

Currell on Convergence

Dan Currell
advancelaw.com
legalevolution.org



ADVANCELAW 

LEGAL
EVOLUTION

Foreward

Bill Henderson



One of the biggest stories over the summer of 2017 was an open letter from 25 general counsel announcing that they are working together to test industry assumptions about the legal market. Although the composition of this group is very impressive, it is also not random. Each company is a member of AdvanceLaw, a network of buyers and suppliers of legal work that seek to drive value by sharing quality metrics and creating data-driven best practices.

Fortunately, Legal Evolution readers are about to get the benefit of some of AdvanceLaw's insights. Over the next three days, AdvanceLaw Managing Director Dan Currell will post a three-part series on law firm convergence and preferred provider networks – basically, theory versus practice (029), how to build a panel that can deliver value (030), and the necessity of active client management (031).

Over the last 10 to 15 years, many large corporate clients have attempted to use convergence to rein in their legal costs, typically through a process that reduces the number of outside law firms, often from two or three hundred to twenty or fewer “preferred provider” law firms. Convergence is controversial because, among other things, it disrupts longstanding (and often comfortable) relationships between in-house lawyers and established law firms. Also, because the process is run by risk-averse corporate counsel who are winnowing firms for the first time, the results tend to favor the “safe” choice.

Notwithstanding these problems, we are going to see more – and better run – convergence in the future, as clients have a strong incentive to fix the underlying design and execution issues. The state-of-the-art is definitely going to improve.

Dan Currell is uniquely qualified to write on this topic. Prior to joining AdvanceLaw, Currell spent more than a decade running the General Counsel Roundtable for the Corporate Executive Board (CEB). Between his time at CEB and AdvanceLaw, Dan has spent more time listening to challenges of senior in-house lawyers than virtually anyone in the legal industry. Further, Dan and his colleagues at AdvanceLaw are now in a position to help shape the future.

I hope you enjoy these posts.



CURRELL ON CONVERGENCE AND
PREFERRED PROVIDER PANELS

Part I on Convergence: Why Practice Falls Short of Theory

Dan Currell • Post 029 • October 10, 2017

We see many companies these days running law firm convergence exercises – generally resulting in a preferred law firm network with fewer “approved” firms than the company previously used. The goal of this exercise is usually to reduce total legal spending and simplify outside counsel management. This kind of effort has a long track record at large companies, and the recent strength of the trend has had a big impact on the legal marketplace. It is, among other things, a significant driver of the continuing law firm merger trend.

Like many corporate initiatives, however, we don’t really know how well it works. Is convergence always an effective way to get better price and quality? Or is it a center-led initiative that raises costs and creates only the illusion of control?

At AdvanceLaw, we work with about 180 corporate general counsel to vet law firms and provide feedback on lawyers’ performance within the group. We have worked with dozens of GCs to design and build their preferred provider networks. Our most recent initiative, the GC Thought Leaders Experiment, is a collaboration with 25 general counsel aimed at better understanding outside counsel management practices by collecting and analyzing a large amount of matter-specific data.

Based on both our experience and our research, we believe convergence efforts can be very successful – and they are usually necessary. But there are significant problems with how convergence exercises are sometimes carried out in practice. The main goals of the effort can be undermined or even



Dan Currell

For more information on the GC Thought Leaders Experiment, see [The GC Thought Leaders Experiment](#) and [An Open Letter From 25 General Counsel](#).

backfire. Our goal is to make preferred provider networks work better for everyone; the purpose of this series is to outline what we believe doesn't work - and what does.

We'll start with the problems in how convergence efforts are sometimes executed today.

How it starts . . .

Most companies accumulate law firms over time, adding new firms as needs arise. It is typical to end up with 50, 100 or more law firms issuing at least one invoice each year to a mid-sized public company. It is quite possible to have over 1,000 firms working, at least a little bit, for a large multinational. The majority of spending is likely concentrated in ten or twenty of these firms, but the headache of managing the rest of the herd is considerable. (Nobody seems to know who these guys in San Francisco are and why they did \$1,247 worth of work for us in March.)

