II. ARBITRATORS AND ADVOCATES: THE CONSUMERS' REPORT

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Introduction

Representatives of unions and employers have long engaged in the process of selecting arbitrators to hear and decide grievances. Each year this selection process may occur 50,000 times or more, and yet very little is known about which arbitrator characteristics influence advocate choices of arbitrators. Further, no "customer survey" of advocate opinions about the state of arbitration has been conducted. No prior study of arbitrator selection was identified which employed the methodology of letting a national group of advocates rank and select arbitrators based solely on biographical data.

The methodology effectively controlled such subjective variables as reputation and experience with a particular arbitrator by using a panel of five hypothetical arbitrators. In addition to demographic and opinion data, advocates made arbitrator rankings for both discharge and subcontracting cases, and ranked from a list of 11 items the arbitrator characteristics in order of importance for making their first and last choices for both types of cases. This paper excerpts some of these results which may be of special interest to NAA members.

Methodology

In February 1987 the Federal Mediation and Conciliation Service (FMCS), Office of Arbitration Services, mailed a thousand questionnaires to advocates who had requested arbitration panels from that office.[1] A 36 percent rate of return was received, almost evenly split between labor and management advocates. This was the first national survey of arbitrator acceptability; therefore, the results are representative of all regions and sectors.

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Demographics: Who Selects Arbitrators

Virtually no prior research has explored the nature of advocates who select arbitrators. The age of advocate selectors is set forth in Table 1.

Management representatives are somewhat younger than their union counterparts, contrary to the popular image of a young employee advocate dealing with an older management representative. Further, neither group is old by any definition. This may mean that both labor and management representatives are young enough to be innovative and creative in dealing with each other and in fashioning a new, cooperative labor-management relationship. Table 2 explores the sex composition of advocate selectors.

As might be expected, industrial relations is still a predominately male pursuit, although women have made significant progress, especially on the union side. Almost one quarter of union selectors are female, and this percentage is likely to increase in the future. Only half as many management representatives were female. It may be assumed that this percentage will also increase as women gain education and experience in the field.

A union advocate is almost three times more likely to be of minority background than a management advocate (Table 3). Minority persons are about one fifth of all selectors, a trend that is likely to increase in the future as those of minority backgrounds gain the education and experience to assume positions of progressively greater responsibility in the field of industrial relations. Interestingly, 18.2 percent of all advocates were female and nonwhite. These figures are significant when the opinions of each group are considered.

Table 1. Age of Advocates

	All	Union	Management
Mean	44.1	44.8	42.0
Median	43.0	45.0	42.0
Range	25–67	25–66	26–67

Table 2. Sex of Advocates

	All Advocates		Union		Management	
	Number	Percent	Number	Percent	Number	Percent
Male	293	81.8	131	76.2	162	87.1
Female	65	18.2	41	23.8	24	12.9
Total	358	100.0	172	100.0	186	100.0

A Shortage of Arbitrators?

Whether there is a shortage of labor arbitrators is perhaps a question of definition and semantics. There is no literature that reports a demonstrable, quantifiable shortage of arbitrators or documents any instance in which the disputants were unable to find an arbitrator to hear their case.

However, other definitional approaches bring different conclusions. The literature is full of quotations from well-respected individuals who lament this purported shortage of arbitrators, and it is not uncommon for action to be taken in an attempt to increase the supply of arbitrators to deal with this problem. An instructive illustration of this approach occurred at the 1985 Annual Meeting of the Academy held in Seattle, Washington. It was announced that a program would be undertaken to assist new arbitrators in becoming established and in gaining acceptability. This program was necessitated, the Board of Governors

Table 3. Racial Composition of Advocates

	All Advocates		Union		Management	
	Number	Percent	Number	Percent	Number	Percent
White	289	81.8	124	72.5	165	89.2
Black, Hispanic, Oriental	67	18.2	47	27.5	20	10.8
Total	356	100.0	171	100.0	185	100.0

concluded, because of the shortage of arbitrators. No statistics were cited to buttress this conclusion, and they noted that their "conclusion that there is a shortage of arbitrators was not based upon a scientific inquiry . . . ."[2]

It may be true that the parties who wish certain busy arbitrators to hear their cases have to wait more than a few weeks for a hearing. Whether this is a problem and, if so, of what dimensions has not previously been examined. Part of my study explored this question and sought to determine if indeed advocates perceived that there is a shortage.

