

SPECIALIZATION ALL AROUND: GENERALIST COURTS, SPECIALIST JUDGES

Jonathan B. Petkun* & Jonathan M. Seymour†

Federal courts and Article III judges are famously “generalist,” in the sense that each does a bit of everything. Article III of the Constitution recognizes a broad sweep of the “judicial power,” and aside from establishing district and circuit boundaries and a handful of formally specialized forums, Congress has done little to parcel it out. Upon closer inspection, however, exceptions to the rule quickly pile up.

This Article takes comprehensive stock of departures from what might best be described as the pretense of a generalist federal judiciary. Its first contribution is to identify and provide the first comprehensive survey of what might be called “informal” or “hidden” specialization—the de facto specialization that occurs, for example, when court of appeals judges parcel out opinion assignments to match the background and expertise of the author, or when district judges rely on non-judge staff attorneys for proposed rulings in all prisoner litigation matters. Informally specialized arrangements are not authorized by Congress nor are they always officially endorsed by court rules, but they pervade and channel the work of the modern federal judiciary.

The Article next offers a general taxonomy of federal judicial specialization that cuts across the categories of formal and informal and organizes the key dimensions of heterogeneity. Specialized arrangements can result in both adjudicator specialization—that is, the channeling of a judge’s time and attention—and centralized adjudication—that is, the funneling of certain subject matters to a limited set of forums. Specialization can occur at both the trial- and appellate-levels. It can emerge from a variety of formal sources of authority and through a variety of informal causal pathways. It can also mark varying degrees of departure from the “generalist” ideal.

* Associate Professor, Duke Law School.

† Associate Professor, Duke Law School. We thank Emilie Aguirre, Robert Bishop, Meghan Brooks, Ryan Doerfler, Michael Francus, John Giammatteo, Alex Gouzoules, Paul Gugliuzza, Andrew Hammond, Tim Holbrook, Nicole Langston, Maria Maciá, David Marcus, Bruce Markell, Luke Norris, Ashlee Paxton-Turner, Portia Pedro, Judith Resnik, Mara Revkin, Bailey Sanders, Joe Schottenfeld, Amy Semet, Bijal Shah, James Stone for comments and suggestions. We also thank participants in the Bolch Judicial Administration & Judicial Process Roundtable, the 11th Annual Civil Procedure Workshop, the workshop on Mass Adjudication in a Changing Administrative State at the Baldy Center for Law and Social Policy at the University at Buffalo, the Duke Law Faculty Scholarship Retreat, and the Duke Law Junior Scholars Workshop for helpful comments and feedback. We are grateful to Dylan Ek, Andrew Graziano, and Jack Townsend for valuable research assistance.

By taxonomizing federal judicial specialization and illuminating its frequent informality, the Article brings new clarity to long-running debates over the future of a generalist federal judiciary. The existing normative debate is importantly incomplete because it has focused almost entirely on formal specialization, leaving the numerous and consequential instances of informal specialization largely unexamined. And informality is something of a double-edged sword. It facilitates valuable judicial experimentation and adaptation, but it also amplifies many of specialization’s most familiar risks—including bias, capture, and doctrinal drift—and generates distinctive hazards of its own. These include what we call the “authoritativeness” problem—an absence of the kinds of authoritative institutional grounding, transparency, and accountability mechanisms that the system-wide consequences of informal specialization would seem to require—as well as the “fidelity” problem, which we use to describe the inherent tensions between informally specialized judging and traditional notions of the judicial role. Finally, informal specialization interacts with the insular cultures of specialized legal communities in ways that further amplify its hazards and resist correction from the outside.

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INTRODUCTION

For more than 20 years, the leading student-edited journal dedicated to bankruptcy law¹ has recognized “honored giants in the field of insolvency and restructuring” with its Distinguished Service Award for Lifetime Achievement.² Past recipients have included professors of bankruptcy law, politicians, bankruptcy practitioners, and several retired bankruptcy judges. In 2024, however, the award went to Senior Judge Thomas L. Ambro of the U.S. Court of Appeals for the Third Circuit—a “generalist” judge on a “generalist” court. To be sure, Judge Ambro was a leading practitioner in bankruptcy long before he took the bench, where he has written notable opinions on matters ranging from the legal effect of federal³ Sentencing Guidelines⁴ to the boundaries of⁵ Free Exercise.⁶ There is little doubt, however, that Judge Ambro’s status as an “honored giant” of bankruptcy reflects in no small part his continued contributions to the field as a sitting circuit judge, including his authorship of more than 70 bankruptcy related opinions over 25 years of judicial service (nearly double any other⁷ circuit judge during that same period).⁸

Judge Ambro’s career notwithstanding, the federal judiciary—both the judges and the courts they comprise—is commonly understood to be a generalist institution. And to be sure, that understanding is rooted in reality: Article III of the Constitution recognizes a broad sweep for *the* “judicial power,” and at first blush, Congress has done little to parcel it out. Congress gives us judicial districts and circuits with geographic boundaries, but as long as federal subject matter jurisdiction attaches and proper venue lies, just about any matter could end up before just about any federal district judge, perhaps later reviewed by a more-or-less randomly⁹ selected panel of circuit judges.

¹ Z. Arima, *Introduction: A Tribute to the Honorable Thomas L. Ambro*, 40 EMORY BANKR. DEV. J. 393 (2024).

² *United States v. Gunter*, 462 F.3d 237 (3d Cir. 2006) (laying out three-step sentencing procedure in first appellate court decision following *United States v. Booker*, 543 U.S. 220 (2005)).

³ *Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly*, 309 F.3d 144 (3d Cir. 2002) (affirming preliminary injunction granted to Orthodox Jews seeking exception to ordinance prohibiting placement of signage or other items on utility poles).

⁵ Authors’ calculations from Westlaw queries using Key Number 51 (“Bankruptcy”).

⁶ *But see* Adam S. Chilton & Marin K. Levy, *Challenging the Randomness of Panel Assignment in the Federal Courts of Appeals*, 101 CORNELL L. REV. 1 (2015) (finding evidence of non-randomness in federal appellate panel assignments). As we discuss in Part III *infra*, interjudge transfers and “related case” rules may also generate non-randomness in district judge assignments.

If the whole of the federal judicial power is left largely intact, then the following corollary is also mostly true: every Article III judge does a bit of this, a bit of that, a little bit of everything.

Upon closer inspection, however, exceptions to the rule quickly pile up. It has been nearly forty-five years since Congress authorized the U.S. Court of Appeals for the Federal Circuit⁷ with its exclusive “hodge-podge” jurisdiction,⁸ and while Judge Ambro is arguably one of a kind, his expertise in bankruptcy is easily rivaled by the more than 300 bankruptcy judges appointed to U.S. Bankruptcy Courts throughout the nation.⁹ What, then, can be said about the state of federal judicial generalism as a whole?

This Article takes stock of and taxonomizes departures from the pretense of a generalist federal judiciary. Put in more positive terms, it inventories and categorizes instances of federal judicial specialization. In doing so, we denaturalize the federal judiciary, holding up for inspection a feature of our courts not commonly recognized, and opening to evaluation and contestation of what is ordinarily thought of simply as the way federal courts work. We are by no means the first to observe a disconnect between the rhetoric of generalism and the reality of specialization in the modern federal judiciary. But to the extent prior scholarship has debunked or at least qualified the “myth” of the generalist federal judge, such accounts have focused primarily on formal instances of specialization like the U.S. Court of Appeals for the Federal Circuit, the U.S. Bankruptcy Courts, or the Foreign Intelligence Surveillance Court.¹⁰ A smaller body of work has identified discrete instances of what might be called “informal” or “hidden” specialization—for example, arising from non-random opinion assignments in the U.S. Courts of Appeals¹¹—but such accounts tend to be partial and siloed.

⁷ Federal Courts Improvement Act of 1982, Pub. L. 97-164, 96 Stat. 50 (codified at 28 U.S.C. § 41 *et seq.*).

⁸ See, e.g., Diane P. Wood, *Is It Time to Abolish the Federal Circuit’s Exclusive Jurisdiction in Patent Cases?*, 13 CHI.-KENT J. INTELL. PROP. 1, 2 (2013) (discussing the Federal Circuit’s exclusive jurisdiction over a “hodgepodge” of case types).

⁹ See *Status of Bankruptcy Judgeships—Judicial Business 2024*, U.S. Courts, (Sep. 30, 2024) <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/status-bankruptcy-judgeships-judicial-business-2024>.

¹⁰ See, e.g., LAWRENCE BAUM, *SPECIALIZING THE COURTS* (2011).

¹¹ See Edward Cheng, *The Myth of the Generalist Judge*, 61 STAN. L. REV. 519, 533–40 (2008) (documenting evidence of non-random opinion assignment in all 12 geographic circuits); see also Melissa Wasserman & Jonathan Slack, *Can There Be Too Much Specialization? Specialization in Specialized Courts*, 115 NW. U. L. REV. 1405, 1434 (2021) (documenting evidence of “opinion specialization” in the already specialized Federal Circuit).

Relative to the existing literature, this Article makes two primary descriptive contributions. First is the sustained and systematic attention it gives to the phenomenon of informal or hidden specialization. Judge Ambro offers one model—that of the district or circuit judge who, through their interests and prior work experience, develops a more or less organic judicial specialty. A less extreme but far more common example is the senior district or circuit judge. While random assignment procedures in the district and circuit courts put a heavy thumb on the scale of generalism as long as a judge remains active, senior status allows both trial and appellate judges to focus their judicial practice, sometimes leading to senior judges opting out of prominent case types entirely. Or consider the MDL judge. Even among the rarified ranks of the Article III federal judiciary, MDL judges are an “elite club”;¹² membership in the club allows these judges to specialize in a particular form of complex civil litigation, replete with its own specialized procedures.¹³ By gathering these and other examples, we offer the first sustained account of “informal” specialization in the modern federal judiciary.

Our second primary descriptive contribution is taxonomic. Here, we start from the premise that *how* judges specialize matters just as much as whether they specialize. For practical purposes, the Waco Division of the Western District of Texas stood for some years as a specialized patent tribunal,¹⁴ like a trial-level version of the Federal Circuit. But surely it matters, for reasons both descriptive and normative, that one existed as a natural outgrowth of litigant and judicial preference and practice, whereas the other existed by formal Congressional enactment. Beyond the formal versus informal distinction, we organize instances of judicial specialization along a variety of analytically meaningful dimensions.