Experienced in-house lawyers will regard this situation as natural. If you have a big company with lots of legal issues in different jurisdictions and practice areas, this is just how it is.

What's the problem?

From a procurement perspective, this "natural state of things" looks like a mess. There are three apparent problems with spreading legal spending across so many law firms:

1. **Diffused Purchasing Power.** By spreading our spending out across so many law firms, we are diffusing our purchasing power. If we concentrate our spending on five or ten firms - or heck, maybe just one or two - we will get a far better deal from those firms in return for the volume of business.
2. **Management Messes.** Nobody can efficiently manage 100+ law firms, and indeed a portfolio of that many firms is often not managed at all. If we can get our preferred provider list down to 20 firms, we can implement effective management practices and stick to them - invoice compliance and review, alternative fee arrangements, performance management, use of alternative providers, matter postmortem reviews, project planning, process management and so on.
3. **Startup Costs.** Firms that don't know the client very well can take a lot of time and energy to ramp up on a matter. Firms that serve a client consistently over time can hit the ground running on every new matter because they already know the client well. It stands to reason that working with fewer firms will result in better service because each "preferred" firm will get to know the client better.

The procurement solution

Applying conventional procurement wisdom to the problem of outside counsel spending, the conclusion is easy: we should concentrate our spending into fewer law firms than before. Controlling for quality, we can drive down prices and therefore overall cost by aggregating our purchasing power. There is much to commend this, which is why companies continue to create preferred provider panels.

But there's an essential problem with the logic, because the act of concentrating purchasing power onto a small number of law firms alone will rarely result in lower prices. In fact, if not properly designed, this approach can lead to significantly increased legal spending. This is a little surprising, since convergence is intended to reduce legal expenses.

How can conventional wisdom be so wrong? Two reasons. First, economies of scale aren't commonplace in legal services, so the underlying economic logic doesn't work as neatly in law as it does in other markets. Second, convergence efforts often push clients up-market to larger law firms with higher revenues per lawyer, raising the basic cost of legal services.

Both of these problems can be overcome with the right design - but first it's worth understanding how these problems play out in practice.

(1) concentration of purchasing power

The "concentration of spend" tactic is very beneficial in industries characterized by economies of scale. If I need a million sheets of paper but I choose to buy a quarter million sheets each from four different suppliers, it really does cost more for those million sheets to be made, packaged and delivered than if I had ordered the whole million from one supplier. There are serious economies of scale in that kind of business. If I concentrate my spending onto one supplier, some of the efficiency created by that big order is passed along to me in the form of a lower price per page. (In an efficient but competitive market, half the savings will go to me and half to the supplier - we both win.)

Following this example from the paper market into the law market, if we concentrate our spending with one law firm where previously we spread it across four, will that reduce the cost of production for the law firm?

In theory, yes. And for the most innovative law firms, the answer will be yes. But most of the time, in the actual legal market of 2017, the answer is no.

Legal practice has historically had very few economies of scale. On the traditional model, if a firm was given four times the work, the natural path was for the firm to work four times as many hours. Things are changing - but they aren't changing all that fast. Most law firms still aren't set up to achieve efficiencies on a day-to-day basis in the way that other businesses regularly do.

But it's not just that there is a lack of efficiency in law. It's potentially worse. If

there are no efficiencies to pass along to the client but the client nevertheless uses its market power to get a lower price from the firm, how will the firm preserve its profitability? The most tempting option is to save money by reducing quality.

We have plenty of firsthand evidence that law firms don't do this. Law is a heavily reputational business, and law firms will fight to serve their clients very well irrespective of profitability in most cases. But that said, it's unhealthy for a market to be suffused with the temptation to make money by serving clients poorly. We want a better market than that.

