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to a lesser extent, Arnold) regard their Academy friendships as high points in their personal and professional lives, but nothing in Jim's book even hints at a friend within the group. Ben and Jim largely gave up on the Academy while Dick loves it still. Arnold does not reach a general verdict on the Academy—after his 14 pages on it, he's off and running on his next adventure—although I suspect that if he wrote a few years later, after the New Directions Committee controversy, he might well have sounded more like Ben Aaron.

II. PERSONALITY AND TIME DELAY AMONG ARBITRATORS

DAPHNE TARAS, PIERS STEEL, AND ALLEN PONAK*

The labor arbitration setting is a unique and exciting venue for developing an understanding of the nexus between personality and task completion. Arbitrators are highly autonomous professionals who have an incentive to render their decisions as expeditiously as possible. They review evidence, analyze submissions, and reach and write a decision, activities that lie almost entirely within their control. In this study, we examine various factors that explain the elapsed time between hearings and the issuance of awards. In particular, we use two sources of data: (1) a content analysis of 1,957 Canadian cases issued after 2002; and (2) the personalities of arbitrators, based on an extensive questionnaire completed by 38 Canadian arbitrators.

While arbitration deadlines are rarely explicit and can be perceived as “slippery” rather than fixed, arbitrators feel an obligation to dispense justice quickly, as they are well aware of the adage “justice delayed is justice denied.” An arbitrator's future acceptability may be harmed by a reputation for tardiness, providing an added incentive to avoid delay.¹ There is a sense of alarm among practitioners that time delay is the most serious fault in the

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¹Berkeley, A. E. (1989). The most serious faults in labor-management arbitration today and what can be done to remedy them. *Labor Law Journal* (Nov.), 728–33.

arbitration system.² A substantial literature exists on the causes, consequences, and solutions for undue delay,³ including many professional articles with such colorful titles as “Delay: The Asp in the Bosom of Arbitration.”⁴ The National Academy of Arbitrators [NAA] contains a section in its Code of Professional Responsibility devoted to “Avoidance of Delay” and arbitrators have been sanctioned for undue delay. There also is a financial incentive for arbitrators to work expeditiously, as the issuance of an award allows the presentation of final invoices.

Empirical investigations have demonstrated that delay has increased alarmingly in the past decades in both Canada and the United States.⁵ Using event history analysis, Ponak et al.⁶ disaggregated total delay into components: (1) prearbitration grievance steps; (2) arbitrator selection; (3) hearing scheduling; and (4) preparation of the arbitration award (which we measure in this study). This final stage accounts for approximately 20 percent of the overall elapsed time from the filing of the grievance to the arbitrator’s decision.⁷ Figure 1 illustrates the four stages and their associated elapsed time.

²Trudeau, G. (2002). The internal grievance process and grievance arbitration in Quebec: An illustration of the North-American methods of resolving disputes arising from the application of collective agreements. *Managerial Law*, 44, 3, 27–49; Foisy, (1998). Is Arbitration too Slow and Legalistic? In M. Hughes and A. Ponak (Eds.), *Conference Proceedings of the 16th Annual University of Calgary Labour Arbitration Conference*. Calgary, Alberta: Industrial Relations Research Group and the University of Calgary; Berkeley, A. E. (1989). The most serious faults in labor–management arbitration today and what can be done to remedy them. *Labor Law Journal* (Nov.), 728–33.

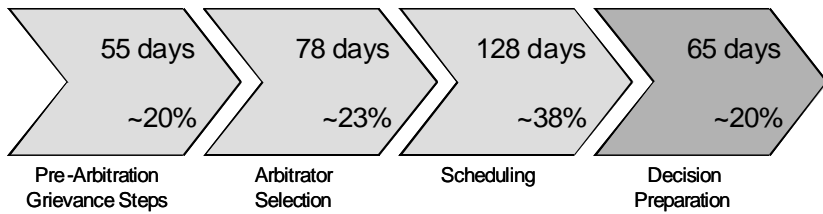
³The literature is reviewed in Lewin, D. (1999). Theoretical and empirical research on the grievance procedure and arbitration: A critical review. Chapter 5 in A. E. Eaton and J. H. Keefe, eds., *Employment Dispute Resolution and Worker Rights in the Changing Workplace*. Champaign-Urbana: University of Illinois, Industrial Relations Research Association. See pp. 154–55.

⁴Seitz, P. (1981). Delay: The asp in the bosom of arbitration. *The Arbitration Journal*, 36, 29–35.