Our goal is not taxonomy for its own sake. Rather, by disaggregating and organizing instances of judicial specialization, we aim to bring new clarity to long-running normative debates.¹⁵ For its proponents—including many with Article III commissions of their own—generalism is not just a feature of the federal judiciary but also a near-sacred institutional virtue. Per

¹² Zachary D. Clopton & Andrew D. Bradt, *Party Preferences in Multidistrict Litigation*, 107 CALIF. L. REV. 1713, 42 (2019).

¹³ See Merritt E. McAlister, *White-Collar Courts*, 76 VAND. L. REV. 1155, 1192-1193 (2023).

¹⁴ J. Jonas Anderson & Paul R. Gugliuzza, *Federal Judge Seeks Patent Cases*, 71 DUKE L. J. 419, 421 (2021).

¹⁵ See, e.g., Rochelle Cooper Dreyfuss, *Specialized Adjudication*, 1990 BYU L. REV. 377 (1990); Diane P. Wood, *Generalist Judges in a Specialized World*, 50 SMUL REV. 1755 (1997); Lawrence Baum, *Probing the Effects of Judicial Specialization*, 58 DUKE L. J. 1667 (2009) (hereinafter Baum, *Probing the Effects*); Chad M. Oldfather, *Judging, Expertise, and the Rule of Law*, 89 WASH. U. L. REV. 847 (2012).

its defenders: Generalist judges are less susceptible than specialists to the dangers of regulatory capture;¹⁶ generalist judges are less technocratic and less prone to obscuring the human impacts of their rulings in bloodless technical jargon;¹⁷ generalism facilitates the “cross-fertilization” of legal ideas, promoting coherence in the law.¹⁸ The list goes on.

Just as vocal are the proponents of specialization, and if recent decades are any indication, they may have the wind at their backs. Compared to the high-minded arguments offered in favor of generalism, arguments in favor of specialization are more frequently rooted in “neutral” process values like decisional quality, efficiency, and uniformity of the law.¹⁹

Largely missing from these debates, however, has been an appreciation for the nuanced reality of modern judicial specialization. Specialization must not be understood, we argue, as a binary departure from a uniform generalist baseline. Rather, “specialization” is better understood as a category of convenience, an umbrella term for a heterogeneous set of institutional arrangements and behavioral patterns, each with their own set of normative implications. Understood this way, it becomes possible to ask more precise questions about when specialization is likely to be beneficial, when it might be harmful, and when it might stand somewhere in between. It also puts into relief the distinctive and underappreciated hazards that arise when specialization emerges informally rather than through deliberate and authoritative acts of institutional design.

Part I defines what we mean by the “pretense” of generalism in the federal judiciary and traces its origins. The next two sections embody the article’s core descriptive contribution, which is a comprehensive taxonomy of the instances of “specialization” in the federal judiciary. Part II begins this taxonomy with *formal* departures from generalism—that is, instances in which Congress or the courts themselves have explicitly channeled some part of the federal judicial power into a particular forum, or where Congress or the courts have explicitly designated a federal judicial actor as a subject matter specialist. Part III extends the taxonomy to *informal* or “hidden” instances of specialization. Such instances might arise from litigant or judge preference or behavior, or else as the collateral consequence of ostensibly generalist institutional arrangements. Throughout Part II and III we layer the formal versus informal distinction with additional cross-cutting dimensions of heterogeneity. Part IV wades into normative waters. After summarizing the existing debate over judicial specialization writ large, we develop what we regard as its most significant gap: the distinctive problems that arise when

¹⁶ See, e.g., Wood, *supra* note 15, at 1767.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See, e.g., Dreyfuss, *supra* note 15; Oldfather, *supra* note 15, at 854–57.

specialization emerges informally. We argue that informal specialization enables valuable institutional experimentation while simultaneously amplifying familiar risks and generating a few of its own. These include problems of authoritativeness, fidelity to the judicial role, and the underappreciated role of legal culture in determining whether specialization succeeds or fails.

I. WHY THE “MYTH” OF THE GENERALIST FEDERAL JUDGE?

American legal scholars, commentators, and litigators operate with a basic assumption that federal judges are, on the whole, generalists. There are exceptions—any writer on the federal courts will readily acknowledge the judges of the Federal Circuit or the Court of International Trade function differently, as subject-matter specialists.²⁰ Nonetheless, American legal culture shares a foundational image of the line federal district court, court of appeals judge, or Supreme Court justice as a generalist: a judge that takes matters as they are assigned to her from the wheel by the clerk of the court and thus spends her time deciding legal issues or all kinds, without the need or ability to build a specialization.

Evidence of this foundational assumption of American legal culture is not hard to come by. Prominent federal judges have extolled the virtues of generalism. In a much-remarked-on speech, Judge Diane Wood characterized “the remarkable diversity of cases” that judges hear as a defining hallmark of the federal judicial system—something, indeed, that might “stagger[]” judges from foreign jurisdictions.²¹ Her conclusion, though, was firm: “we need generalist judges more than ever for the United States federal courts.”²² Likewise, Judge Deanell Reece Tacha, while serving on the Tenth Circuit Court of Appeals, explained that “I like the fact that federal judges are generalists. I often say that judges may be the last generalists left in professional life, and I have resisted mightily any suggestion that the federal courts become specialized in any particular area.”²³ And they are far from the only federal judges to present themselves generalists—rather, that self-identification has spanned that gamut from some of the most senior members

²⁰ Richard Revesz, *Specialized Courts and the Administrative Lawmaking System*, 138 U. PA. L. REV. 1111, 1111 (1990).

²¹ Hon. Diane Wood, *Generalist Judges in a Specialized World*, 50 SMU LAW. REV. 1755, 1755–56 (1997).

²² *Id.* at 1756.

²³ Howard Bashman, *20 Questions for Chief Judge Deanell Reece Tacha of the U.S. Court of Appeals for the Tenth Circuit*, HOW APPEALING (Jan. 5, 2004), https://howappealing.abovethelaw.com/20q/2004_01_01_20q-appellateblog_archive/; see also Hon. Deanell Reece Tacha, *The Federal Courts in the 21st Century*, 2 CHAPMAN L. REV. 7, 15 (1999) (“Appropriately, the federal courts have been courts of generalist judges. I firmly believe they should remain so.”).

of the federal judiciary to “line” district court judges, many of whom, indeed, are “damn proud of it.”²⁴

Scholars agree. Richard Revesz’s study of the impact of those outliers within the federal judiciary that are acknowledged and dedicated specialists sets out as its first analytical step the claim that the “[t]he federal judiciary at the Article III level is predominantly generalist.”²⁵ Even those scholars that have challenged the notion of federal judicial generalism—as we will later in this Article—acknowledge the “iconic status” of the generalist judge in American legal culture, suggesting that even insofar as it amounts to “posturing” it remains an “obsession” of judges.²⁶

Indeed, some facets of American federal adjudication’s structural commitment to generalism may be so foundational as almost to pass without notice. At least some element of commitment to generalism is reflected in the Article III’s Framers’ basic decision to vest the federal judicial power into one single supreme Court charged with hearing disputes concerning any aspect of federal law rather than, as a couple of states and many foreign jurisdictions have elected to do, establishing multiple different courts of last resort that specialize in different areas.²⁷ In that sense, one might say that the

²⁴ See Hon. Bruce Selya, *Arbitration Unbound?: The Legacy of McMahon*, 62 BROOKLYN L. REV. 1433, 1445 (1996); see also Edward Cheng, *The Myth of the Generalist Federal Judge*, 61 STAN. L. REV. 519, 520-21 & n.2 (2008) (collecting a broad array of comments from judges); see also, e.g., JAKE KOBRICK & DANIEL S. HOLT, DEBATES ON THE FEDERAL JUDICIARY: A DOCUMENTARY HISTORY, VOLUME III: 1939–2005 101–02 (FED. JUD. CTR. 2018) (recording comments of Judge John Paul Stevens that “it would be a mistake to turn to specialization); Hon. Jack Weinstein, *The Roles of a Federal District Court Judge*, 76 BROOKLYN L. REV. 439, 440 (2011) (“Assignment by type of case is not desirable because it ignores the Article III judge’s strength as a generalist in the law.”); Steve Lohr, *The Judge Deciding Google’s Fate*, N.Y. TIMES (May 2, 2024), <https://www.nytimes.com/2024/05/02/business/amit-mehta-google-antitrust.html> (“He presents himself as a ‘generalist federal judge.’”) (profiling Judge Amit Mehta of the D.D.C.).

²⁵ Revesz, *supra* note 20, at 1111.

²⁶ Cf. Cheng, *supra* note 11, at 521, 524, 562; see also Wasserman & Slack, *supra* note 11, at 1407 (“The dominant image of a judge in the United States, especially a federal judge, is that of a generalist.”).

²⁷ U.S. CONST. art. III, § 1. Texas and Oklahoma each have a Court of Criminal Appeals that is the court of last resort for appeals from any criminal matter in addition to their “ordinary” state supreme court that hears all other final appeals. See, e.g., Brent Hanson, *Judicial Hot Potato*, 12 TENN J. L. & POL. 151, 164–65 (2018). Many European countries have a supreme constitutional court separate from the supreme court that hears regular civil and criminal appeals. See French Constitution of 1958 arts. 61–1, 62, 65; Italian Constitution, arts. 102, 103; Polish Constitution arts. 183, 188; see also S. Afr. Const. §§ 167–169; see generally Alec Stone Sweet, *Constitutional Courts*, in THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 830 n.4 (Michel Rosenfeld & András Sajó eds., 2012). Germany has five coequal courts of last resort: supreme courts for ordinary

presumption of generalism is embedded in the American founding, its significance recognized by commentators like de Tocqueville, who contrasted it with the “repugnance” that any European government would feel in “allow[ing] the cases to which it was itself a party to be decided by the ordinary course of justice.”²⁸ The United States, unlike any contemporary European nation, “held that all judicial controversies, without regard to their origin, can be decided by the judges of common law.”²⁹ Hence Hamilton’s detailed catalog of the breadth of the federal judge’s responsibilities in Federalist No. 80.³⁰ And Judge Wood finds judicial generalism in the early years of the Republic to be a matter not just of theory but of practice, highlighting the variety of different cases that made up the docket of one district court, even before the federal courts acquired any kind of general federal question jurisdiction.³¹

At least to some extent, this commitment to generalism is a feature distinctive to the American federal judicial system. States more readily embrace courts of limited or specialized jurisdiction. The Delaware Court of Chancery and the New York Supreme Court’s Commercial Division have for decades provided specialized fora for the resolution of complex commercial disputes;³² more recently, states like Texas and Nevada have scrambled to create or develop their own competitor business courts.³³ Other states have specialized courts focused on particular types of property disputes, like Massachusetts’s Land Court or the Colorado Water Courts.³⁴ And many

civil and criminal matters; for administrative law; for tax law; for labor law; for social security law; and a federal constitutional court that hears and finally determines constitutional complaints. German Basic Law, Arts. 93, 95.