(2) bias toward higher RPL firms

In practice, how do convergence initiatives play out? When we see a multinational company consolidating into a very small panel of law firms, the winners usually include firms like Latham, Freshfields, Jones Day and the like. It's just not possible to have one or two law firms handling, say, all of your global labor and employment work without getting into that bracket of 1,000+ lawyer firms with \$1b or \$2b+ in revenues. Nobody else has the necessary office footprint and practice area coverage. And those firms' revenues per lawyer are \$1,000,000 or more. In all cases, the firms themselves have a lot of market power because they are big. In some cases, they are bigger - by revenues - than the client.

If a convergence effort is consolidating work into national and global law firms, it is common in our observation that a dozen or more regional or local firms will lose the same work. These firms usually have revenue per lawyer numbers around half the level of the firms that have replaced them. Since revenue per lawyer is the most fundamental measure of what clients pay, the convergence exercise that was intended to reduce spending has, in many cases, just increased it in a fundamental way.

So this is what we have regularly seen: a client is working with several regional firms whose revenues per lawyer are around \$600,000. As a result of a convergence effort, the client leaves those firms for a smaller list of national and global firms whose revenues per lawyer are \$1,000,000 or more. The theory behind this is that a bigger purchase will lead to better pricing. But that's not how law works. One way or the other, the client will end up paying more for what it's getting.

Put another way, in its search for efficiency, the client has just moved from a more efficient firm to a less efficient firm.

What about quality? We have little evidence that quality and cost are much related. Big firms have a scope advantage - many offices, many practice areas, more lawyers who are deep and narrow in certain specialties - but our research into matter-level quality suggests that ultimate work quality is about the same as between regional, national and global firms. Not surprisingly, responsiveness from the biggest firms actually tends to be worse in the opinions of in-house lawyers.

To be clear, a move to a big firm may well be the right move. Such firms

are in high demand and their fees are, at least to an economist, *prima facie* evidence of value. But clients too often believe that the move to a short list of bigger firms will save them money on fees – and this just isn't so. More often it's the exact opposite.

Louis Vuitton, esq.

If the explanation above still doesn't have you convinced, let's try it this way: we saw that we were spending an awful lot of money on purses and handbags from dozens of different suppliers around the world. In order to drive a better bargain, we decided to concentrate our spending on a few suppliers of purses and handbags. But we needed a handful of suppliers who could sell us these products anywhere in the world, and we found that the only providers with a truly global footprint (every airport and city center) were Louis Vuitton, Chanel and Hermes. So we decided to concentrate our spending with them; that way, we're sure to get a better deal.

Obviously not. These products are just fundamentally more expensive than middle-market handbags, and no amount of bargaining or bulk purchasing will make a Hermes handbag reasonably priced. Market facts immediately trump procurement theory in this story. And so with law firms, for the same basic reasons.

In both the law firm and handbag examples, the logic of concentrating spend to drive a better bargain is swamped by a confounding variable: global footprint (and in law, practice area depth and breadth) happens to have developed first and most strongly at the tippy-top of the market. As a result, going to a short list of global suppliers will drive prices up, not down. Any deal you get from Louis Vuitton will be radically more expensive than whatever you were doing before – because your decision to consolidate means that you are no longer buying the same product. You can be happy with the quality, you can love the global footprint and the customer experience, you can benefit from only having to deal with a few suppliers rather than dozens. But you cannot possibly save money by buying Louis Vuitton handbags.

Others Reasons for Convergence

Are there other benefits to going with a very short list of suppliers? There may be. The tendency across all areas of industry in the last two decades has been towards large, single-source contracts that make it easier to integrate a supply chain and enhance total efficiency. In this way the world has tended overall towards large contracts between a single supplier and its customer rather than a range of suppliers working with the same customer. The total benefit of the single supplier goes beyond price. It may create greater overall efficiencies because of more reliability, simpler process, better management practices and other factors – and those are very real and important considerations.

