury that no one knew about then.

Stefano Portigliatti:

So we get involved in the case, we get into the right providers and all that and sure enough, two DTIs confirmed that he had a brain injury and he starts getting all the treatment he needed. And every doctor has been pretty consistent on pretty severe neck injury requiring the neck surgery. And then what we call a mild TBI that affects his balance and his ability to shift his vision around. So it's in a nutshell, the case, obviously, there's the human story behind all of that we can spend a lot of time talking about.

Michael Cowen:

Yeah. So you've got some issues that you had to overcome in this case. So let's just start with liability. I mean, your car was blocking the lane of traffic on the roadway. He should have inspected the vehicle. How much fault did they put on your client?

Stefano Portigliatti:

Zero.

Michael Cowen:

How did you do that?

Stefano Portigliatti:

So first of all, it started a long time ago with consulting experts, understanding exactly. I mean, I had never had a chassis air loss case before, so I called an expert on commercial motor vehicle maintenance and had them explain to me exactly what that looks like, what that sounds like and what that feels like and all that. And then we did five sets of focus groups on liability alone. And I'll tell you the very first one put 70% fault on my client. And every time we'd learn something, we have questions we didn't have an answer for. And we go and do the work and find out and talk to the right people or get, speak to the

experts and develop the analysis necessary to address concerns that they had. And the last one I had done before trial put 20% fault to my client.

Stefano Portigliatti:

But at the end of the day, I could tell that the reason they were putting fault on my client was just because some of the things that happened, they just didn't like, right. So for example, my client never called 911. He never called the tow truck, never called road service. He didn't put the triangles as far back out as he should have. He didn't get the truck off the roadway. And they understood why he didn't. At first, one, there was traffic to his right. But when they heard that he had been stopped for over 20 minutes, they had a hard time believing he couldn't then move it off the road at some point during those 20 some minutes.

Stefano Portigliatti:

So we went and did the homework. I mean, I went and spoke with Seaboard Marine, the owner of the chassis and the container. And we got the exact weight on everything and got the experts to calculate, go back out there, 3D the scene, get the right elevation so that we can explain why once you're now going uphill, you're not going to have ... What does that do to the center of gravity? It puts us on the wheels that are locked and now the truck on wet pavement is just, isn't going to pull.

Stefano Portigliatti:

So it really came down, moving the truck off the roadway came down to a 1700 pound deficiency in power. So that's very minimal compared to a 55,000 pound truck. But that's what the evidence was. As minimal as that was, that impossibility was minimal, but it was impossible. And at the end of the day, right, even though they had all these questions and concerns, he didn't call the police and he doesn't speak English and this and that and the other, they all understood that those things didn't directly cause the crash. And here's why, because we were able to get the traffic study from the DOT, the Florida DOT that showed that just recently, data collected showed that on that same lane that my client was driving, 31 vehicles would travel per minute, 10% of which are commercial vehicles.

Stefano Portigliatti:

So if you do the math at 25 minutes, that's 700 vehicles or 70 semis that came up right behind him and didn't run into him. So in Florida, the jury instructions on negligence or, or legal cause, right? It says negligence is a legal cause of damages if it directly, continuously and in natural progression causes, right, the harm and issue. That was our main argument. It was, look, we're not shying away from the fact that Mr. Valli didn't put the triangles out all 200 feet. He'll admit it. In fact, they didn't catch him on the lie to prove that it wasn't. He right off the bet he just, all he said, "I only put it out up to that fourth line, whatever that is." And we know that that's 160 feet, we're not hiding from it. But the question is, was that the legal cause? If him not putting the triangles out far enough was the legal cause, if him not moving the truck off the roadway was the legal cause, that very next car would've hit him.

Stefano Portigliatti:

Or the fifth or hundredth. Heck, the 200th would've hit him. That would be a natural, direct, continuous sequence of events. But how did they all miss him? Because that wasn't the problem. What's the legal cause? It no longer was the triangles or not moving it or whatever happened at the Port of Miami at 10:00 AM that morning, it was someone not paying attention. So at that point we can take away, we can forget that this was a semi or why it was stopped. It could have been stopped traffic. It could have been

a brand new vehicle with an electrical problem. It could have been a young college student that ran out of gas. No one else hit him because they were doing what a reasonably prudent driver would've done, paying attention, adjusting speed, adjusting space, and avoiding. The only reason this person couldn't is because they weren't doing the first of them, which was paying attention. And it stuck. It worked.

Michael Cowen:

And how did you handle a traumatic brain injury when it was over a year before there was any diagnosis of a traumatic brain injury?