²⁸ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 223–24 (Henry Reeve trans., Saunders & Otley 1835); *see also id.* at 144–45 (emphasizing that it is the “ordinary tribunals” that “punish public offenses” and have the “right . . . of judging the agents of the executive government.”). <https://archive.org/details/democracy01tocq/page/144/mode/2up> (last visited Jan. 2, 2026).

²⁹ *Id.* at 224.

³⁰ THE FEDERALIST NO. 80, at 475, 479–481 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

³¹ Wood, *supra* note 15, at 1757–58; Jurisdiction and Removal Act, ch. 137, 18 Stat. 470 (1875); *cf.* 28 U.S.C. § 1331.

³² Wood, *supra* note 15, at 1763–64; Tyler Moorhead, *Business Courts: Their Advantages, Implementation Strategies, and Indiana’s Pursuit of Its Own*, 50 IND. L. REV. 397, 399 (2016); Oscar Chase & David Ferstendig, *Chief Judge Kaye: Improving the Pace and Integrity of Litigation*, 92 N.Y.U. L. REV. 11, 16–17 (2017).

³³ Jack Buckley DiSorbo, *A Primer on the Texas Business Court*, 76 BAYLOR L. REV. 360, 362 (2024); Kalin Sokell & Collin Weires, White Paper, *Business Law in the Ring: Nevada’s Rebel Rules versus Delaware’s Corporate Crown*, 9 NEVADA L.J. FORUM 1, 14–19, 39–44 (2025).

³⁴ Mass. Gen. Laws ch. 185, § 1 (describing jurisdiction of the Land Court); Hon. Gregory Hobbs, Jr., U. DENV. WATER L. REV. 1, 10 (1997).

states maintain dedicated courts or panels of judges for various categories of routine but high-volume litigation, whether related to family law, housing, probate, or minor criminal law cases.³⁵ State court judges decide many disputes and issues of vital importance; nonetheless, the diet of many of those judges exhibits nothing like the “stagger[ing]” breadth that Judge Wood associated with the federal judiciary.³⁶ As a basic rule of thumb, a federal judge is expected to be a generalist in a way that a state court judge may not be.

For all that, this Article calls the presumption of generalism for federal judges is only scantily recognized in case law. It is implicit in substance in the Supreme Court’s examination in cases like *Northern Pipeline* and *Stern v. Marshall* of the lines of demarcation between Article III courts and non-Article III adjudication.³⁷ First, *Northern Pipeline* teaches that Congress may establish specialized Article I tribunals, but such “‘specialized’ legislative courts” must be the exception; the mere fact that a dispute relates to a “specialized area” that Congress believes has a “particularized need” for a different mode of adjudication cannot by itself justify the removal of a whole category of disputes from the remit of Article III judges.³⁸ Rather, only disputes pertaining to “public” rather than “private” rights may be withdrawn from Article III courts to legislative or administrative adjudicators.³⁹ Second, in *Northern Pipeline* and *Stern v. Marshall*, the Court gave a remarkably broad construction of what is core to the Article III judicial power and thus non-withdrawable: all of the “stuff of the traditional actions at common law tried by the courts at Westminster in 1789.”⁴⁰ In other words, the Constitution not only presumes but to some extent *demand*s that the Article III judicial power be left intact. And since the

³⁵ See, e.g., Barbara A. Babb, *Reevaluating Where We Stand: A Comprehensive Survey of America’s Family Justice Systems*, 46 FAM. CT. REV. 230, 233 (2008); Jessica K. Steinberg, *Informal, Inquisitorial, and Accurate: An Empirical Look at Problem-Solving Housing Court*, 42 LAW & SOC. INQUIRY 1058, 1073 (2017); Sally Balch Hurme & Diane Robinson, *What’s Working in Guardianship Monitoring: Challenges and Best Practices*, 72 SYRACUSE L. REV. 291, 303 (2022); Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964, 974 (2021).

³⁶ Cf. Wood, *supra* note 15, at 1756 (acknowledging that “we are seeing some movement in our own state courts towards increasing judicial specialization.”); see also *id.* at 1763–64 (describing development of state business courts).

³⁷ *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982); *Stern v. Marshall*, 564 U.S. 462 (2011).

³⁸ *Northern Pipeline*, 458 U.S. at 72–73. The Court makes an exception for geographical areas with particularized needs, like the District of Columbia or the territories. *Id.* at 76.

³⁹ *Id.* at 67.

⁴⁰ *Stern*, 564 U.S. at 484 (quoting *Northern Pipeline*, 458 U.S. at 90 (Rehnquist, J., concurring)).

Constitution vests the whole judicial power in one Supreme Court,⁴¹ that Court must necessarily be generalist as a matter of constitutional principle; that lower courts are also generalist may not be required under the Constitution but is nonetheless a matter of long tradition.⁴²

Just as much, the shadow of the presumption of generalism is visible in debates over the interaction between Article III courts and administrative agencies. Justice Stevens's explanation of *Chevron* deference, for example, emphasized that "[j]udges are not experts in [any] field."⁴³ Forty years later in *Loper Bright*, the Supreme Court reversed itself entirely on the question of deference, but still relied implicitly on the model of the generalist judge. Justice Roberts pronounced federal judges indeed to be experts—in the “traditional tools of statutory interpretation,” which they were expected to apply across the board, regardless of whether a case involved a technical subject matter in which someone else might have more substantive expertise.⁴⁴ In this one sense, cases from *Northern Pipeline* to *Stern* and *Chevron* to *Loper Bright* all carry the same message: Article III judges resolve, assuming jurisdiction, every kind of lawsuit one could traditionally imagine a plaintiff bringing. They are generalists.⁴⁵

Giving an etiology of this presumption of generalism is a complex task. Although commentators debating, for example, the establishment of a specialized federal antitrust court today would hardly argue in such terms,⁴⁶ the analysis presented by de Tocqueville suggests links to the protection of individual liberty as against government intrusion: Americans, distinctively,

⁴¹ U.S. CONST. art. III, § 1, cl. 1.

⁴² See Judiciary Act of 1789, ch. 20, §§ 1–4, 1 Stat. 73, 73–75 (establishing generalist district and circuit courts separated only by geographic boundaries).

⁴³ *Chevron U.S.A., Inc. v. Nat. Resources Defense Council*, 467 U.S. 837, 865 (1984).

⁴⁴ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–02 (2024).

⁴⁵ Lower courts too make occasional reference to this foundational presumption of judicial generalism. Courts emphasize the importance of the exhaustion requirement before litigating complex Individuals with Disabilities Education Act in federal court because the technical subject matter gives a strong interest in agencies rather than generalist judges passing on most questions. *Student A v. San Fran. Unif. School Dist.*, 9 F. 4th 1079, 1083 (2021) (“Exhaustion is particularly important with respect to the IDEA because it deals with public education . . . We have recognized . . . the relevant expertise possessed by educational agencies as opposed to generalist judges.”) It also appears when judges invoke those deference doctrines that survive *Loper Bright*, as when a judge reviews the exercise of some authority that Congress has lawfully delegated to an agency. *City of L.A. v. U.S. Dept. of Transp.*, 165 F.3d 972, 977 (D.C. Cir. 1999) (“In reviewing the Department's order, we do not sit as a panel of referees on a professional economics journal, but as a panel of generalist judges obliged to defer to a reasonable judgment by an agency acting pursuant to congressionally delegated authority.”).

⁴⁶ See Part IV.A, *infra* (surveying landscape of normative arguments regarding judicial specialization).

had the right to sue any entity, including the government, in any ordinary court with jurisdiction over the dispute, rather than in a specialized court or tribunal for administrative matters that might show undue favoritism.⁴⁷ Other aspects of generalism's origin story may be more prosaic; the sparse judicial resources of the early Republic, and in particular, the expectation that judges riding circuit would move from place to place deciding whatever disputes they found along the way, all point to the development of a judiciary in which judges are expected to be jacks of all trades.

Whatever its origin, the presumption of generalism is today the subject of fierce contestation. Federal judicial generalism has its defenders. Virtually all of the commentary from judges discussed above endorses generalism; it is comparatively rare for a federal judge to call for specialists to relieve her of some aspect of her docket.⁴⁸ Generalism is thus said to promote independence; a judge who sees disputes of all types is less amenable to capture by a specific audience or interest group.⁴⁹ And it broadens perspective, allowing for intellectual cross-pollination and stopping a judge from becoming laser-focused on the perceived needs of one field of law at the expense of others.⁵⁰ And federal judicial generalism can also do implicit work; advocates and commentators may use it as a rhetorical shorthand for urging judicial humility and minimalism, emphasizing the incongruity of a “generalist federal judge” weighing in on complex and technical subjects.⁵¹

⁴⁷ *Supra* notes 28-30 and accompanying text.

⁴⁸ *But see, e.g.,* Hon. James Holderman, *The Patent Litigation Predicament in the United States*, 2007 J. L. TECH & POL. 1, 18 (suggesting that judges specialize at the trial level in patent cases); Hon. Schira Scheindlin, *Special masters are another category of ADR*, Commentary—Legal Industry, REUTERS (Sept. 15, 2021) (characterizing federal judges as generalists but calling for increased use of special masters to provide judges “the assistance of someone who has the expertise to assist the court”). Equally, for all that generalism is extolled, where existing practice *does* consign substantive areas of law to specialist judges, the generalists that purportedly supervise them may show little inclination to become deeply involved. *See, e.g.,* Jonathan Seymour, *Bankruptcy in Conflict*, 98 AM. BANKR. L.J. 561, 571-72 (2024); Melissa B. Jacoby, *Superdelegation and Gatekeeping in Bankruptcy Courts*, 87 TEMP. L. REV. 875, 875 & n.3 (2015) (quoting a district court judge as saying his colleagues “hate [bankruptcy], they don’t want anything to do with it.”).

⁴⁹ *See, e.g.,* Wood, *supra* note 15, at 1767.

⁵⁰ *Id.*; *see also* Seymour, *supra* note 48, at 572–73.