We might just bundle all of that together and call it quality: we're willing to pay more for quality in law because quality ultimately reduces the total cost to the client. This is why it can make some sense to hire the former

Solicitor General at \$2,000 an hour or to give Wachtell a percentage fee on a certain kind of deal. By the same token, it explains why it may be sensible to work with a global firm across a dozen or more jurisdictions for the sake of integrated service. Those are enhanced features, and they may increase the total overall value of a representation, but they will not reduce its cost.

There are other problems with conventional practice. Two are most apparent in their effect on the law firms' day-to-day work.

1. Firms formally placed on a preferred provider panel know that the work is locked up, so they have little incentive to hustle in order to please the client. Often, responsiveness suffers.
2. Costs rise not only because firms are now inherently more expensive but also because they are assured a position in the client's set of law firms - they are, in a sense, formally entitled to the work.

These problems result from how the preferred provider panel is structured. Firms that otherwise may have been constantly competing for a client's business are now assured of getting the work. Again, this is not intended, but it is a predictable result of today's common practice. And in our research, we do see indications that in some cases, firms assured in their position on a preferred provider panel can work less hard than firms who are actively competing for more work from the same large client.

Having said all this, we are in favor of preferred provider panels in part because the alternative is untenable. Nobody can coherently manage 100 or 200 law firms. There are tremendous management benefits to cutting that list down to size.

But it does have to be done right, and that doesn't happen without focus and adherence to a few key principles. The next installment (Post 030) will focus on how to do preferred provider panels right. We'll outline the management practices that we believe achieve the overall results companies are looking for from their law firm panels.



Part II on Convergence: How to Make it Work

Dan Currell • Post 030 • October 11, 2017

In the first part of this series (Post 029), we discussed why there are sometimes serious problems with the way law firm preferred provider panels are structured and managed. In particular, we often see that law firm panels:

- Take clients “up-market”, raising rather than lowering their legal fees;
- Reduce firms’ responsiveness, because larger firms tend to be less responsive in general (see our Harvard Business Review blog post on the matter) and also because, by putting a firm on a panel, the client is signaling that the firm won’t lose their work; and
- Diminish the firm’s incentive to provide efficient service, since the firm is assured of its position as a preferred provider.

See *Why Law Firm Pedigree May Be a Thing of the Past*, available at <https://hbr.org/2013/10/why-law-firm-pedigree-may-be-a-thing-of-the-past>.

Yet we also said that law firm panels are a good (and sometimes essential) management tool if done right. So – how can we do them right?

As we begin, a word about how we have developed our views on the matter. AdvanceLaw is a GC-led group that identifies high-performing lawyers by, among other things, sharing performance feedback within a group of senior in-house counsel. We are involved in outside counsel hiring decisions every day, and we regularly work with general counsel and their senior lawyers to construct and manage preferred provider panels. We have seen what works in practice, and we have researched the efficacy of outside counsel management practices through years of data collection and through the General Counsel Thought Leaders Experiment.

For more information on the GC Thought Leaders Experiment, visit www.advancelaw.com/thought-leaders-experiment/.

Here are some elements of what we believe is the right approach.

First, correct structure. The right law firm panel setup carefully balances constant competition with intentional cultivation of the client-firm relationship. Second, intentional management practices. The way firms are managed, the kind of relationship they have with the client, and the incentives and motivations they feel as a result will have more impact on their performance than the contractual or formal aspects of the relationship.

