

Trial Aces: Cravath's Evan Chesler

By Erin Coe

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Cravath Swaine & Moore LLP Chairman Evan Chesler doesn't like surprises at trial, but when he was cross-examining the government's chief economics witness during a bench trial last summer in the U.S. Department of Justice's case against American Express Co.'s anti-steering rules, he received something unexpected — a compliment.

After a couple of hours of being cross-examined, Michael Katz, a University of California Berkeley business professor who served as the DOJ's economist, mentioned that he had read Chesler's opening statement.



Evan Chesler

"Could I object to the fact that apparently the witness read Mr. Chesler's opening statement but not mine?" DOJ lawyer Craig Conrath asked U.S. District Judge Nicholas Garaufis, according to the court transcript.

"When you get his bill, you can adjust," the judge said.

"I am delighted that he saved the time that would have been wasted reading my opening," Conrath said.

"I'm not good at taking ..." Chesler began.

"I'm very impressed, Mr. Chesler, about the fact that the witness is so familiar with your work," the judge said.

"Not as familiar as he is with mine," the witness said.

The court exchange hints at the great pains Chesler, one of Law360's Trial Aces, takes to prepare for trial and learn as much as he can in advance about the witnesses he plans to question, according to Kevin Orsini, a Cravath partner who worked with Chesler on the case.

"The witness recognized that Evan had in his head everything the witness had ever said or written," Orsini said. "He knew that when Evan asked him a question, there was something Evan could show the witness that he had said before."

Orsini said he has never seen a lawyer so effective at conducting a cross-exam.

“Evan always knows what the answer is going to be,” Orsini said. “When a witness fights him and doesn’t give him the answer, the level of preparation to get ready for the cross gives him what he needs to lock the witness in to give the important answer Evan needs.”

Chesler has worked on a total of 32 trials in court, 25 of which he has served as first chair, and he has racked up 15 trial wins, not including settlements during or after trial or adverse trial judgments that were overturned on appeal.

He scored a win for NCR Corp. in May when a Wisconsin federal judge **reversed** an earlier ruling and found the company had successfully established a divisibility defense that shields it from full liability under the Comprehensive Environmental Response, Compensation and Liability Act for part of a \$1.5 billion Superfund cleanup.

“The divisibility defense has not been widely used or widely achieved,” Chesler said. “But here was an instance where the case went to trial and where we pressed the defense and ultimately succeeded.”

Chesler also secured a victory for American Express in April 2014 when a New York federal judge **ruled** following a five-week bench trial that consumers couldn’t prove American Express, Citigroup Inc. and Discover Bank conspired to introduce arbitration agreements with class action waivers. The decision is pending an appeal at the Second Circuit.

“It’s unusual that an antitrust class action case would go to trial at all,” he said. “Although a bunch of banks settled, these three institutions, including my client, believed in the facts that there was no conspiracy and were prepared to have their day in court.”

Chesler is a master technician when it comes to presenting evidence in an effective way, according to Darin McAtee, a Cravath partner who has worked with Chesler for 15 years and on eight trials, including several cases against NCR.

In one of the NCR environmental trials, Chesler made use of the opposing side’s numbers on the amounts of river discharges allegedly caused by NCR and other defendants by inserting them into NCR experts’ model, McAtee said.

“We flipped the evidence on them and used their own numbers to beat them,” he said. “It was hard to say the numbers weren’t right or accurate when the other side sponsored them rather than us.”

Chesler also is skilled at boiling down complex concepts while telling a compelling story, according to Orsini.

“Evan has this incredible gift that can’t readily be copied — as any great trial lawyer must have — to take the most complicated set of facts and the most complicated set of doctrines of law and distill them into one or two sentences that anyone can relate to,” Orsini said.

Most of what Chesler learned about being a trial lawyer came from working closely as an associate with legendary Cravath partner Tom Barr in defense of IBM Corp. in several cases, including the DOJ’s landmark suit alleging the tech giant monopolized the computer market. More than a dozen years after

the complaint was filed and in the middle of a bench trial, the government settled that case in 1982, and Chesler was promoted to partner that year.

“I learned the importance of not only what you present in the courtroom, but how you present it,” Chesler said. “I also learned to never sacrifice your credibility and to tell the truth even when it hurts. That’s your obligation to your client and to the court.”

Having tried antitrust, intellectual property and environmental cases in four different jurisdictions over the past two years alone, Chesler sees an important advantage in being a generalist, rather than a specialist in one area of law.

“I see problems in lawsuits as litigation problems, not as problems that are unique to a particular area of law that the case deals with,” he said. “It doesn’t mean you don’t need to understand the area of law well. It just means that looking at problems as copyright, securities or antitrust problems versus looking at litigation problems is, in my view, a less effective way to litigate.”

Chesler first became interested in law as a teen when he read “Democracy in America” by Alexis de Tocqueville, an aristocrat in post-revolutionary France who embarked on travels across the U.S. in 1831 and marveled at lawyers’ singular role in American society.

“De Tocqueville said lawyers in American society were the protectors of the society because the mechanism by which rights were enforced and protected was the rule of law,” Chesler said. “I was struck by that. I was a working class kid from the Bronx. Neither of my parents had gone to college. And I don’t think I had even met a lawyer when I was 15 years old, but I was struck by the power of that concept. I thought, ‘There’s a way to find my place in the world and where what I do will matter.’”

Before Chesler started law school at the New York University School of Law, he spent two years teaching English and social studies to junior high school students in the Bronx, an experience that helped shape him as a trial lawyer.

“There is not a case I’ve tried ... where I haven’t done something in the courtroom that I learned as a school teacher,” he said. “I had to teach 14-year-olds who didn’t necessarily want to be there about something I knew and they didn’t. I had to learn to speak to them, not at them. ... I needed to learn to simplify complicated subjects so that the learning process could begin and so that they would ultimately understand a concept at a more complicated level.”

After graduating from law school in 1975 and clerking for Judge Inzer Wyatt of the U.S. District Court for the Southern District of New York, Chesler built his entire career as a lawyer at Cravath. During nearly four decades at the firm, he has held several leadership roles, including head of the litigation department and presiding partner. In 2013, he became the firm’s chairman.

Clients tend to seek out Chesler to handle bet-the-company-type cases and high-stakes matters where the damages exposure may run into the billions of dollars. Chesler said he believes clients bring their most important matters to him because they know he will do everything he can to prepare, he will not flinch when a case gets difficult and he takes his role as a lawyer personally.

“It’s not my job; it’s who I am,” he said. “I don’t check it at the door and leave it at the office. I take it home with me every night.”

As far as interests outside of the law, he points to his growing family, which includes three children and 3.5 grandchildren.

"I've heard the 0.5 one is going to be terrific," he said.

And he also takes great pleasure in being the chairman of the board of trustees of the New York Public Library.

"It's important to me to open up doors for kids who may not have doors open up otherwise," he said.

If he could offer up-and-coming trial lawyers a piece of advice, it is this: Be patient.

"When someone across the room disagrees with you or someone you're talking to doesn't understand what you're saying or you think someone is acting unreasonably, be patient," he said. "It comes up in everything a trial lawyer has to do, and it's almost always the right advice."

--Editing by Chris Yates and Kelly Duncan.

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