⁵¹ *See, e.g.,* Greer Donley & Rachel Sachs, *The stakes in the Texas abortion medication suit*, WASH. POST (Mar. 3, 2023) (commenting on incongruity of a “generalist federal judge” overruling FDA’s judgment on abortion medication); J. Howard Beales III & Timothy Muris, *Achieving Change at the Federal Trade Commission: Success and Failure*, CEI (May 6, 2024), <https://cei.org/studies/achieving-change-at-the-federal-trade-commission/> (criticizing the FTC for seeking rulings from “a generalist federal judge” without an administrative record from the FTC).

Yet generalism has its detractors too. It may be characterized as an “old fashioned” norm, ill-suited for the overloaded dockets of today’s federal courts in which efficiency is paramount.⁵² Judicial luminaries as progressive as Learned Hand⁵³ and as traditionalist in orientation as Justice Scalia have questioned the sustainability of the federal judiciary’s commitment to generalism, at least in absolute form.⁵⁴ Scholars in technical fields may call for judicial specialization as a tool for enhancing the accuracy of judicial decisions.⁵⁵ Most frequently, commentators focus on the potential for specialist federal trial courts;⁵⁶ yet others, though, propose cousin courts to the Federal Circuit that dedicate themselves to resolving appeals of some particular kind.⁵⁷ The normative debates proliferate. What is important is that all agree the choice between federal judicial generalism and specialization matters.

⁵² Revesz, *supra* note 20, at 1120.

⁵³ *Parke-Davis & Co. v. H.K. Mulford Co.*, 189 F. 95, 115 (C.C.S.D.N.Y. 1911) (Hand, J.), *aff’d in part, rev’d in part* 196 F. 496 (2d Cir. 1912) (“I cannot stop without calling attention to the extraordinary condition of the law which makes it possible for a man without any knowledge of even the rudiments of chemistry to pass upon such questions as these. The inordinate expense of time is the least of the resulting evils, for only a trained chemist is really capable of passing upon such facts[.] In Germany . . . they do quite differently. The court summons technical judges to whom technical questions are submitted and who can intelligently pass upon the issues without blindly groping among testimony upon matters wholly out of their ken. How long we shall continue to blunder along without the aid of unpartisan and authoritative scientific assistance in the administration of justice, no one knows; but all fair persons not conventionalized by provincial legal habits of mind ought, I should think, unite to effect some such advance.”).

⁵⁴ Revesz quotes remarks from Justice Scalia in which the Justice conceded that “it would be wonderful to give all federal litigants, and all cases, the benefit of an old-fashioned generalist federal judge,” but nonetheless argued that the best qualities of the “generalist” federal courts could be retained by diverting a substantial amount of business away from them to other, specialized courts. *Id.*

⁵⁵ See, e.g., Cheng, *supra* note 11; Matthew Fletcher, *Against Judicial Generalists*, 77 STAN. L. REV. ONLINE 101, (2025) (discussing the Supreme Court’s Indian law docket and observing that “[t]ribal advocates also have long suspected that federal judges’ relative lack of experience in Indian law issues results in bad decisions.”).

⁵⁶ See, e.g., Maria Maciá, *Learning in Antitrust and the Promise of Specialized Courts* (manuscript on file with authors); Makan Delrahim, Asst. Att’y Gen., Antitrust Div., U.S. Dep’t of Just., A Whole New World: An Antitrust Entreaty for a Digital Age (Jan. 19, 2021), <https://www.justice.gov/archives/opa/speech/assistant-attorney-general-makan-delrahim-delivers-final-address>; Comm. for the Study of Digit. Platforms, Mkt. Structure & Antitrust Subcomm., Report (Draft) (Stigler Ctr., Univ. of Chi. Booth Sch., May 15, 2019), <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/market-structure---report-as-of-15-may-2019.pdf>; cf. Douglas Ginsburg & Joshua Wright, *Antitrust Courts: Specialist versus Generalists*, 36 FORDHAM J. INT’L L. 788 (2012).

⁵⁷ See, e.g., Adam Levitin, Purdue’s *Poison Pill: The Breakdown of Chapter 11’s Checks and Balances*, 100 TEX. L. REV. 1079, 1152 (2022) (proposing a Federal Court of Bankruptcy Appeals).

The backdrop for this Article, then, is substantial normative contestation of what is all but universally presented as a basic and foundational feature of American federal judging. Previous scholars have identified discrete instances of departure from this foundation.⁵⁸ The broader and cross-cutting analysis that we undertake in this Article suggests that, viewed in the aggregate, drift away from the principle of federal judicial generalism is more than generally recognized. Perhaps more significantly, much of this drift is *silent*—not the product of open and deliberate choices by Congress or judicial conferences but driven by the choices of individual or ad hoc groups of litigants and judges. Indeed, for some actors doing the work of Article III judging, generalism is more a pretense than a presumption. And, in turn, we hope that showing this can bring new insights into the longstanding normative debates on this subject.

Analyzing the drift away from federal judicial generalism requires setting clear parameters. The central players in our analysis are Article III judges: those who exercise the judicial power of the United States, and who are the “iconic” actors in popular legal culture’s saga of federal judicial generalism. But it also makes sense to look further than Article III judges themselves. Here, the *Northern Pipeline* and *Stern* canon provides a helpful yardstick.⁵⁹ The Supreme Court in those cases—and any commentator on the judiciary—acknowledges that Article III judges delegate to adjuncts and receive assistance from many other actors. But there is something fundamental about the “stuff of the traditional actions at common law”⁶⁰—the kinds of actions that secure the right to an Article III judge in the first place—that means irrespective of such delegation, the buck stops with the Article III judge.⁶¹ We include in our analysis, therefore, all of those other actors that are doing the aforementioned “stuff” of Article III that ultimately falls within the preserve of the federal judiciary.⁶² That means our analysis, therefore and for example, extends to bankruptcy judges, even though they sit as Article I adjuncts to the district court and not as Article III judges

⁵⁸ See, e.g., Cheng, *supra* note 11; Wasserman & Slack, *supra* note 11.

⁵⁹ *Northern Pipeline*, 458 U.S. 50; *Stern*, 564 U.S. 462.

⁶⁰ *Stern*, 564 U.S. at 484 (quoting *Northern Pipeline*, 458 U.S. at 90 (Rehnquist, J., concurring)).

⁶¹ Hence the Supreme Court’s ultimate conclusion that, while bankruptcy judges might hear disputes related to traditional common law actions like fraudulent conveyance claims and recommend findings of fact and conclusions of law to a district court, entering final judgment, absent consent by the parties, is firmly the prerogative of the district court. *Stern*, 564 U.S. at 502; *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 37–40 (2014); *Wellness Intern. Network, Ltd. v. Sharif*, 575 U.S. 665, 683–85 (2015).

⁶² *Stern*, 564 U.S. at 484.

themselves.⁶³ We do not, though, not consider administrative judges like immigration or social security judges.⁶⁴

This choice is linked to our observation that the story (or myth) of federal judicial generalism has constitutional roots, and that at least part of its origin lies in the decision of the Framers to vest the judicial power of the United States, as a whole, in one Supreme Court. To the extent that this Article analyzes how far, since that time, Congress, the courts themselves, or other actors have divided up that judicial power into narrower parcels, at least in judicial institutions inferior to the Supreme Court, we believe it makes little sense to exclude delegations of the Article III judicial power to a non-Article III actor. Otherwise stated, a plaintiff in a common law claim filed in a bankruptcy court may see final judgment on her claim entered by a district court judge or (if the parties consent) by a bankruptcy judge.⁶⁵ Either way, as the Supreme Court’s Article III cases make clear, the judicial power is at issue.⁶⁶ Equally, because one of the ways that Article III judges may control the contents of their dockets is to make decisions about delegation to other actors, considering Article III delegees is necessary to secure a full understanding of how Article III judges themselves understand their perceived obligations to act as generalists.⁶⁷

We do, though, think there is something different about disputes that never find their way underneath the umbrella of the judicial power. There is no presumption or pretense that, for example, work that is the stuff of administrative agencies and committed to resolution by administrative law judges will be resolved by a broad-minded generalist.⁶⁸ Indirectly,

⁶³ *See id.*

⁶⁴ Stephen H. Legomsky, *Restructuring Immigration Adjudication*, 59 DUKE L. J. 1635, 1641–42 (2010); Christopher J. Walker & Melissa F. Wasserman, *The New World of Agency Adjudication*, 107 CALIF. L. REV. 141, 193 (2019).

⁶⁵ *Wellness*, 575 U.S. at 686.

⁶⁶ *Stern*, 564 U.S. at 484.

⁶⁷ We conceive of delegation broadly, encompassing institutions like the bankruptcy court and judicial actors like magistrate judges to whom Congress and the Article III courts delegate judicial power, but also non-judge actors within the judiciary, like staff attorneys or law clerks, to whom Article III judges may delegate decision-making power. *See* Part III.A., *infra*.

⁶⁸ Lawrence Baum makes similar choices to us in *SPECIALIZING THE COURTS*, *supra* note 10, including both Article III and Article I courts but omitting administrative adjudication where he argues that “subject-matter specialization is generally taken for granted.” *Id.* at 9. As this Part explains, we agree with Baum that there is no pretense of generalism within administrative agency adjudication. But we argue the same could be said of Article I courts, which Congress has generally authorized within the context of subject-matter specific legislation. It is likely telling, for example, that the Federal Circuit, the Court of International Trade, and bankruptcy courts are all authorized under Title 28 of the U.S.

Congress’s decision, for example, to channel social security claims to ALJs and veterans’ benefits claims to a combination of administrative officers and Article I judges affects what matters come before a line district court judge. But the intertwining is not so great as with, say, a bankruptcy judge who, at least as a matter of law, enjoys her jurisdiction at the pleasure of her colleagues in the district court.⁶⁹ Also importantly distinct about administrative adjudication is its relationship to the Executive; it would not be unusual or necessarily improper, for example, for a President to exert influence over ALJs or other agency adjudicators, so long they do so within the confines of all relevant statutes.⁷⁰ Article III judges and adjuncts, on the other, are by no means executive. We believe these distinctions are meaningful ones but nonetheless acknowledge that some might characterize them as formalistic. So too, though, is the backdrop of the Article III and separation of powers case law that governs how federal judges do their work.⁷¹

A brief definitional note: while the preceding section has used the terms “generalist” and “generalism” in an intentionally capacious fashion, the proceeding analysis is helped by a more deliberate working definition. For the purposes of this Article, an Article III tribunal is “specialized”—and consequently, *not* “generalist”—when its jurisdictional remit is substantially narrowed relative to the broad federal subject matter jurisdiction of line district and circuit courts, or when it possesses exclusive jurisdiction over discrete aspect of the federal judicial power as it is defined in Article III of the Constitution.⁷² Analogously, an Article III *judge* is specialized—and not a generalist—when their docket is similarly substantially narrowed, or when

Code, which addresses the “Judiciary and Judicial Procedure,” whereas the U.S. Tax Court, U.S. Court of Appeals for the Armed Forces, and U.S. Court of Appeals for Veterans Claims are all authorized in subject-matter-specific titles of the U.S. Codes.

