

Innovative Managing Partner: Cravath's Evan Chesler

By Abigail Rubenstein

Law360, New York (June 22, 2010) -- Evan Chesler has used his position as presiding partner at Cravath Swaine & Moore LLP to lead a crusade to “kill the billable hour,” earning himself a place on Law360's list of Most Innovative Managing Partners.

In January 2009, Chesler, who took over the managing partner job at Cravath in 2007, penned a full-page article for *Forbes Magazine* provocatively titled “Kill the Billable Hour,” in which he argued that the billable hour makes no sense — even for lawyers.

The article noted that under the billable-hour system, being successful early in a case means the lawyer earns less than if the lawsuit ends up bogged down in an endless back and forth, and Chesler called that situation “frankly nuts.”



For the partner at the helm of the tradition-laden law firm that handled electric lightbulb patent litigation for Thomas Edison to take such a public stance against the legal industry's conventional wisdom was a bold move.

But Chesler truly believes that the billable hour should be replaced.

“My position is that there are many clients who are looking for alternative ways to pay for legal services, and there are respects in which the billable hour causes a misalignment in the incentives for the client and the incentives for outside counsel,” Chesler explained to Law360. “I think it's very important that those incentives be aligned, so there are good reasons why the billable hour is a less sensible way to charge for legal services than some alternatives.”

He is a particular advocate of adopting fixed fees for particular portions of litigation, along with an additional success fee to ensure that the lawyer's and the client's incentives do in fact line up squarely.

In Chesler's view, this arrangement places the day-to-day concerns of how the litigation is staffed on the law firm rather than the client and properly incentivizes the firm to achieve success in the most efficient manner possible.

Chesler decided to speak out after hearing from a number of clients that they were dissatisfied with the billable-hour system, and realizing that he also knew several attorneys, himself included, who were unhappy with the billable-hour model.

"I started thinking about it more, and I thought 'if you're not satisfied and we're not satisfied, why are we doing this?' I have the privilege of serving as the presiding partner at Cravath, and I thought that was a platform from which I could perhaps have a voice in that conversation," Chesler said.

While Chesler may not have been the only one toying with the idea of new billing models, his position as the head of a venerable white-shoe law firm made the legal community sit up and take notice of the article.

The piece ignited a debate that is still raging on the future of legal billing, and other publications soon came calling to solicit Chesler's views on alternative fees, giving him the opportunity to reassert his position often.

And Chesler has made an effort to do more than just call for the demise of the billable hour — he has pushed to implement alternative billing methods at Cravath.

Although the firm keeps all of the specific financial agreements it strikes with clients confidential, Chesler said that the firm was "doing more and more alternative fee arrangements with clients."

Chesler has also worked toward subtler, less heralded innovations at the firm.

"I think almost in every aspect of our interaction with Evan, he reflects a facile, flexible, creative mind, and so he's innovative in a variety of ways," said Jeff Benjamin, vice president and general counsel litigation for longtime Cravath client Novartis Corp.

Even though Chesler heads a firm that prides itself on sticking with the staffing model devised by Paul Cravath in the early 20th century, he has focused his energy on refining the system to keep it working in the 21st.

"Cravath is really an institution," said Qualcomm Inc. Executive Vice President and general counsel Don Rosenberg, a longstanding client of the firm.

"I know Evan is committed to that tradition at Cravath, and I couldn't think of a better person to be in that job now. And I'm sure a lot of partners feel that way, too. It's that feeling of history and tradition that I think drives him to try to do all the things that will maintain that aura that Cravath has," Rosenberg said.

In what now appears to be a prescient move, Chesler brought in a lateral hire to launch the firm's first-ever bankruptcy and restructuring practice in 2007.

The firm brought partner Richard Levin on board from Skadden Arps Slate Meagher & Flom LLP to establish a presence for the firm in the restructuring world because Chesler also saw the new practice as a natural complement to the firm's existing banking, mergers and acquisitions, and securities practices.

And although at the time no one could have predicted the magnitude of the coming financial crisis, Chesler and his fellow partners knew that business moves in cycles and that when the tide turned the firm would want to have a bankruptcy practice.

“At a time when the Dow was at near-record heights, we decided we really should have a bankruptcy and restructuring practice. A lot of people at the time thought that was counterintuitive,” Chesler said.

But when the recession did hit, Cravath was well-positioned not only because of the new group that Chesler had helped make possible, but also because of the firm's cherished traditions.

One key aspect of the Cravath model is that all the firm's associates are trained as generalists and all of its partners are compensated on a lockstep model based on their seniority at the firm.

So when work dried up in areas like securities underwriting and bank lending because of the down economy, Chesler was able to move partners from those areas into thriving practice areas like bankruptcy and restructuring and the firm's board of directors advisory practice.

The general Cravath training that all the partners had gone through as associates made moving partners from one area to another possible, and the firm's compensation model meant the partners embraced the idea because what's good for the firm is good for each partner, according to Chesler.

This notion that what is best for the firm as a whole is best for the partners animates Chesler's approach to his role as Cravath's leader.

“I don't think of myself as a manager. The Cravath partners are all equal. We have a true equity partnership. There are no nonequity partners; there are no nonvoting partners,” Chesler said. “I think of myself more as a consensus builder than as a manager, and what inspires me is being a Cravath partner.”

And even clients have noticed that colleagues appreciate Chesler's inclusive leadership style. “He commands tremendous respect from all the members — and by members I don't just mean partners, I mean the entire staff — at Cravath, which tells me that he is as good, respectful and sensitive a listener whether the speaker is a client or an administrative assistant at the firm,” Benjamin said.

Chesler may not be looking to reinvent the wheel with his stewardship of the firm, but the same logic that led Chesler to adopt his radical stance on the billable hour guides him in his decisions on when to innovate and when to stick with tradition at the firm.

He constantly seeks out the best way to align everyone's incentives, and when innovation is necessary, Chesler embraces change.

“I think it is the most productive when you've got two parties to any transaction, whether it be partners with each other or partners with clients when everybody is aligned in terms of what the goals are and how to get there. It improves the overall quality,” Chesler said.

Cravath, Swaine & Moore LLP