Stefano Portigliatti:

Oh man. So fortunately we had severe trauma to the head, right. But my client always said, "No, I didn't lose consciousness." Some of the things he said didn't even make sense. Like for example, he says that when he got out of the truck, the cop was there, but, "I didn't lose consciousness." Okay. It's all right. I think the helpful fact that was well documented was his issue with imbalance. At the hospital, less than 24 hours after he was admitted, he's complaining of dizziness, dizziness, dizziness. And later on to his neurosurgeon that's doing his neck he's, you know, "The pain, the neck is better, but I'm feeling like I have vertigo now or something." And fortunately that was close enough in time to the crash that we could say, "Look, there was something going on."

Stefano Portigliatti:

But how that really would've affected the rest of his life and his activities didn't really sort of reveal itself until he started driving for Uber and taxing his brain in the way that his brain just couldn't. And he tried because he is a family man and a proud guy, to work through it, but people were noting. He was having nightmares. He was irritable, he was stressed out. He started getting really depressed. He would drive and his palms with sweat. So it was just a matter of time until all of that boiled up to the point where, hey, let's look a little deeper. And instead of just looking at it with an MRI or a CT, let's do a more specialized MRI. And sure enough, that revealed the issue that they suspected. And that made sense.

Stefano Portigliatti:

Again, going back to talking to the juror, not the juries, we had a juror that had vertigo. And you know, I think the defense did this on purpose. They were very intent of keeping on the jury, some jurors that had chronic degenerative, you know, non-traumatic issues that caused them pain and problems. Like one of them had a cervical fusion, the other one had imbalance. The other one had degenerative disc disease. I mean right out of our client's medical records, right? And I think that the strategy there is look, there's someone with the same problems you have, wanting a whole bunch of money. You're not getting a bunch of money for your problems. So why should he get some? But no one had all the same problems affecting their lives as much as it did my client's, in ways that no one would ever make up. You don't make your grandkids cry out of anger or distance, if you can avoid it. So the human story really added immense credibility to the medical story.

Michael Cowen:

Who did you use to tell the human story?

Stefano Portigliatti:

We had a lot of before and after, we call before and after witnesses. I'm not sure if everyone calls them that, but lay witnesses, you know, human family. So we had his wife, we had his grandchild, his grandson, that's 11. We had his daughter, we had one of his best friends. We had three coworkers. One of the coworkers, unfortunately couldn't testify because of the time. And this is one of those things that I had noted to talk about, is voir dire ended up taking two full days. So we lost a day and a half between another day of voir dire and some argument in the morning and then openings and all that. So our entire order of proof was jacked up. We normally like to start with liability, then get into the damages. Nope. We started with a radiologist. When we went into a doc, another doctor, then we went into a neurologist.

Stefano Portigliatti:

I mean, it was all over the place. So it took a lot of framing issues with each witness and a lot of trusting the jury that they could separate things and keep things in the right box and then bring it together later, because not only did it Jack up our order of proof, we had expected the case to last seven to nine days of trial. It went through 13 days of trial. So I will, maybe I'm wrong, but I think the defense really did everything they could to delay the trial, because, obviously the reason I don't know, but I could see how it distances the deliberations from when they heard my evidence. Makes them less and less pleased to be sitting there. And I don't know what other reasons they had, but ultimately, we had a lot of concerns with how things were progressing, the order and the time that it was taking.

Stefano Portigliatti:

But we remained consistent. We had very specific purposes for every witness we called. We didn't harp on all of the same things over and over and over again with every witness. Each one of them had a distinct reason to be there. But yeah, the family was a big deal and they each had their own version or their own perspective of the harm and naturally gave us these just powerful, powerful bumper stickers or whatever, powerful phrases that helped us put it together.

Stefano Portigliatti:

Like for example, one of the coworkers was the guy he used to work with that he introduced into trucking, who was a team driver with him. And one of the issues my client has now, he's not a confident driver. So I asked him, was Mr. Valli confident in his ability to drive back when you guys worked together? "Absolutely. And I was confident in his, I put my life in his hands, sleeping in that sleeper berth every night." Little things that just came out of the sincerity of a witness on the stand, that added up to see how ... For example, I think on cross examination, they asked my client's daughter, "Oh, if your dad has so much problems with imbalance, he showers by himself, doesn't he?" "Yeah, he does." "How does he do that?" "Well, he's got a chair in the shower," which I didn't even know about. I been to his house and that must have been folded up. I never saw it. She said, "He's got a chair in the shower."

Michael Cowen:

That's the thing, don't ask the question if you don't know the answer, if you're on the other side of the witness. So you got, 4.6 million was economic damages, but you got 10 million for what's called human loss. How did you persuade the jurors to allow so much money for the human losses?

Stefano Portigliatti:

Yeah. So I've started using more recently what's called the, what I call my damages pie chart, and it doesn't work in every case, but in a case like this with a lot of medical expenses in the past and in the

future, it does work. So in Florida, we have several elements of non-economic damages: pain, suffering, mental anguish, inconvenience, physical limitation, loss of enjoyment of life, permanent scarring. We didn't ask for anything for the scarring. So what I did is I created this pie chart and I separated into six slices. And one of the slices was titled medical. And within that slice of the pie, I put the total amount of past and future medical expenses.