⁶⁹ Cf. 28 U.S.C. § 1334 (granting original jurisdiction in bankruptcy cases to the district courts); 28 U.S.C. § 157(a) (establishing that district courts “may provide” for referral of bankruptcy cases to bankruptcy judges), (d) (providing that district court judges may withdraw the reference of a bankruptcy matter).

⁷⁰ See, e.g., *United States v. Arthrex, Inc.*, 594 U.S. 1, 23 (2021) (holding that adjudicatory decisions of executive officers must be subject to review a principle officer accountable to the President); see also Emily Bremer, *Presidential Adjudication*, 110 VA. L. REV. 1749, 1782–89 (2024).

⁷¹ In re *Tribune Media Co.*, 799 F.3d 272, 286 (3d Cir. 2015) (Ambro, J., concurring) (“If [our ruling] seems formalistic . . . that is because the Supreme Court’s separation-of-powers cases . . . are often formalistic.”).

⁷² That means, for example, that we need not conclude that lower U.S. courts were “specialized” prior to 1875 when Congress first conferred general federal question jurisdiction. See Act of Mar. 3, 1875, ch. 137, § 1, 18 Stat. 470 (codified as amended at 28 U.S.C. § 1331(a)); see also William M. Wiecek, *The Reconstruction of Federal Judicial Power, 1863–1875*, 13 AM. J. LEGAL HIST. 333, (1969).

they possess disproportionate dominion over a discrete area of cases falling within the broader federal judicial power. In describing the scope of this Article, we make one further clarification at this stage. As this Part has explained, commentators speak frequently—and often interchangeably—of the generalist federal *judge* and the generalist federal *judiciary*. To the extent that these are different things, we mean in this Article to address both: to consider how far federal judges as individual actors live up to the presumption or pretense of generalism, but also how far the federal judiciary, operating as an institution, embraces or draws back from those same generalist principles.

II. FORMAL INSTANCES OF SPECIALIZATION

What follows in Parts II and III is a taxonomy of judicial specialization as it currently occurs in the federal judiciary. To guide the reader, this Part begins with a brief outline of our proposed taxonomy. First, at the highest level of generality, we argue that all examples of federal judicial specialization can be sorted along a spectrum from “formal”—areas where Congress or another authority has formally conferred or withheld subject matter jurisdiction in a manner designed to achieve specialization—to “informal”—areas where a federal court or judge possessed of general jurisdiction nonetheless exercises that jurisdiction in manner that results in *de facto* specialization. “Formal” specialization is the subject of Part II and “informal” specialization the subject of Part III.

Beyond the formal vs. informal dichotomy, we propose four additional dimensions along which specialized federal judicial arrangements tend to vary. Namely: specialized arrangements can yield either “judge” or “case” concentration; they can occur at the trial or appellate; they can arise from a variety of causal forces; and, lastly, they can vary in degree, resulting in more or less of a departure from the generalist baseline. Of these four secondary dimensions, Part II discusses the first two in Part II, using examples of formal specialization as illustrations; Part III discusses the remaining two in Part III, illustrating with examples of informal specialization. Importantly, however, all four dimensions of heterogeneity cut across both formally and informally specialized arrangements.

* * *

With few exceptions,⁷³ existing accounts of specialization in the federal courts limit themselves to examples of what we call “formal”

⁷³ See, e.g., Cheng, *supra* note 11 (describing non-random opinion assignment in the Courts of Appeals as an example of specialization); Wasserman & Slack, *supra* note 11 (same).

specialization.⁷⁴ Formal specialization occurs when an authority—usually Congress—establishes a tribunal and either confers upon it limited subject matter jurisdiction *or* endows it with a zone of subject matter jurisdiction enjoyed by no or few other tribunals.

Almost all examples of formal specialization were accomplished by Congress. Although the first Judiciary Act of 1789 established only geographically-based line district and circuit courts,⁷⁵ it was not long before Congress began experimenting with specialist judges and specialized courts.⁷⁶ The earliest such court was the Court of Claims, which Congress created in 1855 for the purpose of streamlining the handling claims against the federal government and consequently alleviating Congress of the demand for private bills.⁷⁷

Congress has made repeated forays into judicial specialization in the years since. Administrative adjudications housed within Executive Branch agencies and “legislative courts” established by Congress under Article I are quite routinely specialized,⁷⁸ but at present, Congress also authorizes five specialized tribunals or sets of tribunals exercising Article III power⁷⁹: the U.S. Court of Appeals for the Federal Circuit,⁸⁰ the U.S. Court of

⁷⁴ See, e.g., Wood, *supra* note 15, at 1765 (identifying the Federal Circuit, the Court of International Trade, and the Foreign Intelligence Surveillance Court as the only then-current examples of “existing specialization” affecting Article III judges); BAUM, *supra* note 10 at 3, 13–15 (noting casually that line federal courts in the U.S. “feature some elements of specialization,” but otherwise focusing on the Federal Circuit, Court of International Trade, Foreign Intelligence Surveillance Court and Court of Review, and Bankruptcy Courts as sole Article III or Article III-adjunct examples of “current specialized courts in the federal judicial system”). Wood, Baum, and others also refer to various Article I tribunals as examples of federal judicial specialization, but for reasons discussed in Part I *infra*, we limit our focus to judges and courts exercising some degree of Article III power.

⁷⁵ Judiciary Act of 1789, ch. 20, §§ 1–4, 1 Stat. 73, 73–75.

⁷⁶ See Federal Courts Study Committee, Working Papers and Subcommittee Reports, Volume I, 6 (Mar. 12, 1990) (discussing history of specialized federal adjudication).

⁷⁷ See Act of Feb. 24, 1855, ch. 122, 10 Stat. 612; see also *Gidden Co. v. Zdanok*, 370 U.S. 530, 552 (1962) (discussing history of the Court of Claims). The constitutional status of the Court of Claims was long contested. The Supreme Court ruled in 1933 that the Court of Claims was created under Article I, *Williams v. United States*, 289 U.S. 553 (1933), but Congress legislatively overruled that decision in 1953, declaring the by-then-renamed U.S. Court of Claims to be an Article III court, 67 Stat. 226—which the Supreme Court subsequently upheld in *Gidden*, observing evidence from the legislative history that Congress had intended for it to be an Article III court all along.

⁷⁸ See generally William Baude, *Adjudication Outside Article III*, 133 HARV. L. REV. 1511 (2020).

⁷⁹ See Part I *supra* for explanation of this focus on Article III adjudication.

⁸⁰ Federal Courts Improvement Act of 1982, Pub. L. 97-164, 96 Stat. 50 (codified at 28 U.S.C. § 41 *et seq.*). The Federal Circuit was created from the merger of two prior Article III courts: the United States Court of Claims—itsself a descendent of the prior Court of Claims—and the United States Court of Customs and Patent Appeals.

International Trade (USCIT),⁸¹ the Foreign Intelligence Surveillance Court (FISC)⁸² and Foreign Intelligence Surveillance Court of Review (FISCR),⁸³ the U.S. Bankruptcy Courts,⁸⁴ and, arguably, the Alien Terrorist Removal Court (Removal Court).⁸⁵

Congress does not always accomplish formal judicial specialization by establishing a new and specialized tribunal; occasionally, Congress accomplishes specialization by means of forum-channeling statutes that allocate jurisdiction or venue in subject-matter-specific ways. In their strongest form, these provisions confer exclusive jurisdiction on a single court.⁸⁶ Congress has most frequently used this approach in administrative law, where jurisdiction over the review of agency actions is frequently vested

⁸¹ Customs Court Act of 1980, Pub. L. 96-417, 94 Stat. 1727 (codified at 28 U.S.C. § 251 *et seq.*).

⁸² Foreign Intelligence Surveillance Act of 1978, § 103(a), Pub. L. 95-511, 92 Stat. 1783, 1788 (codified as amended at 50 U.S.C. §§ 1803(a), 1871(e)).

⁸³ *Id.* at § 103(b) (codified as amended at 50 U.S.C. §§ 1803(b), 1871(e)).

⁸⁴ Bankruptcy Reform Act of 1978, §§ 201(a), 402, Pub. L. 95-598, 92 Stat. 2549, 2657, 2682 (codified as amended at 28 U.S.C. §§ 151–52) (creating bankruptcy courts, providing for appointment of bankruptcy judges, and making such provisions effective on April 1, 1984). Neither purely Article I nor purely Article III in nature, bankruptcy judges have a mixed constitutional status. When hearing matters falling within the Article III “judicial power,” bankruptcy judges serve as “adjuncts” of the Article III courts, empowered to submit proposed findings of fact for district court review or, with consent from the parties, to make final judgments subject to Article III appellate review. *See Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 40 (2014) (allowing for issuance of proposed findings with respect to non-public-rights claims); *Wellness Intern. Network, Ltd. v. Sharif*, 575 U.S. 665, 686 (2015) (allowing parties to consent to bankruptcy judge’s final adjudication of non-public-rights claims).

⁸⁵ Antiterrorism and Effective Death Penalty Act of 1996, § 502, Pub. L. 104-132, 110 Stat. 1214, 1259 (codified at 8 U.S.C. §§ 1531–1537). The Removal Court’s inclusion in this list is “arguable” in the sense that its constitutional nature remains contested. Like the FISC and FISCR, it comprises Article III judges “borrowed” from the district courts, 8 U.S.C. § 1532(a), but at the same time, its jurisdiction is limited to deportation proceedings, which, except in the case of alleged terrorists, are ordinarily conducted by Article I immigration judges. To the extent it is discussed at all, the court has been treated by scholars as both Article I and Article III in nature. *Compare* Laura K. Donohue & Jeremy M. McCabe, *Federal Courts: Article I, II, III, and IV Adjudication*, 71 CATH. U. L. REV. 543, 558 (2022) (describing as an Article III court), *with* John Dorsett Niles, *Assessing the Constitutionality of the Alien Terrorist Removal Court*, 57 DUKE L.J. 1833, 1838 (2008) (describing as an Article I court). The Removal Court also sat dormant for 30 years after its establishment, only receiving its first application for removal in July 2026. Alan Feuer & Adam Sella, *U.S. Revises Obscure Court in Bid to Deport Afghan Woman*, N.Y. TIMES (Jul. 30, 2026).