⁵Ponak, A., & Olson, C. (1992). Time delays in grievance arbitration. *Relations Industrielles*, 47, 690–708; Thornicroft, K.W. (1995). Sources of delay in grievance arbitration. *Employee Responsibilities and Rights Journal*, 8, 1, 57–66; Foisy, (1998). Is arbitration too slow and legalistic? In M. Hughes and A. Ponak (Eds.), *Conference Proceedings of the 16th Annual University of Calgary Labour Arbitration Conference*. Calgary, Alberta: Industrial Relations Research Group and the University of Calgary; Trudeau, G. (2002). The internal grievance process and grievance arbitration in Quebec: An illustration of the North-American methods of resolving disputes arising from the application of collective agreements. *Managerial Law*, 44, 3, 27–49.

⁶Ponak, A., Zerbe, W., Rose, S., & Olson, C. (1996). Using event history analysis to model delay in grievance arbitration. *Industrial and Labor Relations Review*, 50, 105–21.

⁷Ponak, A., & Olson, C. (1992). Time delays in grievance arbitration. *Relations Industrielles*, 47, 690–708; Steiber, J., Block, R., and Nichol, V. (1990). Elapsed time in grievance arbitration. *Proceedings of the 43rd Annual Meeting of the National Academy of Arbitrators*.

FIGURE 1: Model of Delay in Grievance Arbitration

Source: Ponak, A., Zerbe, W., Rose, S., & Olson, C. (1996). Using event history analysis to model delay in grievance arbitration. *Industrial and Labor Relations Review*, 50, 105–21.

Compared to the other stages of the industrial justice process, only the final stage is almost entirely controllable by the arbitrator, and so it is of greatest interest to researchers investigating the effects of personality on timely task completion. All other stages are subject to the input of multiple parties, often with competing interests. A recent summary of arbitrator decision time reported averages ranging from 37 days to 101 days, depending on time period covered and region.⁸ Ponak and his colleagues⁹ found that characteristics of the arbitration process that predicted faster decision time were: a discharge dispute, fewer pages of written decision (a proxy for complexity), the use of legal counsel, and the use of a sole arbitrator rather than a three-person panel. The study also examined one job-related characteristic of the arbitrator—his or her workload—and found that the busiest arbitrators took longer to render their decisions.

In this study, we expand the list of possible procedural factors that might predict decision time and add a number of demographic, work-related, and dispositional variables that should influence decision time. The most important contribution will come from a survey of the arbitrators themselves, matched to their actual decision time performance.

⁸Thornicroft, K. W. (2001). The grievance arbitration process: Theory and practice. In M. Gunderson, A. Ponak, and D. G. Taras, eds., *Union-Management Relations in Canada*, 4th edition. Toronto: Pearson, p. 372.

⁹Ponak *et al.* (1996).

Testing Two Competing Hypotheses

Our study was motivated by the desire to test the following hypothesis:

H1. Personality will significantly explain variability in time delay.

According to literature that supports this hypothesis, we expect that arbitrators' observed delays correlates well with their self-assessment of procrastination. Funder¹⁰ proposes that individual difference variables can have as strong an effect on outcomes as situational variables. We were particularly interested in testing the robustness of a scale measuring procrastination, developed by Steel¹¹ and validated by him in 2010.¹² Specifically, as Steel's literature¹³ review finds, we expect that those who put off their decisions tend to have lower expectancies regarding their own abilities, as measured by self-efficacy. They should also have less enjoyment in their decision-writing work. Previous research indicates that the most important features affecting procrastination—and hence task completion—are impulsiveness, distractibility, and task aversion. Each of these traits will be tested separately but are also components of a procrastination measure.

However, one of the problems of studying arbitrators is the possibility that similarities among arbitrators remove the explanatory potential of personality. This is known as the “gravitational hypothesis,” i.e., that people select and are successful in certain careers because they already have a strong match. Only those arbitrators who are consistently accepted by both union and management can remain “successful” arbitrators; those people who are not fit will not be selected by the parties and will eventually be forced to leave the field of arbitration. Those individuals who “stay” may constitute a more homogeneous group than those who were initially attracted to the field of labor arbitration. Specifically, the Attraction-Selection-Attrition framework¹⁴ proposes that attraction to an organization and attrition from it produce restriction in range in the kinds of people in an organization. There is

¹⁰Funder, D. C. (2001). Personality. *Annual Review of Psychology*, 52, 197–221.

¹¹Steel, P. (2007). The nature of procrastination: A meta-analytic and theoretic review of quintessential self-regulatory failure. *Psychological Bulletin*, 113, 65–94.

¹²Steel, P. (2010). Arousal, avoidant, and decisional procrastinators: Do they exist? *Personality and Individual Differences*, forthcoming.