Stefano Portigliatti:

And I said, "I think we can all understand how \$1 of medical bills represents dozens of dollars and effects throughout our lives. That the inconvenience of going, the fear of what you're going to hear, the fear of what's coming, the pain that took you there, the suffering through the procedures or whatever the solution is the dealing with medical bills and facilities and scheduling and missing out on work and family and time. I mean, I don't have to go in through all the details for us to understand that every little bit of medical represents a whole bunch of effects in our lives. But let's talk about Mr. Valli specifically."

Stefano Portigliatti:

And I went and I filled in each slice with examples from the case, right? So for example, in the physical impairment, put sexual dysfunction, put imbalance. I put double vision in the loss of quality of life. I put the travels that this and that and the other, right, and filled that whole pie. And during the deliberations, three hours, three and a half hours into deliberations, we hadn't heard anything yet. And the jury rings the bell. And, you know, your heart sinks and everyone gets a little giddy. And the defense had actually just made us an offer, some high, low, that was ridiculous. And we said, "Well, let me hear what this is about and I'll get back to you." Because it turned out, it was a question. And the question was, can we have Mr. Portigliatti's pie chart?

Michael Cowen:

Wow, that's a good sign.

Stefano Portigliatti:

We turned to the adjuster. We said, "No, thanks."

Stefano Portigliatti:

Yeah. So that worked, obviously, they liked that concept. But obviously, there was a story, there was evidence tied to each slice and the details, or the examples, right, within each slice of all the other non-economic damages.

Stefano Portigliatti:

I'll say a couple points that to me were very significant. One is, I think it was Muhammad Ali that said, or it might have been Mike Tyson that said, everyone's got a plan until you get punched in the face.

Michael Cowen:

Tyson. Yeah.

Stefano Portigliatti:

Yeah, it was Tyson. Right. And that was our order of proof. We were struggling. Right. So we needed to readjust and be flexible, you know, damages before liability. We got the delays in the case. So, why do I

bring that up? Because I mean, this is proof that you can only plan for so much if you don't have the actual evidence and the purpose for each witness and what you expect each juror to write down for each witness, right? Planned out, well, you could be in trouble. Because their order may change. Some of them may be tightened to a couple minutes. My client ended up being on the stand for almost a day and a half.

Stefano Portigliatti:

So all of that just required a lot of flexibility. And if we had our choice, obviously we wouldn't have to be as flexible, but definitely it's something that I'm going to be more prepared for in the future. Another one is, I am so particular about credibility, right? I tell my clients, credibility is number one. I'd rather understate your claim and preserve credibility than overstate it by 1% because credibility's over the whole. So how we looked, how our table looked, how our witnesses looked, how our team worked together, how our documents came up, all reinforced credibility.

Stefano Portigliatti:

For example, my opening statement was very understated. I tend to err on the side of argument, but I knew who my opposing counsel was. I knew that he was going to come out swinging, just trashing us from the get. So I took the completely opposite approach of understating our claim and being very mild, very factual, no judgment. This is what the evidence will show. This is how things happen. This is what was experienced by him. This is what the defense, you know, addressing the defense's very superficially not getting into it. Not trying to hit everything, just, concise. Until closing came and then closing was a different story. But so, I emphasize that concern for credibility. It's not just not lying. It's how you present yourself, how your team works together, how you respect the judge, how you respect the jurors' time, how prepared you are, how organized you are, consistency between the witnesses.

Stefano Portigliatti:

I always made sure that there was a just ... I'm not talking about repeating the same thing, but some overlap in all of the witness' testimony, right. Where one sort of reinforced the other. Right. So especially with the before and after witnesses. And between flexibility and credibility, it kind of leaves you with this trusting the jury. It's not easy, but this is one where we really had to, because things came up last minute, there were points being made in closing argument that we like, "How can they be making that argument?" And like, "We just got to trust that they're seeing through it. And that at a personal level, they understand it as a group that will reinforce that understanding and come through." And gosh, they did.

Michael Cowen:

Well. I want to tell you, I'm so proud of you know. I've watched, you come up through the ranks. I met you when you were a younger lawyer. You're still fairly young. I mean, you, small kids at home and stuff, but you definitely, seeing your incredible success and seeing the things you're doing make me so proud and so happy. I'm really looking forward to the next time I see you in person again. And congratulations. And I've learned a lot. I've taken a lot of notes. I know when I'm doing a good podcast, when I'm taking a lot of notes of what I want to do at my firm and what I want to change and what, you know. And so I've taken a lot of notes on this one and I hope listeners, I hope you guys have gotten a lot out of it too.

Michael Cowen:

And I look forward to having you all next time on Trial Lawyer Nation.

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Outro:

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