Let's start with structure. We believe there are five key structural principles:

1. **Double Coverage.** The final panel of law firms needs to have at least two viable providers, at different firms, for every economically significant and legally distinct area of practice and major geography. So if your company has a lot of FDA regulatory work, the panel must have at least two strong FDA firms competing for that work at all times. If your company has a lot of California litigation, there must be at least two strong California litigation shops. Competition makes the firms stronger, ensures market pricing, and provides redundancy for the client in case there is a conflict or problem.
2. **Panel Size.** The number of law firms involved in a panel will depend on the client's total legal spending of course, but an American company with a few billion in revenue will need a dozen law firms or more. If this seems like a lot, refer to Part I of this article, which discusses why in the legal marketplace uniquely, consolidating onto a very small number of providers leads to much higher costs.
3. **Varied Cost Tiers.** The firms in each practice area should be at different cost levels, and efficient firms should be favored. Look at a firm's revenue per lawyer numbers, not just their rates. Continuing the FDA example, the two firms with an FDA capability should be at two different price levels so that the competition between them results in price pressure on the more expensive firm, quality pressure on the more efficient firm, and better choices for the client. This kind of competition can show where more efficient law firms are just as good as their more expensive competitors - but at the same time it will often clarify the unique value delivered by an expensive and sought-after lawyer. Overall, our research has shown repeatedly that cost and quality don't correlate the way we might think they do - meaning we need to give lawyers at all price points a serious look based on the particular needs of the matter at hand.
4. **Open Competition.** Providers need to know that they are competing for every piece of work. This does not mean regular RFPs and reverse auctions - those should be reserved for certain situations. It just means that no firm has the work "locked up." Pilots should be run periodically with new firms, ensuring that different options and approaches are always considered.

5. **Re-Selection.** Preferred provider panels cannot go on indefinitely. The panel should expire in two or three years, and everyone should know that from the start. When the panel ends, everything is on the table again and there are no guarantees.

So we think this is the right basic structure. But as we mention above, management practice is more important than structure. Put another way, as our friend Casey Flaherty has said, creating a law firm panel is just the first step. The second step is to do something with it. What should you do with it?

We believe there are three key management practices necessary to getting the most out of a law firm panel:

1. **Assertive Change Management: Lock Down New Matter Initiation.** The most common practical outcome of convergence onto a preferred provider panel is nothing: executives, in-house lawyers and others simply continue to hire law firms as before. They may have agreed that a panel approach is best, but current matters are grandfathered in, and when new matters come up, shifting work to a panel firm is never quite right in this particular case. It is no exaggeration to say that in many cases the status quo ante is perfectly preserved after a months-long convergence exercise. To change this powerful inertia, new matter initiation needs to be locked down in a process that drives the right work to the right firms. Also, existing work needs to be closely assessed to determine whether it should also move into the panel. Everyone needs to see how and where all matters go; matter performance assessments must be rolled up and distributed; successes of the new system should be communicated and cost outcomes broadly known.
2. **Positive Psychology.** Panel lawyers should be given opportunities to connect, collaborate across firms in a positive way, share best practices and celebrate victories or compete for honors in a friendly way. One way to do this is to gather key partners at an annual or biannual law firm summit. Events like this always remind us that law firm leaders are - get this - very human. They respond to incentives - and yet they respond much better to incentives when clear expectations are set, results are communicated, and relationships built. Then they put their best foot forward, their best staff onto matters, and more effort into the relationship. Post-convergence you may only have a dozen law firms . . . but those law firms still have hundreds of clients. Becoming a top-priority client is not simply a matter of forming a panel. You need to figure out how to become a client of choice for the firm.
3. **Structured Communication: Law Firms and in-house counsel alike perform better with feedback.** Performance assessments should be structured and consistent, and performance conversations should go in both directions. Talk about how the firm can improve, but discuss how in-house counsel can do better too. Assess at both

the matter level and the relationship level. And share information across the entire in-house group.

These conclusions flow directly from our experience of law firm panel arrangements that work well because they are correctly designed and actively managed. The third and final installment in this series (Post 031) will go deeper on how to carry these out, and it will also consider some of the more nuanced issues in law firm panel management.