¹³Steel, P. (2007). The nature of procrastination: A meta-analytic and theoretic review of quintessential self-regulatory failure. *Psychological Bulletin*, 113, 65–94.

¹⁴Schneider, B. (1987). The people make the place. *Personnel Psychology*, 40, 3, 437–53.

a further body of literature examining the professions and why people identify with them.¹⁵ Hence, it is quite plausible that:

H2. Personality will not significantly affect time delay, as successful arbitrators are too much alike for personality to have explanatory effects.

Obviously, these are two competing hypotheses, each with its own supporting literature and underlying logic.

Methodology: Three Phases

Phase 1: The Sample. First, we built a sample frame of appropriate arbitrators in order to limit the number of arbitration cases to be analyzed. Approximately 60 Canadian arbitrators, representing all provinces and jurisdictions, are members of the NAA. Targeting NAA arbitrators ensured a certain level of experience, reputation, and reliability. Only those arbitrators who consistently did not report the hearing dates of their arbitration cases were excluded from the current study. There also are distinguished arbitrators who do not belong to the NAA because they have not applied, or their advocacy work disqualifies them from meeting the NAA's stringent membership requirements. Interviews with members of the NAA helped us identify additional arbitrators, bringing the total number of arbitrators to 70. Note that although this seems to be a small group, the labor arbitration "business" is highly concentrated. A small group of arbitrators do a disproportionate share of the cases. For example, in Quebec, Trudeau¹⁶ found that fewer than ten arbitrators render 25 percent of all awards, while half of the arbitrators produce less than 10 percent. Our research found between 31 and 35 percent of all Canadian cases are decided by NAA members.

Phase 2: Content Analysis of Arbitration Cases: By law, arbitrators in Canada must file their decisions with a Ministry of Labour or an equivalent body, and these decisions are publicly available. We

¹⁵Ashforth, B. E., and F. Mael (1989). Social Identity Theory and the organization. *Academy of Management Review*, 14, 1, 20–39; Dutton, J. E., Dukerich, J. M., and Harquail, C. V. (1994). Organizational images and member identification. *Administrative Science Quarterly*, 39, 2, 239–63; and Schneider *op cit*, p. 443.

¹⁶Trudeau, G. (2002). The internal grievance process and grievance arbitration in Quebec: An illustration of the North-American methods of resolving disputes arising from the application of collective agreements. *Managerial Law*, 44, 3, p. 38, citing earlier work by Blouin and by Hébert.

acquired all cases produced by our arbitrator sample over a three-year period (2003–2005, inclusive). Three years worth of cases enabled us to develop an accurate portrait of the “normal” work flow of any arbitrator, and the years are lagged somewhat in case arbitrators “procrastinate” in reporting their cases for the public record. The comprehensive data set of cases is a significant advantage of doing research in the Canadian setting; by contrast, American arbitrations are not routinely filed and are considered to be private documents. LexisNexis® *Quicklaw*™ Research Service provided full-text retrieval of all 1,957 Canadian cases.

The most important variable—our dependent variable—was the measure of elapsed time between the date of the final hearing and the issuance of the award. We found that the average time delay was about 53 days and that there was extremely wide variability among decisions, with some arbitrators having ranges such as 13 days to 719 days. Because posthearing briefs are virtually unknown in Canada, the clock starts ticking with the end of the hearing. Delay is a wonderfully unobtrusive and concrete measure, as arbitrators routinely include this information without any notion that researchers will make use of it.

In addition, we coded the same types of variables used in other studies, e.g., regular or expedited case, public or private sector, federal or provincial jurisdiction, case complexity as measured by a number of proxy variables such as page length and number of issues, sole arbitrator or panel, discipline and discharge or policy grievance, presence of lawyers, gender of grievant, outcome of case, and the number of other cases rendered by the arbitrator in order to measure workload.

Phase 3: Survey of Arbitrators to Gather Personality and Situational Factors: We achieved 38 usable on-line or hard copy questionnaires, a response rate of about 70 percent among the Canadians we contacted. This high response rate resulted from the personal contacts of coauthor Ponak, and likely could not be duplicated by other researchers. Responses were kept confidential. Particular attention was paid to assure participants that neither Taras nor Ponak could access individual arbitrator results, as these members of the research team are peers of many of the arbitrator respondents.

We asked respondents over 200 questions about themselves, and most of these involved questions that build into multi-items scales

that have been validated in previous research and have acceptably high internal reliability coefficients. The scales are listed in Table 1, with arbitrators' mean scores and standard deviations, compared to general population measures of working adults. We also provide two illustrative graphs that contrast the normal curve for arbitrators against the general population measures.