⁸⁶ Weaker forms of these statutes allow litigants to retain a degree of forum choice or else channel litigation based on the location of real-world events.

in the courts of appeals⁸⁷ and, in several instances, in the D.C. Circuit alone.⁸⁸ Even without altering the D.C. Circuit’s nominal status as a generalist court, these statutes combine to centralize adjudication of certain case types in before the D.C. Circuit and,⁸⁹ in the eyes of many, to make subject-matter experts out of the dozen or so judges who comprise it.

At least a few formally specialized judicial arrangements have developed outside of legislation. One of the most surprising and least appreciated examples of formal specialization comes from the Constitution itself, in Supreme Court original jurisdiction. Article III of the Constitution enumerates nine types of “cases” or “controversies” falling within the federal judicial power;⁹⁰ among these, the Framers reserved just two—cases “affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party”—for the Supreme Court’s original jurisdiction.⁹¹ In a subset of these cases—specifically, those involving two or more U.S. states—Congress has made the Court’s original jurisdiction exclusive.⁹² That arrangement has by no means made Supreme Court justices specialists in diplomatic privileges or interstate disputes,⁹³ but it does lead to specialization in the sense that such cases are potentially centralized in a single forum.⁹⁴

Specialized judicial arrangements tend to follow certain familiar patterns, but just as relevant to this article are their differences. The remainder

⁸⁷ See, e.g., 28 U.S.C. § 2342 (giving the courts of appeals exclusive jurisdiction over certain rules, regulations, and final orders of various agencies and agency heads).

⁸⁸ See, e.g., 42 U.S.C. § 7607(b)(1) (granting D.C. Circuit exclusive jurisdiction over review of various nationally applicable actions by the E.P.A.); see also Eric M. Fraser, David K. Kessler, Matthew J.B. Lawrence & Stephen A. Calhoun, *The Jurisdiction of the D.C. Circuit*, 23 CORNELL J.L. & PUB. POL’Y 131, 143, 154–55 (2013) (identifying more than 130 statutory provisions relating specifically to the jurisdiction of the D.C. Circuit, over a third of which grant exclusive jurisdiction to the D.C. Circuit).

⁸⁹ See John G. Roberts, *What Makes the D.C. Circuit Different? A Historical View*, 92 VA. L. REV. 375, 389 (2006) (describing the D.C. Circuit as “a court with special responsibility to review legal challenges to the conduct of the national government”); see generally Andrew Hammond, *The D.C. Circuit as a Conseil D’État*, 61 HARV. J. ON LEGIS. 81 (2024) (describing the D.C. Circuit’s “distinctive docket” and likening it to a specialized high administrative court).

⁹⁰ U.S. CONST. art. III, § 2, cl. 1.

⁹¹ *Id.* at cl. 2.

⁹² 28 U.S.C. § 1251(a).

⁹³ Since 1960, the Supreme Court has received fewer than 140 motions for leave to file cases under the Court’s original jurisdiction, and the Court has denied hearing in nearly half. FED. JUD. CENTER, *Jurisdiction: Original, Supreme Court*, available at <https://www.fjc.gov/history/work-courts/jurisdiction-original-supreme-court#:~:text=The%20Supreme%20Court's%20original%20docket%20has%20always%20been%20a%20minute,which%20were%20denied%20a%20hearing.>

⁹⁴ See Part II.A *infra*.

of this section draws out two initial dimensions of heterogeneity in the design and effect of specialized courts: first, whether the arrangement yields “judge” or “case” concentration—that is, does an arrangement tend to channel much or all of an individual judge’s attention toward a narrow set of case types or does it rather tend to channel most or all cases belonging to a particular case type to a narrow set of judges—and second, whether the specialization occurs at the trial or appellate level.

A. Modes of “Judicial Specialization”: Specialized adjudicators vs. centralized adjudication

Core to any discussion of judicial specialization is a definitional problem: what, *exactly*, do we mean by “judicial specialization?” Following political scientist Lawrence Baum, we incorporate into our taxonomy two distinct modes of specialization. When commentators opine on “generalist” versus “specialist” judges, what they usually⁹⁵ have in mind is that the labor inputs—that is, individual judges or the courts they sit on—are specialized in the sense that they devote much or all of their attention to a narrow set of case types. Baum calls this phenomenon “concentration of judges” or “judge concentration,”⁹⁶ but we prefer the terms *specialized adjudicators* (for the judges or courts) or *adjudicator specialization* (for the overall phenomenon, referring to the idea that a legal system uses its adjudicators in a specialized manner). Similar to a worker on the Ford Model T assembly line, whose sole focus might be the installation of a single component, the primary focus of a specialized trial or appellate judge is on a single case type.⁹⁷

But on occasion, what we might have in mind is not how an individual judge allocates her time but instead how the cases belonging to a certain case type are distributed across judges or forums. The idea here is that certain case types might be overwhelmingly or even exclusively channeled to a narrow set of courts or judges. Baum refers to this phenomenon as “case concentration,” but we prefer the term *centralized adjudication* (referring to

⁹⁵ See, e.g., Wood, *supra* note 15 (promoting virtues of the “generalist judge,” with a focus on individual judges with diverse caseload).

⁹⁶ BAUM, *supra* note 10, at 6–9. Although Baum uses “judge concentration” to refer specifically to the workload of individual judges, we use it to refer to the workloads of individual judges *or* individual courts.

⁹⁷ We would also call it “adjudicator specialization” if an individual judge or forum were to be focused on a single aspect of the litigation process (in addition to or instead of a focus on a single case type). One common example is U.S. Magistrate Judges, who in certain districts tend to specialize in discrete aspects of litigation like the resolution of discovery disputes or the conduct of settlement conferences. See *infra* notes 139-142 and accompanying text. Another is the Judicial Panel on Multidistrict Litigation, which specializes in the narrow procedural question of whether two or more similar actions should be transferred to a single MDL judge. See *infra* notes 132-135 and accompanying text.

the idea that the legal system may centralize the adjudication of certain matters within a small number of forums or before a small number of judges). At the far extreme of centralized adjudication are areas of law where Congress has granted a single court or a single grouping of judges exclusive jurisdiction.

Adjudicator specialization and centralized adjudication are conceptually distinct but not mutually exclusive. Neither is binary, instead both occurring along something of spectrum. And although general terms like “judicial specialization” or “specialist judge” are perhaps more commonly associated with adjudicator specialization than centralized adjudication, we think it important to define “judicial specialization” broadly and to consider both of its major modes in this article. Not only does the literature on judicialization specialization frequently conflate the two concepts,⁹⁸ but as several of the following examples demonstrate, both are commonly used by policymakers as methods of achieving the purported benefits of a “specialized” judiciary.⁹⁹ Even more fundamentally, the ideas share at least some conceptual relationship. Both relate to *channeling*: channeling of

⁹⁸ See, e.g., Dreyfuss, *supra* note 15, at 377–78 (discussing the transferring of “some or all cases in a particular subject area [to a specialized court]”—what we call *centralized adjudication*—as well as judges’ “sustained involvement with a field”—what we call *adjudicator specialization*—as “shared by all models [of specialized adjudication.]”); Oldfather, *supra* note 15, at 854, 852 (explaining the author’s intent “to use the terms generalist and specialist in the informal sense in which they are typically used,” and acknowledging the “slipperiness” of the concept of “judicial specialization,” but not differentiating between examples of adjudicator specialization and centralized adjudication); Wood, *supra* note 15, at 1765 (discussing the Federal Circuit, USCIT, and FISC as examples of “existing specialization” without acknowledging between their distinct modes of specialization).

⁹⁹ The FISC, for example—which centralizes the adjudication of electronic surveillance applications before otherwise generalist district judges, *see infra* notes 110–117 and accompanying text—was partially justified on the grounds that it would allow its judges “to acquire an expertise in the field.” See, e.g., *Foreign Intelligence Electronic Surveillance: Hearings Before the Subcomm. on Legis. of the H. Permanent Select Comm. on Intelligence*, 95th Cong. 72 (1978) (testimony of Carl H. Imlay). The Patent Pilot Program—a 10-year experimental program that aimed to develop patent expertise among designated district judges while also taking steps to ensure that trial-level patent adjudication remained broadly dispersed across districts and judges—was similarly justified on grounds of predictability and judicial efficiency. See Amy Semet, *Specialized Trial Courts in Patent Litigation: A Review of the Patent Pilot Program’s Impact on Appellate Reversal Rates at the Five-Year Mark*, 60 B.C. L. REV. 519, 539–41 (2019) (summarizing the program’s rationale and design); *see also* 156 CONG. REC. H8537 (2010) (statement of Rep. Ted Poe) (“The premise underlying [the house resolution leading to the Patent Pilot Program] is, succinctly stated, practice makes perfect, or at least better. Judges who focus more attention on patent cases will be expected to be better prepared to make decisions that can withstand appellate scrutiny.”).

judicial attention in the case of adjudicator specialization; and channeling of litigation in the case of centralized adjudication.

Adjudicator specialization and centralized adjudication often go together,¹⁰⁰ but individual instances of specialization can result in more of one, more of the other, or some both. A few examples may help to illustrate the possible patterns. Start with U.S. Bankruptcy Judges. Bankruptcy judges and the U.S. Bankruptcy Courts they sit on are highly specialized in the sense of adjudicator specialization.¹⁰¹ Bankruptcy judges' jurisdiction is always born of referral by the district court, the latter possessing original jurisdiction over matters pertaining to bankruptcy law (codified in Title 11 of the U.S. Code).¹⁰² Upon referral, typically automatic, a bankruptcy judge may hear, determine, and enter final order or judgment in bankruptcy cases themselves as well as in "core proceedings" arising under bankruptcy law or the bankruptcy case¹⁰³—essentially, causes of action created under the Bankruptcy Code as well as non-statutory matters that exist only because of the bankruptcy. Bankruptcy judges are altogether prohibited from hearing personal injury or wrongful death claims,¹⁰⁴ and to the extent other matters arise in relation to a bankruptcy action (for example, state law tort or contract claims whose outcomes may affect the rights of creditors or the value of a debtor's estate), both the Bankruptcy Code and the Constitution place strict limits on a bankruptcy judge's authority.¹⁰⁵

Bankruptcy adjudications are not, however, especially centralized—at least as a formal matter.¹⁰⁶ Each of the 94 U.S. judicial districts possesses its own bankruptcy court,¹⁰⁷ and nationwide there are almost 300 sitting

¹⁰⁰ See BAUM, *supra* note 10, at 9.