Part III on Convergence: Clients Must Manage to Get Results

Dan Currell • Post 031 • October 12, 2017



Part I of this series (029) laid out some pervasive problems with law firm panel arrangements, and Part II (030) outlined the basics of how we believe those problems can be overcome through correct structure and active management. This final installment will go deeper into what we believe are the most important aspects of a law firm panel approach: the management practices that keep law firms motivated, focus firms on innovation and strong outcomes, and result in high quality and stable or declining costs over time. Our experience is that law firm panel arrangements can be tremendously successful, and that the success always comes from good management practices - not just panel structure.

Quality is fragile, and quality is King

Quality is paramount in law, and preservation of quality is always a key factor informing convergence efforts. This highlights a natural challenge with them: a consolidated preferred provider deal only works if we can define and hold the firm accountable for quality - and that's very hard to do.

If we bid out a million sheets of paper but do not define quality, then we've just committed to a million sheets of whatever is most convenient for the supplier to deliver. So - paper buyers are careful to define paper quality. (We all remember *Frigaliment* . . . you need to specify the right chicken.)

But can we define legal quality? Not usually. We can define who works on the matter, and for clients who are managing counsel closely, this is a good

See *Frigaliment Importing Co., v. B.N.S. International Sales Corp.*, 190 F.Supp. 116 (1960).

approach. But for most matters the client and firm cannot define in advance the quality or even in many cases the basic character of what is going to be delivered, since the trajectory of a transaction or litigation is so variable. A legal matter could end tomorrow or go on for a few years, often independent of anything the lawyers are doing. Because of this, when all is said and done it's very hard to know if the firm has delivered on its promised quality of services.

The difficulty of controlling for quality on the front end of an engagement is arguably the most confounding feature of the legal services marketplace and the primary reason why credentials, brand and track record are so critical in law. Quality varies widely from one matter to the next, from one lawyer to the next, from one firm to the next. The fact that we lost a case doesn't mean we got bad quality representation. The fact that we did very well in a negotiation doesn't always mean that we had good quality legal work. So we rely instead on a series of proxies for quality: law firm brands, law school brands, past performance on similar matters, and so on. This is because we can't define quality.

Most of all, we rely on who does the work. As well we should - it's the closest thing we can do in most cases to controlling quality. And if the client has the market power, making an effort to control staffing is probably the most important single negotiation move the client can make. We hire the lawyer, not the law firm.

But the presumption behind everything said above is that once staffing is settled and the matter is under way, there's nothing much the client can do to deflect quality. This is a common presumption in our experience, and we believe it's wrong. The same lawyer can do great work and mediocre work in the same day for two different clients; the difference is focus and incentives. How can we set them up for success on our matters?

Incentives matter

There are knowable factors that influence whether and how quality shows up in legal work, and one of them is how we structure deals with law firms. To stick with our theme of the effects of consolidation, here are some effects of consolidation we see regularly.

When the client settles onto a small number of preferred law firms, each firm is thereby formally protected from competition, undermining the incentive to be responsive and hard-working for that client. Let's imagine a perfectly typical scenario. You are the managing partner of the employment practice of a large firm that is the sole provider of FidgetCo's employment work for the next three years. Your firm also has a decent chance of getting more of BananaCo's employment work, but doesn't have much of it yet.

You just got a matter in from BananaCo, the new client who might or might not give you more work in the future. You also have a matter for FidgetCo going on right now too . . . and as we know, FidgetCo is committed to sending you all of their work for the next three years no matter what. You have two

lawyers who could work on either matter and one of them is better than the other. Where do you send your best lawyer?

The BananaCo and FidgetCo example shows that successful law firm partners will be pressed by market forces to adjust the character and quality of what is being delivered in order to continue to grow their practices. This is not malicious; this is not in bad faith. It's the free market. Partners make trade-offs that bias towards practice growth because in most firms it's an eat-what-you-kill environment and each partner needs to kill enough to feed every mouth up and down the hallway. Once a client is secure – and perhaps especially when that security is in writing – firm economics will shift the partner back to business development.