As to the nature of any shortage, the Report of the Special Committee on the Academy's Role in the Development of New Arbitrators stated that:

> There are at least two types of demonstrable shortages of qualified arbitrators. First, there are some regions of the country that still suffer from the lack of a sufficient number to meet the needs of the parties. Second, with few exceptions, there is a general lack of qualified arbitrators who are black, Hispanic, or female. The committee is of the view, therefore, that there is a need for instruction and training programs in the few regions where qualified arbitrators are in short supply, and in all areas where blacks, Hispanics, and women are underrepresented in the ranks of qualified arbitrators.[3]

As to the first point, noted earlier, there is no documented report of any instance in which the disputants absolutely were unable to find an arbitrator to hear their case. It is unclear in what manner, therefore, the needs of the parties are unmet. It may be true that arbitrators must travel some distance to hear a case in some areas of the country, and the parties may prefer an arbitrator who lives closer. As discussed in another section of my dissertation dealing with costs of arbitration, arbitrators' travel time and related expenses are rarely a significant cost consideration, given the extensive internal expenses of arbitration. Therefore, beyond the mere convenience aspect, not having an arbitrator nearby does not appear to be a significant problem.

As to the second point, noting a lack of black, Hispanic, and female arbitrators, it is true that most successful arbitrators are white males. As to whether an affirmative action program is needed to improve minority and female representation in the arbitration profession, no one has sought the opinion of advo-

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[2]National Academy of Arbitrators, Report to the Board of Governors (1985), 6.

[3]Aaron, Report of the Special Committee on the Academy's Role in the Development of New Arbitrators, 3.

cates who, as users of arbitration services, have the largest stake in this matter. The survey questionnaire contained several items designed to elicit the opinions of advocates on this point. The first item asked advocate-selectors for their opinions on the need for more female and minority arbitrators.

The Need for More Female and Minority Arbitrators

The data indicate that there is a difference in the way union and management advocates view this question. Table 4 represents those who could make a judgment on this matter.

It should be noted that while 19.1 percent of union advocates felt that they could not make a judgment, almost one third of management representatives (32.1%) could not make a judgment. Of those advocates who made a judgment, almost twice as many union as management advocates were in favor of more female and minority arbitrators (76.4% compared with 41.7%). Over twice as many management as union representatives did not believe that there should be more female and minority arbitrators (58.3% compared with 23.6%).

How Sex Characteristics Affected Responses

It appears that males and females view this question of the need for more female and minority arbitrators differently. More than 75 percent of females strongly agreed or agreed that there was a need, while only half as many males were in that category (37.5%). Less than 34 percent of males slightly or strongly dis-

Table 4. Advocates' Opinions on Need for More Female and Minority Arbitrators

	Union		Management	
	Number	Percent	Number	Percent
Strongly agree and agree	107	76.4	53	41.7
Slightly disagree and strongly disagree	33	23.6	74	58.3
Total	140	100.0	127	100.0

agreed with the need, while only 12.2 percent of females were in that group.

The results were significant at the .01 level, meaning that we can be fairly certain that the male advocates see this subject from a different perspective than female advocates.

How Sex and Affiliation Affected Responses

The next question is whether the affiliation of respondents affected their responses on the need for more female and minority arbitrators. Cross-tabulations were run for union and management advocates by sex and their responses to the question. Union advocates appeared to be more similarly inclined than management advocates, with the difference between males and females not as pronounced, though significant nonetheless.

Management advocates view this proposition differently based on their sex. Of the female management advocates, 62.6 percent strongly agreed or agreed that there should be more female and minority arbitrators, but only 23.5 percent of the males responded similarly. Conversely, 42.1 percent of the males disagreed with the statement, but only 20.8 percent of the females disagreed.

How Race Affected Responses

Race clearly influenced responses to the question of the need for more female and minority arbitrators. While only 34.9 percent of white advocates agreed that there was such a need, 82.3 percent of nonwhites did. Similarly, 34.8 percent of white advocates expressed disagreement with the need for more female and minority arbitrators, but only 7.3 percent of minority respondents did. The results for all advocates were significant at the .01 level, demonstrating that advocates of minority background view this subject far differently from nonminority respondents. The next area of inquiry was whether affiliation had any effect on the response to this question. Therefore, cross-tabulations were run for union and management advocates by race and their response to the question.

How Race and Affiliation Affected Responses

Even among union advocates, who would be expected to hold more "liberal" ideas, there was a statistically significant dif-

ference between white and minority respondents. While 51.7 percent of white union advocates agreed there should be more female minority arbitrators, 87.4 percent of nonwhites did. Similarly, 24.1 percent of white union advocates expressed disagreement with the statement, but only 6.3 percent of minority union advocates disagreed. Further emphasizing the dichotomy between the two groups, 24.2 percent of whites could not make a judgment on this question, but only 6.3 percent of minority respondents could not.