The first two columns of Table 2 report the Cronbach's alpha measure of each scale, and the number of items used to compose each scale.

TABLE 1: Comparing Arbitrators to Population (where 1 = low and 5 = high)

	Arbitrators (N = 38)		General Population		
	Mean	Std Dev.	Mean	Std Dev.	
Self-Efficacy	4.07	0.5	3.46	0.51	Adult Employees, age 40+
Need for Achievement	3.58	0.57	2.71	0.362	Adult Employees, age 40+
Lack of Energy	2.22	0.54			
Susceptibility to Temptation	2.6	0.55	3.23	0.723	Adult Random Population
Attention Distractibility	2	0.62			
Procrastination	2.13	0.56	3.34	0.83	Adult Employees, age 40+
			3.56	0.77	Those younger than 30
			3.61	0.78	Lawyers

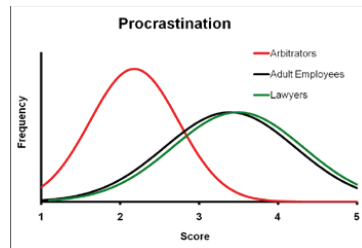
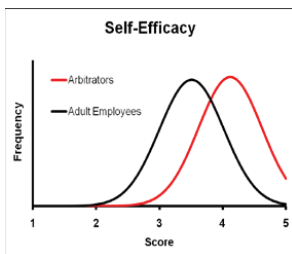


TABLE 2: WLS Bivariate Regression of Personality Scales With LogDelay

	Scale Alpha	Item #s	R	R Square	Significance	Beta
Procrastination	0.85	10	0.538	0.29	0.001	0.294
Temptation	0.78	8	0.377	0.142	0.023	0.207
Distractibility	0.82	6	0.417	0.174	0.011	0.224
Aversiveness	0.76	2	0.341	0.117	0.042	0.118
Lack of Energy	0.73	6	0.384	0.148	0.023	0.21

Not Significant but trending in the expected direction:

Self-Efficacy	0.88	10	0.013	0	0.939	-0.008
Need for Achievement	0.85	16	0.274	0.075	0.106	-0.136

Findings

Like other researchers before us, we explained 30 percent of the variance in time delay through our content analysis of case characteristics. There were no particular surprises. Expedited grievances are issued more quickly than regular grievances. Use of nominees significantly increases time delay. Dismissal grievances are issued slightly faster than other types of grievances, and complex grievances take longer to issue. Busy arbitrators have longer time delays. There were no effects based on age, gender of arbitrator or grievant, or presence of lawyers. In the survey directed to arbitrators, we also asked whether they worked solo or in offices with others and whether they had secretarial support. There were no significant differences based on how arbitrators organized their work situations.

Now we come to the crux of our project: Does personality matter? We showed in Table 1 and the illustrative graphs the remarkable similarities of arbitrators. Clearly, there is support for the notion of a gravitational pull toward arbitration by people whose personalities match the job demands. While lawyers, for example, are more like the general population norms on procrastination, arbitrators are extraordinarily likely to be nonprocrastinators. We also know from our questionnaires that arbitrators are working

pretty much flat out; that is, when arbitrations cancel, they use the time to write up their other decisions. When traveling out of town, they use hearing interruptions and evenings to work on their arbitration practices. There is remarkable similarity among arbitrators. Indeed, arbitrators are even so conscientious that we never found a single anomalous response to any of dozens of personality items; that is, arbitrators never made the error of filling out any measure that was reverse-coded so it read in the negative rather than the positive. This is quite unusual for personality surveys.

With the restriction of range of arbitrators' responses to our personality variables (as shown by the low standard deviations), we had little expectation that Hypothesis 1 could be confirmed. To our surprise, bivariate regressions testing each of the personality dimensions on Table 2 against the natural logarithm of time delay, and weighted by the number of cases heard by each arbitrator, showed strong and significant effects of personality. (Multivariate regressions were not possible because of the small sample size.)

In particular, the self-reported procrastination measure, based on an amalgamation of ten questionnaire items, explained almost 30 percent of the variance in time delay. Each of the scales for temptation, distractibility, aversiveness to the task of writing decisions, and lack of energy produced significant results, and each explained some portion of time delay. However, care should be taken not to add the *R*-squares, as the procrastination scale can be decomposed using these other items, and so they are not additive.

In future, with a larger sample, we will be using Hierarchical Linear Modeling (HLM) to blend our two sources of data from the cases and the personality survey. For example, using HLM we will be able to determine if cases are delayed because they are complex, because the arbitrator is impulsive, or because impulsive arbitrators delay complex cases. Further research will help us answer these questions.