¹⁰¹ But see Alexander Gouzoules, *The Bankruptcy Judge and the Generalist Tradition*, 51 BYU L. REV. 743, 749 (2026) (characterizing bankruptcy judges as "procedural specialist[s]" and "substantive generalist[s]").

¹⁰² 28 U.S.C. § 1334

¹⁰³ *Id.* at § 157(a)–(b).

¹⁰⁴ *Id.* at § 157(b)(5).

¹⁰⁵ See *id.* at § 157(b)(2), (c) (defining "core" bankruptcy proceedings in which the bankruptcy judge may enter final order or judgment and, absent party consent, limiting the bankruptcy judge's role to submitting proposed findings for district court *de novo* review in all non-core proceedings); see also *Stern v. Marshall*, 564 U.S. 462, 503 (2011) (holding that bankruptcy courts lack constitutional authority to enter final judgment on claims falling within the Article III judicial power, notwithstanding their inclusion as "core" proceedings under the Bankruptcy Code); *Executive Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 40 (2014) (allowing for issuance of proposed findings with respect to *Stern* claims); *Wellness Intern. Network, Ltd. v. Sharif*, 575 U.S. 665, 686 (2015) (allowing parties to consent to bankruptcy judge's final adjudication of *Stern* claims).

¹⁰⁶ Cf. Part III *infra* (discussing informal patterns resulting in certain sub-fields of bankruptcy being high centralized in certain U.S. Bankruptcy Courts).

¹⁰⁷ See 28 U.S.C. § 151 (designating a bankruptcy court for each judicial district).

bankruptcy judges.¹⁰⁸ In short, the bankruptcy judges and bankruptcy courts are laser-focused on bankruptcy law and the few other areas of law that tend to intersect with it, but bankruptcy actions themselves are widely dispersed across dozens of forums and hundreds of judges.¹⁰⁹

If bankruptcy judges show that a specialized arrangement can result in adjudicator specialization without centralized adjudication, then the Foreign Intelligence Surveillance Court (“FISC”) shows that the converse is also true. The FISC represents an extreme form of centralized adjudication: Congress has seen fit to vest a single court, sitting in Washington, D.C., with exclusive jurisdiction over applications for electronic surveillance and related intelligence-gathering activities under the Foreign Intelligence Surveillance Act.¹¹⁰ All such matters are funneled to this one forum, and appellate review is likewise centralized in a single, specialized court, the Foreign Intelligence Surveillance Court of Review.¹¹¹

Several design aspects of the FISC add to its centralizing effect. The court comprises just eleven judges, all of whom chosen by the Chief Justice.¹¹² Judges on the FISC enjoy maximum terms of up to seven years,¹¹³ meaning that the court is extremely slow to turn over.¹¹⁴ The result is that just a handful of individuals—and one individual in particular, the Chief Justice¹¹⁵—have a near monopoly over an important area of legal policy.¹¹⁶

¹⁰⁸ U.S. COURTS, STATUS OF BANKRUPTCY JUDGESHIPS — JUDICIAL BUSINESS 2024, available at <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/status-bankruptcy-judgeships-judicial-business-2024>.

¹⁰⁹ Another example of adjudicator specialization without centralized adjudication was the Patent Pilot Program, which Congress authorized for a ten-year period beginning in 2011. Act of Jan. 4, 2011, Pub. L. 111-349, 124 Stat. 3674–76 (2011), 1259 (codified at 8 U.S.C. §§ 1531–1537). At the heart of the program was a list of “designated” patent judges in certain pilot districts. In pilot districts, patent cases continued to be randomly assigned according to that district’s ordinary rules, but any non-designated judge who received a patent case could decline the case and ask to have it reassigned to one of the designated patent judges on the district. *Id.* at § 1(a)(1); *see also* Semet, *supra* note 99, at 539–40.

¹¹⁰ 50 U.S.C. § 1803(a).

¹¹¹ *Id.* at § 1803(b).

¹¹² *Id.* at § 1803(a).

¹¹³ *Id.* at § 1803(d).

¹¹⁴ Initially comprising seven judges, Congress explicitly designed the FISC’s tenure rules “so that one term expires per year.” *Id.*

¹¹⁵ *See* Jonathan Petkun & Joseph Schottenfeld, *The Judicial Administrative Power*, 93 GEO. WASH. L. REV. 349, 399–400 (2025) (discussing how the Chief Justice’s appointment powers result in outsized influence over legal policy).

¹¹⁶ *See* Laura K. Donohue, *The Evolution and Jurisprudence of the Foreign Intelligence Surveillance Court and Foreign Intelligence Surveillance Court of Review*, 12 HARV. NAT’L SEC. J. 198, 209–211 (2021) (discussing four “clusters” of FISC/FISCR jurisprudence, including, prominently, the specialized nature and constitutional status of the courts themselves).

But while Congress chose to centralize electronic surveillance adjudications in a single forum, Congress did *not* choose to assign them to specialized adjudicators. When the Chief Justice designates members of the FISC and FISCR, he must do so by choosing among Article III district judges, each of whom continues to sit as a generalist judge in their own home district, and each of whom devotes only a portion of their judicial time to FISA matters.¹¹⁷ FISA judges will develop a degree of subject matter expertise over time, but on the whole, they remain generalists.¹¹⁸

One last example demonstrates the possibility of highly centralized adjudication paired with highly specialized adjudicators. The Court of International Trade exercises nationwide, exclusive jurisdiction over a broad class of civil actions arising out of customs and international trade law.¹¹⁹ At the same time, the USCIT is staffed by judges devoted to that court and that court alone.¹²⁰ They devote their full judicial labor to the adjudication of international trade disputes and develop deep in a narrow and complex area of federal law. The USCIT therefore combines both modes of judicial specialization discussed here: Congress has channeled the adjudication of trade-related disputes to a single forum, resulting in a high degree of centralization, and it has simultaneously created a cadre of adjudicators who, like the Model T assembly line workers, dedicate themselves to a narrow subject-matter specialty.

B. Specialization and the Judicial Hierarchy: Trial vs. Appellate Specialization

In a hierarchical judicial system, there is at least one sense in which nearly all judges are “specialists,” which is according to their position in the judicial hierarchy. In the federal system, district judges specialize at trying cases, circuit judges specialize in hearing intermediate appeals, and Supreme Court justices largely specialize in reviewing petitions for certiorari and hearing final appeals. But that is not usually meant speaking of a “specialized judiciary.”

¹¹⁷ 50 U.S.C. § 1803(a).

¹¹⁸ Congress used a similar mechanism to centralize the appellate review of cases arising under the wage and price control program of the Economic Stabilization Act of 1970, Pub. L. 91-379, 84 Stat. 799 (1970). Although original jurisdiction over such cases was shared among the district courts, Congress chose to centralize appellate review in a newly-created Temporary Emergency Court of Appeals—a single tribunal consisting of Article III judges drawn from any of the district or circuit courts. Act of Dec. 22, 1971, Pub. L. 92-210, 84 Stat. 743, 748–49 (1971). The Temporary Court of Emergency Appeals was abolished when its jurisdiction was folded into the Federal Circuit in 1993. Act of Oct. 29, 1992, Pub. L. 102-572, 106 Stat. 4506 (1992).

¹¹⁹ 28 U.S.C. § 1581.

¹²⁰ *Id.* at § 251(a).

Rather, when judges call themselves “generalists”—or, for that matter, when lawyers hold themselves out as “specialists”—what they usually have in mind is *subject-matter* specialization vis-à-vis a substantive area of law or legal policy. Subject-matter specialization can occur at any level of the judicial hierarchy, be it at the trial level, intermediate appellate level, or even at the Supreme Court. In the world of formal specialization, where in the judicial hierarchy Congress or another policymaking authority has placed a specialized tribunal may tell us something about what policymakers saw as the potential benefits of specialization and how they intended to achieve them.

Some formal arrangements combine trial- and appellate-level specialization, as with government applications for electronic surveillance that are steered to a single specialized tribunal in both the first instance and upon appeal.¹²¹ Others, however, occur only at the trial level. The most prominent examples are the federal bankruptcy courts. In the first instance, the vast majority of bankruptcy cases and proceedings handled by expert bankruptcy judges. Bankruptcy appeals, however, are a different matter. A handful of circuits refer bankruptcy appeals to so-called “Bankruptcy Appellate Panels” (BAPs)—three-judge panels comprised of in-circuit bankruptcy judges¹²²—but the default rule is that appeals go to a district judge of the district in which the bankruptcy judge was sitting below.¹²³ Subsequent appeals may go to the courts of appeals and ultimately the Supreme Court, following the ordinary appellate course for civil matters.¹²⁴ As a general matter then, it is fair to say that Congress has chosen to specialize bankruptcy adjudication at the trial level while leaving bankruptcy appeals to generalists.

The opposite is also possible, with Congress choosing specialization for appeals but not at the trial level. The Federal Circuit is the paradigmatic example. Congress created the Federal Circuit not to try cases but to hear appeals on a diverse but limited set of subject matters, including cases involving patents, veterans benefits, federal government contracts, federal

¹²¹ See *supra* notes 110–116 and accompanying text.

¹²² See 28 U.S.C. § 158(b)(1)–(2) (authorizing the judicial council of a circuit to establish “a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit”). Notwithstanding the establishment of a BAP, the parties may elect to have their appeal heard by a district judge. *Id.* § 158(c)(1).

¹²³ *Id.* at § 158(a). At present, five circuits—the First, Sixth, Eighth, Ninth, and Tenth Circuits—have established bankruptcy appellate panels; district judges hear significantly more bankruptcy appeals than do BAPs. Jonathan M. Seymour, *Bankruptcy Appeal Barriers*, 82 WASH. & LEE L. REV. 87, 102 n.65, 104 n.73 (2025).