This may be why we see that firms who are on a formal panel for a client are frequently out-performed by law firms working for the same client who are not on that client's formal panel. The firms that aren't on the panel want to get on it – and they work harder. The firms that are on the panel believe they have the work sewn up, so they don't feel they need to work as hard to keep it.

Why can't we control quality?

In response to these concerns, a client contract can attempt to define which lawyers will do the work, but this is usually hard because staff are so mobile. It's a free country, associates leave at a rate of 20% or more per year and the partner lateral market is very active. Departing staff, practice group moves, family medical leaves, trials for other clients and other unavoidable factors take staffing decisions out of the client's hands.

But when we **are** able to control the law firm's staffing of our matters, consider the potential effect on a lawyer's career. We have struck with the law firm a fixed-term contract specifying who will do the work. We can specify that Mary will do our contracts work, because Mary is good. But we can't force her to do it with passion and focus if the firm isn't rewarding her for it.

Will the firm reward her for it? If it's a locked-in, long-term contract on client-favorable terms (i.e., not as profitable as the firm average), why would the firm reward Mary for doing the work? For a host of reasons, working that file is a career dead end; it will not lift Mary out of the role of non-equity service partner. Indeed it will solidify her position there. Will Mary do it? Maybe. Will she leave the firm for greener pastures? Possibly. It's certainly not the route for Mary to become an equity partner in an eat-what-you-kill firm.

Imagine how different the firm's perception of Mary would be if she were seen to be bringing in each new project from the client as a newly won piece of work? If the client were seen to be **choosing her each time on the competitive market** because she's so good? It's not just a difference of semantics – it will make an economic difference of the first order to Mary.

These are just small, illustrative points. The point is that consolidated sourcing arrangements in law, unless very carefully engineered, invite the firm to define both service quality and price against a backdrop of limited resources and an internal war for talent. We can't know in advance what true quality and price will look like, but we do know in advance that the firm will do everything possible to maintain its revenue per lawyer and profit per partner numbers in any given period. To do this, within the life of a contract the firm's lawyers have an incentive to square the terms of service with the firm's economics. And they will always have a marginal incentive to prioritize new business opportunities over work for settled clients.

Can relationships help? Yes, but no unconditional love

We all know from experience that law firms regularly **don't** make decisions this way. They often prioritize existing clients over new business, or go above and beyond for a client where the economics don't strictly make sense. But we've also seen it the other way. Why?

I believe we see narrow economics-only decisions when the client and law firm are dealing at arm's length. If as clients we cultivate a purely transactional feeling, if we minimize the feeling of relationship, we will reap what we have sown. Law firm leaders are entirely human in our experience, and cultivating the right kind of relationship will go a long way towards maintaining a consistent quality of legal service. In law, unlike many other industries, we still have a choice about how much we deal at arm's length versus how much it feels like we're in a relationship with a firm. A big part of success with preferred provider networks is getting the balance between relationship and arm's length correct.

This point is rich enough to warrant its own book so I will keep it short with a single illustration. Overall, we want most of the cost benefits of an arm's length commercial deal - but not quite all. It just doesn't serve the client well in the long run for firms to feel no emotional allegiance to the client. Yes, our relationships need to conform to the logic of the marketplace, but we need firms to invest in the relationship, build and preserve human capital that serves the client well, and care at an emotional level about the success of the client.

The trick is to do this in a way that doesn't **quite** signal unconditional love.

Here's one practice that clients and firms both benefit from and we strongly encourage. Hold an annual summit attended by a few lawyers from each primary law firm. Firms won't bill you for the time and they will happily cover some of the cost - it's good marketing spend for them, builds the relationship, and it's a nice perk for a top associate to come along if she's a key player on your files. Spend two days together, set an agenda that's substantive but also sometimes fun, let the firms compare notes and think about how they can collaborate to serve you better. A common experience here is to discover that firm lawyers do not want to be hostile to their "competition" within the panel. Instead they want to have positive relationships with other panel firms

and even discuss how they can work together for the client's benefit. These folks are also potential sources of referral work for one another.