The data clearly indicate that race influences the response to this statement. While 23.7 percent of white management advocates expressed some agreement with the need for more female and minority arbitrators, 70.0 percent of nonwhites did. Whites disagreed four times more (43.0%) than nonwhites, although the small number of nonwhites makes this statistic weaker. Interestingly, one third of white management advocates reported that they could not make a judgment on this question, while 20 percent of minority management respondents could not.

In summary, white advocates, no matter which side they represent, view the need for more female and minority arbitrators differently from nonwhite advocates. Far more white union advocates (51.7%) expressed agreement with this statement than management advocates (23.7%), and far more white management advocates (43.0%) expressed disagreement with this statement than white union advocates (24.1%). Additionally, one third of white management selectors could not make a judgment on this statement, and 24.2 percent of white union advocates could not.

It appears, therefore, that while the Academy Special Committee believes there should be more female and minority arbitrators, most advocates who actually select arbitrators do not share this perception. The data do not mean that the Academy Special Committee was in any way "wrong" to seek this goal of altering the composition and complexion of the arbitration profession. However, it is clear that a vast majority of those who select arbitrators do not support this goal. The true base of selector support for this project is comprised of those from the very groups of advocates the Academy Special Committee had targeted.

Advocates' Selection Preferences and Opinions

The research clearly supports the proposition that the selection of arbitrators and the opinions of advocate selectors are the

product of who those selectors are. For example, consider selector responses (Table 5) to a statement about a shortage of new acceptable arbitrators. (In the questionnaire, a new arbitrator was defined as "one with less than five years' experience arbitrating.")

In summary both groups of advocates agree that there is a shortage of new, acceptable arbitrators. While union representatives would like to see more female and minority arbitrators, management advocates do not agree. Many management representatives and a number of union representatives would like to see more white male arbitrators who are acceptable. This recurrent theme—that one seeks in an arbitrator the very qualities one possesses—is reinforced when the qualification of a law degree is examined (Table 6).

Influence of a Law Degree

Almost 10 percent more management than union advocates have law degrees, not surprising in itself since greater financial resources enable management to hire lawyers (Table 6). However, the process is not dominated by attorneys. Even management, which had more representatives with law degrees, did not have a majority of its representatives in that category. Only about a third of management advocates had a law degree, and only about a quarter of union advocates did. Viewed from another perspective, in aggregate about 70 percent of all advocates are not lawyers. This may indicate that the process of labor-

Table 5. Advocates' Responses to Statements About Shortage of New, Acceptable Arbitrators

	Union Advocates		Management Advocates	
	Number	Percent	Number	Percent
Strongly agree and agree	131	83.4	125	79.6
Slightly disagree and strongly disagree	26	16.6	32	20.4
Total	157	100.0	157	100.0

Table 6. Advocates and Law Degrees

	All Advocates		Union		Management	
	Number	Percent	Number	Percent	Number	Percent
Have law degree	108	30.2	44	25.6	64	34.4
Do not have law degree	250	69.8	128	74.4	122	65.6
Total	358	100.0	172	100.0	186	100.0

management arbitration is not unduly legalistic and may retain its informal quality, one of the strengths of the process.

A majority of respondents on both sides noted that their preference for an arbitrator with a law degree is dependent upon either the nature of the case or the individual arbitrator. As other sections of this study indicated, advocates tend to alter their choices of arbitrators for different cases (for example, a discharge and subcontracting dispute).

Of those expressing a preference, 28.9 percent of management respondents preferred a law degree, but only 15.6 percent of union advocates expressed such preference. The total for all respondents was 22.5 percent. Thus, management representatives exhibited a greater preference for arbitrators who possess law degrees than union representatives.

It might be argued that the reason more management than union advocates prefer an arbitrator with a law degree is that more management representatives themselves possess law degrees. To examine that possibility, cross-tabulations were run between the preference for an arbitrator with a law degree and whether the respondent possessed a law degree. The null hypothesis was that all advocates viewed this question the same, that is, there were no differences between the way lawyers and nonlawyers viewed an arbitrator with a law degree. The research hypothesis was that the two groups were different. The results were tested at the .01 level of significance.

In the aggregate of the 108 respondents who possessed a law degree, 50 (46.3%) preferred an arbitrator with a law degree. Of the 250 respondents who did not possess a law degree, 31 (12.4%) preferred an arbitrator with a law degree.