Conclusions

This study has shown that conventional, case-based coding can explain about 30 percent of the variance in time delay. Another 30 percent is likely due to the personality predispositions of arbitrators, confirmation of our Hypothesis 1. We believe that if case characteristics and personality can be added together—since they are likely to be uncorrelated—then we have been able to explain at least 60 percent of the variance in time delay. As our data

collection continues and as we have a number of additional variables from the survey that need incorporation into the statistics (e.g., whether the arbitrator endured significant personal trauma that impeded the practice, whether the arbitrator is busy doing nonarbitration work, and so on), we may be able to present an even more complete portrait of time delay. Although Hypothesis 2, that arbitrators' similarities would negate the effects of personality on time delay, was refuted, nevertheless, we have assembled a portrait of an occupation that shows support for the gravitational thesis. Clearly there is a strong personality profile for arbitrators.

A final caveat is necessary in discussing time delay. It could well be that a certain level of time delay is normal, and perhaps even optimal. Aggressive efforts to reduce delay by flooding the system with new arbitrator entrants would put business pressure on the more established, full-time arbitrators, who might then diversify their arbitration practice, take on other types of business, or leave the field entirely. This loss of expertise is not a good outcome, and it obviously is not desired by the parties to the collective agreement, who seem to tolerate significant delay in order to have experienced arbitrators of their choosing rather than appoint new arbitrators. Alternatively, to bring down time delay, we might work on ways of training experienced arbitrators so that they procrastinate less, but since they already barely procrastinate in relation to the general population, it is not likely that our efforts would be met with a warm reception.

Indeed, there seemed to be very little actual squandering of time among arbitrators. The very term "time delay" seems to have the connotation of culpability, which our research does not support. Perhaps some arbitrators who have a mild aversion to writing awards are more efficient at case scheduling or perhaps at mediating. They may be "productive procrastinators" in the sense that they still use their time wisely, albeit not as diligently at writing awards. On an ongoing stock-and-flow basis, successful arbitrators are extremely efficient at managing their practices. They could not be faster at any one award without being slower at others, meaning there is little they could do to change their average time delay.

Acknowledgements

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to Caroline Manchot, who gathered the bulk of the data used in this study, and to Tracey MacCorquodale and Chris Morin, who coded arbitration cases. We are greatly indebted to the many arbitrators who participated in our questionnaire pre-tests and the Canadian region of the National Academy of Arbitrators for its members' participation in this study.

III. JUDICIAL REVIEW OF AWARDS IN MANDATED EMPLOYMENT ARBITRATIONS: ARE WE GETTING IT RIGHT?

ROBERT J. RABIN*

Guiding Principles

“By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum. . . . Although judicial scrutiny of arbitration awards necessarily is limited, such review is sufficient to ensure that arbitrators comply with the requirements of the statute at issue.”¹

*Professor of Law, Syracuse University College of Law. Member, NAA. I thank Camille Castro and Dan Goode, Syracuse College of Law students of the class of 2010, and Melissa Mead, class of 2011, for their invaluable help in preparing this paper. From the very inception of the project until her graduation, Camille helped me with the basic outline of the project and with research on the cases reviewing arbitration awards. Dan provided excellent research on cases initiated in the district courts and with the Board's deferral doctrine. His work could have been the basis of separate papers. Melissa helped to get the paper in final shape, and handled some of the difficult footnoting that we kept putting off until the end. Camille, Dan, and Melissa all took labor law with me at different times, and Camille even suffered through contracts with me as well. It was a pleasure to work with these three wonderful students. I am also grateful to Dean Hannah Arterian for her support and encouragement of this project. Thanks to NAA Member Howell Lankford for administering the Invited Papers portion of the NAA program in 2010 and for inviting me to present this paper. I thank Wayne Outten, Esq., a nationally known plaintiffs' lawyer based in New York City who represents employees in litigation of statutory and other employment claims, including those in which arbitration is mandated, and Cliff Palefsky, a prominent lawyer who does the same sort of work based in California, for their helpful insights and suggestions. Thanks also to Tim Garrigan, a plaintiffs' lawyer based in Texas, for his observations about the *Williams* litigation, discussed later in the paper. Neil Currie, a Vice President with the American Arbitration Association, was very helpful in providing statistics on AAA case handling of these cases. Raymond Peeler and Peggy Mastroianni of the Equal Employment Opportunity Commission kept me posted on EEOC developments.

¹*Gilmer v. Interstate/Johnson Lane*, 500 U.S. 20, 26, 32 n.4 (1991) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985) and *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220, 232 (1987)).