Can this kind of relationship-building overcome the performance and staffing issues outlined above? Our experience is that it largely does – as long as the lawyers serving you have enough power to resist whatever countervailing political and economic forces may be at play within their firms.

Communication

Good communication is the foundation of nearly all success in the legal world. Equally, bad communication is the basis of nearly every major mess. So the question is – how do we ensure good communication between all relevant parties?

This is a matter of persistent management practice. The primacy of good communication is one of the reasons we favor building a small preferred provider panel – you just can't get good communication practices in place with 50 or 100 law firms. A smaller list of firms is easier to manage and communicate with, and with more of each firm's revenues coming from a single client the firm should be more willing to invest time and energy into communicating with that client.

The right way to do this could fill a book, but in short we believe the following practices should be followed. In practice, they will be followed best by firms who do the most work for you.

1. Matter plans commensurate in detail with the value of the matter should be in place 2-3 weeks after the start of a representation. The important thing is not that the plan has been written; the important thing is that it has been discussed with the client.
2. Simple, early-stage performance evaluations should take place 4-8 weeks after the start of each significant matter. Discuss it with the lead law firm lawyer. Get his or her feedback on what the client can be doing better, too. This early evaluation is here to identify problems before the cement dries. It lets the firm and client make corrections. Evaluating a representation only once it's over misses much of the potential value.
3. Similar evaluations should take place quarterly or half-yearly after that, again depending on the scale and significance of the matter.
4. Conduct matter post-mortems on significant matters – a meeting to collect lessons learned and make plans to do even better next time. If you've done #1-3 above, this is an easy meeting.
5. At the level of the firm-client relationship, conduct quarterly or half-yearly reviews of the overall relationship with the law firm. Firms will welcome the chance to talk overall about the workflow, and it

provides a critical opportunity to discuss alternative fees, staffing, cost control, quality issues and other key items.

In our experience, lawyers are great communicators who are simply terrible about communicating regularly. The checklist above is hard to stick to - and to do it right. On the one hand, the substance of these communications are what really matters - not the form. But lawyers are generally tempted therefore to skip steps, ignore some of the formalities, and generally erode the ethic of consistent communication. Forces of entropy return us to substantive but highly irregular communication, the lawyer's natural habitat. And that is the root of nearly all evil in the lawyer-client relationship as noted above.

So it takes an operational mindset and some considerable structure to ensure that these exchanges take place. The bureaucrat's comfortable path, of course, is formalistic communications with little substance. The only way to do communication right is to stay on the middle path: combine persistent and regular communications with a unbroken focus on client outcomes.

So -what's the Ghai recipe?

Law firm panel convergence can be done right - it just needs to be tailored to the legal market. The structural basis of success in legal procurement is constant competition in the context of a long-term relationship. In other areas of procurement, competition is used at the outset of the contract - to set terms to which a vendor is then committed. But in law, because price and quantity are being adjusted at all times, and because quality can't well be defined, competition has to be in effect at all times. Lawyers need to know that their performance on each matter will determine whether they get more work from that client. That single principle is not a complete substitute for defining quality and cost for every matter, but it's an indispensable backstop. Moreover, communication needs to be constant within the relationship - and if done right, that relationship will grow in a way that helps both the law firm and the client.

How do we make this happen? These are the five principles we laid out in Part II (030):

1. Double Coverage
2. Varied Cost Tiers
3. Sufficient Panel Size
4. Open Competition
5. Re-Selection

These structural principles set the panel up for success, but management practices matter even more than structure. Here are the ones we think matter most:

1. Assertive Change Management
2. Positive Psychology
3. Structured Communication

As we have said, these principles have been learned from years of working at the intersection of law firms and their clients. They have guided us as we have constructed our approach at AdvanceLaw, and we believe success in convergence rests on getting them right.