These figures indicate that those advocates who had a law degree viewed the question differently from those who did not. The high chi-square score means that the results are significant at the .01 level. This, in turn, suggests that when we reject the null hypothesis and accept the research hypothesis, there is very low probability of error. Stated simply, we can conclude with little probability of error that the preference for an arbitrator with a law degree is markedly stronger on the part of those advocates with law degrees.

When the data for each side were analyzed separately, the same conclusions held. No management representative who possessed a law degree preferred an arbitrator without a law degree and, of those management advocates who lacked a law degree, nearly twice as many preferred an arbitrator with a law degree to an arbitrator without one.

Sixty-four (34.4%) management respondents reported possessing a law degree and, of this group, 33 (51.6%) preferred an arbitrator with a law degree. Twenty (15.6%) of the 128 union advocates who did not possess a law degree preferred an arbitrator without a law degree, but only 9 percent of the management advocates who did not possess a law degree preferred an arbitrator without a law degree. Therefore, for both labor and management advocates, we rejected the null hypothesis and accepted the research hypothesis that those advocates who have a law degree are different from those advocates who do not have a law degree.

It appears that both union and management advocates operate under the same inclination in arbitrator selection for this characteristic. There appears to be a relationship here. For example, if a selector has a law degree, it is highly likely that an arbitrator with a law degree will be sought. Conversely, those selectors lacking a law degree did not exhibit a marked preference for arbitrators with law degrees, and a number of this group recorded a preference for arbitrators without a law degree.

In summary, it appears that while as a group management advocates exhibit a greater preference for arbitrators who have a law degree, the greatest predictor of preference in this regard is whether the selector has a law degree.

Conclusion About Demographics

One inescapable conclusion from the research is that who the selector is has a great impact upon who the selectee will be, as

well as the opinions held. While this may not represent a startling conclusion, this study is the first methodologically valid statistical analysis of the subject, and that *is* startling. As an arbitrator and an academician, I hope it is not the last.

A Note About NAA Membership and Arbitrator Acceptability

The main thrust of the research study was to explore whether there were objective characteristics which influenced arbitrator acceptability, and if so, what they were. Pre-arbitration background of an arbitrator was overwhelmingly the most important characteristic for both labor and management representatives for discipline as well as contract-interpretation cases.

This is not the place to examine all the findings, but it is appropriate to discuss the characteristic of NAA membership. The 11 characteristics advocates ranked in order of importance for their most and least preferred selections for both types of cases were (in order of questionnaire presentation):

1. years arbitrating
2. per diem fee
3. National Academy of Arbitrators membership
4. number of awards issued
5. law degree
6. advanced degree
7. pre-arbitration background
8. status as full-time arbitrator
9. age
10. waiting period for first available hearing date
11. timeliness in issuing awards

One outcome not anticipated was the consistently low ranking given the characteristic of NAA membership. It might have been assumed that membership in this prestigious organization would be highly valued by advocates as a key indicia of competence, neutrality, and broad acceptability. However, the opposite occurred. In every ranking involving the discharge case, NAA membership was last (or tied for last). For the subcontracting case, NAA membership was last (or tied for last) among every group except for management respondents in ranking characteristics for their first choice of an arbitrator, when it placed in a tie for the next to last place with a percentage of 1.2.

Table 7 represents the frequency, percentage, and ranking of respondents identifying membership in NAA as the most important characteristic for their choice of an arbitrator.

This pattern of low rankings for NAA membership by all groups may be explained by two related characteristics, the number of awards issued and years arbitrating. As a general rule, admission to membership in the Academy requires a minimum of five years' experience as an arbitrator and the issuance of at least 50 awards. It is likely that advocates considered these two criteria and concluded that these characteristics were more relevant or more important than NAA membership.

Clearly years arbitrating was of greater importance to advocates than the number of awards issued. One may hypothesize that the number of years an arbitrator has been hearing cases gives seasoning, maturity, and experience, all valuable attributes for an adjudicator of disputes. Yet age of an arbitrator in itself was not considered important. Thus, age was not relevant, but the number of years spent arbitrating was highly relevant. The obvious conclusion seems to be that the mere fact of NAA

Table 7. Ranking NAA Membership

Selection of Arbitrator as:	Group	Frequency	Percent	Rank
First choice for discharge case	All respondents	3	0.9	11
	Union	1	0.6	11 (tie)
	Management	2	1.2	11 (tie)
Last choice for discharge case	All respondents	1	0.3	11
	Union	0	0.0	11
	Management	1	0.6	11
First choice for subcontracting case	All respondents	3	0.9	11
	Union	1	0.1	11
	Management	2	1.2	10 (tie)
Last choice for subcontracting case	All respondents	3	0.1	11 (tie)
	Union	2	1.4	11
	Management	1	0.6	11 (tie)

membership is not nearly as important as the characteristics that contribute to eligibility for membership.

While it may be the height of folly to stand before this august group and report that membership does not markedly affect acceptability as an arbitrator, I do not interpret the findings as negative. What the research reveals is that advocates closely scrutinize biographical data about each arbitrator and go beyond the "sizzle" or appearance of NAA membership to examine the "steak" or the substance of an arbitrator's qualifications and background. It may be that when advocates limit consideration of arbitrators to NAA membership, as they often do, they are simply using a shorthand for the qualifications they seek. When they have the time and the opportunity, they look beyond the brand name and closely examine the individual.

In closing, I welcome the opportunity at another time to explore at length with this group additional findings about the characteristics influencing arbitrator acceptability.

Comment—

GEORGE R. FLEISCHLI*

I will make only a few observations, some of which are perhaps in the nature of "nit-picking" because they focus on the choice of words used rather than substantive content. Otherwise, most of my comments are positive in nature, and it is perhaps appropriate that I begin with these.

Important points are made to the effect that female and minority advocates, as a group, apparently view the question of the need for more female and minority arbitrators differently than do their male and majority counterparts. These results are not particularly surprising, given our everyday observations of human behavior, but this is often the case in social science. Objective studies do not in all cases validate opinions based upon personal observation, and this research supplies important information for use in assessing the appropriate role of the Academy in training new arbitrators.

What is surprising about the study is the candor of the respondents. It is reasonable to assume that respondents were tempted to give the answer they deemed politically or socially

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"correct," and it is therefore quite possible that the viewpoint reflected in the responses is understated. In short, I think the paper makes an important contribution by providing objective evidence to challenge and support some of the assumptions made about the "need for more arbitrators."

From the results of the 1986 Academy Census Report, it is quite clear that there is no numerical shortage of arbitrators in relation to the available caseload. Instead, as we have all suspected for some time, complaints from the parties concerning an alleged shortage of arbitrators often refer to the paucity of arbitrators who live nearby and are not particularly busy in spite of their high acceptability to both sides. We also learned, what we already knew, that there are far too few female and minority arbitrators in relation to the general population or, more importantly, the population we serve. Ironically, this study helps to justify training programs which focus more on affirmative action rather than the assumption that there is a shortage of arbitrators generally.

In the category of "nit-picking," I question the wording of statements to the effect that "race determines response." While race appears to affect many responses, a substantial percentage of white male advocates agreed with the need for more female and minority arbitrators.

I also question the accuracy of the statement that "the vast majority of those who select arbitrators do not support" the Academy's goal of increasing the number of female and minority arbitrators. First, in order to reach this conclusion, it is necessary to combine the responses that expressed no opinion on the subject with those that believed there was no need to increase the number of female and minority arbitrators. Second, it is possible that many of these nonrespondents and negative respondents attach singular importance to matters affecting competence and consider sex and minority status—as they should be—irrelevant for that purpose. Holding this view, it is still possible to support the Academy's position on training programs.

For similar reasons I question the fairness of the statement that "many" management advocates and "some" union advocates would like to see more white male arbitrators who are acceptable. The attitude reflected on the part of many of these respondents may simply be a short-sighted desire to see more acceptable arbitrators, without regard to the separate but impor-

tant question of whether a larger percentage should be female or minority.

The study makes reference to the fact that it is a "consumer's report." While it is the advocates, as defined in the paper, who select arbitrators, the ultimate consumers of the process are the employees on whose behalf collective bargaining agreements are negotiated. While management and union representatives have the greatest immediate concern with the arbitration process, the long-term viability of arbitration may depend on the perception of those upon whom it has the greatest personal impact. A large and growing percentage of the employees covered by the agreements that we interpret and enforce are female and minority. In collective bargaining relations, perceptions are frequently more important than reality, and the perception of these female and minority employees is understandably skeptical of the fairness of a system which is dominated by advocates and arbitrators who are seldom female or minority.

The 1986 Census Report establishes that probably not one member of this Academy is identifiably Hispanic and that less than one percent of all arbitrators are Hispanic. Think about the impact that fact must have on the perception of Hispanic employees, who must rely on the integrity of the process we help to administer. I may be naive in my belief, but I honestly hold to the view that there would be no significant difference in outcomes if the sex and minority makeup of the universe of available and active labor arbitrators from which the parties choose more closely approximated the general population or, better yet, the population we serve. However, it would go a long way to increase the perceived fairness of the arbitration process among females or minorities, notwithstanding the somewhat disturbing results of this study.