¹²⁴ 28 U.S.C. § 158(d)(1).

government personnel disputes, customs and tariffs, and tax refunds.¹²⁵ Many appeals to the Federal Circuit come from specialized lower tribunals like the Article III Court of International Trade¹²⁶ or the Article I Court of Federal Claims.¹²⁷ Still others come from specialized Executive Branch agencies like the Patent and Trademark Office.¹²⁸ Many appeals to the Federal Circuit, however, come from the district courts, where a generalist district judge has taken the first swing on any of several enumerated issue areas—for example, in a case involving patents¹²⁹ or tax refunds.¹³⁰ In that sense, the Federal Circuit frequently sits as a specialist court in review of generalist trial judges.

Prior treatments of judicial specialization often treat specialization as a monolith, but where in the judicial hierarchy it is located—be it at the trial-level, the appellate-level, or both—could be of major consequence for whether policymakers reap the rewards (or suffer the pitfalls) of specialization. We consider how the judicial hierarchy may intersect with a normative analysis of specialization in Part IV below.

* * *

The following section continues this Article’s taxonomy with a discussion of “informal” judicial specialization. A helpful prior observation is that the formal vs. informal distinction, like all other dimensions of heterogeneity within judicial specialization, is not binary but occurs along a spectrum. The examples discussed so far have tended to be highly formalized, in the sense that the specialized arrangement was enacted by some legal authority—typically for lawmakers’ deliberate purpose of achieving the perceived benefits of specialization—and consequently, the specialized effects play out *de jure*. At the other end of the spectrum are the informal examples of specialization, where specialization was not part of lawmakers’ conscious design, but where certain patterns of specialization nonetheless play out *de facto*. In between the two poles, then, are a handful of specialized arrangements that are neither fully one nor the other.

A few other examples help illustrate this blurry middle ground between formal and informal. Multidistrict litigation (“MDL”), for instance, channels similar actions—typically mass tort, antitrust, or complex commercial cases—to a single district judge for coordinated pretrial

¹²⁵ 28 U.S.C. § 1295 (enumerating bases for Federal Circuit exclusive jurisdiction); see Paul R. Gugliuzza, *Rethinking Federal Circuit Jurisdiction*, 100 GEO. L. J. 1437, 1461–62 (2012) (discussing current scope of Federal Circuit jurisdiction).

¹²⁶ 28 U.S.C. § 1295(a)(5).

¹²⁷ *Id.* at § 1295(a)(3).

¹²⁸ *Id.* at § 1295(a)(4); 15 U.S.C. § 1071(a).

¹²⁹ 28 U.S.C. § 1295(a)(1), (a)(4)(C).

¹³⁰ *Id.* at § 1295(a)(2).

proceedings.¹³¹ The MDL mechanism itself is a product of formal statutory design: Congress created the Judicial Panel on Multidistrict Litigation and authorized it to transfer cases when doing so would promote efficiency and convenience.¹³² In that sense, the JPML is a formally specialized arrangement, with its members specializing not in discrete subject matters but rather in a discrete area of procedure. Yet the downstream specialization that results from MDL practice is only partially formalized. Although the statute does not require the Panel to select transferee judges based on subject-matter expertise or prior experience, the Panel frequently does so,¹³³ and judges who have previously presided over MDLs are disproportionately likely to be selected again.¹³⁴ Over time, this process produces a small cadre of repeat MDL judges with substantial expertise in complex litigation—an outcome that is not dictated by statute, but emerges organically from the interaction of formal transfer authority, judicial experience, and institutional practice.¹³⁵

Complex case panels in bankruptcy courts offer a related example. In a handful of districts, 100% of “complex” Chapter 11 megacases are assigned to one of two or three judges sitting on that court’s “complex case panel.”¹³⁶ These arrangements are formal to the extent that they are codified in local rules or standing orders,¹³⁷ but they are not mandated by any higher authority, and they also arise organically to reflect judges’ own preferences and administrative judgments.¹³⁸

¹³¹ See, e.g., Andrew D. Bradt, *The Long Arm of Multidistrict Litigation*, 59 WM. & MARY L. REV. 1165, 1205–8 (2018) (explaining the mechanics of the MDL statute).

¹³² 28 U.S.C. § 1407(a)–(d).

¹³³ See, e.g., Bradt, *supra* note 131, at 1215–16; Daniel A. Richards, *An Analysis of the Judicial Panel on Multidistrict Litigation’s Selection of Transferee District and Judge*, 78 FORDHAM L. REV. 311, 321–24 (2009) (citing transfer orders referencing the transferee judge’s “experience”).

¹³⁴ Zachary D. Clopton & Andrew D. Bradt, *Party Preferences in Multidistrict Litigation*, 107 CALIF. L. REV. 1713, 1739–40 (2019).

¹³⁵ MDL practice generates specialization in a narrower sense as well, which is that actions belonging to a single MDL are subjected to temporary centralization before the transferee judge, and the transferee judge is likely to develop temporary but intense expertise in the particulars of the MDL.

¹³⁶ See, e.g., Adam J. Levitin, *Judge Shopping in Chapter 11 Bankruptcy*, 2023 U. ILL. L. REV. 351, 372–74 (2023) (discussing complex case panels as a facilitator of judge shopping).

¹³⁷ See, e.g., General Order 2018-1 (Bankr. S.D. Tex. Jan. 29, 2018); General Order 2024-4 (Bankr. S.D. Tex. Jul. 16, 2024) (dividing all complex cases between two of district’s five sitting bankruptcy judges); Second Amended and Restated General Order No. 26-2019 (Bankr. N.D. Ga. Feb. 6, 2023) (dividing complex cases between three of nine sitting bankruptcy judges).

¹³⁸ Levitin, *supra* note 136 at 373–74 (explaining how the two judges initially sitting on the panel created it with the explicit purpose of attracting large corporate debtors to their court); see also Part III.A.1, *infra*.

Magistrate judges likewise occupy an intermediate position between formality and informality. Congress created the magistrate judge system and very formally defines the scope of their authority as Article III “adjuncts,”¹³⁹ but their actual duties vary substantially across districts. About a third of districts include magistrate judges on “the wheel” for direct assignment of civil cases, but other districts use magistrate judges as either subject-matter or procedural specialists. Common practices—sometimes codified in local rules or standing orders,¹⁴⁰ other times determined from case-to-case on an ad hoc basis—include direct assignment of social security appeals or prisoners’ complaints to magistrate judges; also common is using magistrate judges to oversee settlement conferences or discovery disputes.¹⁴¹ Thus, while magistrate judges and other judicial adjuncts¹⁴² are vested with their authority by way of some formal arrangement, their actual employment and its consequent effects on judicial specialization are determined by a blend of formal rules and informal judge or litigant preferences and practices.

III. BEYOND THE FORMAL: INFORMAL OR “HIDDEN” INSTANCES OF SPECIALIZATION

This section discusses informal specialization, or specialization that is not the product of an authoritative law or rule-making process. We believe that this is the more productive category of specialization to focus on and, indeed, we suggest that it is broadly understudied by academics.¹⁴³ We are not the first to comment that informal or “de facto specialization”¹⁴⁴ is

¹³⁹ See Federal Magistrates Act, Pub. L. 90-578, 82 Stat. 1107 (codified as amended at 28 U.S.C. § 631 *et seq.*).

¹⁴⁰ See, e.g., Local Civil Rule 3.3.1(a), (W.D. Mich.) (“Each civil action (except Social Security cases) and each bankruptcy appeal, shall be assigned to a district judge Each Social Security action shall be assigned at random to a magistrate judge at the time of filing.”).

¹⁴¹ Charlotte S. Alexander, Nathan Dahlberg, Anne M. Tucker, *The Shadow Judiciary*, 39 REV. LITIG. 303, 322–323 (2020) (discussing common uses of magistrate judges across judicial districts); PETER G. MCCABE, A GUIDE TO THE FEDERAL MAGISTRATE JUDGES SYSTEM 44–45, 47–54 (2016).

¹⁴² Special masters are another type of judicial adjunct whose relationship to judicial specialization reflects a blend of formal and informal arrangements: they derive their authority from formal court rules, *see* FED. R. CIV. P. 53, but their actual employment reflects informal norms and preferences.

¹⁴³ *Cf.* Introduction, *supra* (describing descriptive contribution of this Article); *cf.*, e.g., Cheng, *supra* note 11 (documenting evidence of opinion specialization in the courts of appeals); Wasserman & Slack, *supra* note 11 (documenting evidence of opinion specialization in the Federal Circuit).

¹⁴⁴ *Cf.* Oldfather, *supra* note 15, at 851 n.11 (“[A] certain amount of de facto specialization takes place on generalist courts, whether by the happenstance of a trial judge getting a case in an area in which she has experience or the more intentional practice of a

markedly more “slippery” than its formal counterparts, though in this Part, we give the phenomenon more sustained and comprehensive attention than it has heretofore received.¹⁴⁵

Among the reasons why an account of informal specialization becomes slippery: Formal specialization is typically intentional, in the sense that some authoritative institutional actor has turned to adjudicator specialization or centralized adjudication with the express purpose of channeling judicial attention and the expectation that such channeling will secure benefits to decision-making quality or efficiency. Informal specialization need not reflect that same kind of intentionality. Instead, individual judges or litigants may make decisions reflecting their own preferences and for their own reasons that, aggregated together, materially shift the work of the federal judiciary away from the generalist baseline that it is its organizing presumption (or pretense). Or, indeed, informal specialization may be the product of path dependence absent meaningful decision-making by any institutional actor.¹⁴⁶

These facets make informal specialization harder to identify and to classify. But we believe, although we leave exploration of overall normative implications until Part IV, that they also raise even more interesting analytical questions. A deep commitment to the presumption of generalism, for example, could counsel in favor of resisting any kind of informal drift away from the norm that does not reflect the careful consideration of actors with a system-wide view. Alternatively, and as we suggest, the judiciary could analyze these instances of informal specialization on a case-by-case basis, acknowledging that each presents different and difficult questions about the judicial role.

Each instance of informal specialization discussed in this Part can be analyzed using the organizing principles set forth in Part II above: adjudicator specialization vs. centralized adjudication, and trial vs. appellate adjudication. In this Part, we further suggest and apply two further organizing principles: cause (which actors are responsible for the specialization)¹⁴⁷ and degree (the extent to which the specialization represents a departure from the generalist presumption or pretense).¹⁴⁸ We split our analysis of cause into four categories: specialization that results from judges’ behavior, from litigants’ behavior, from court staffing, and from path dependence absent

judge on an appellate panel being assigned to write the opinion in a case as to which she has experience.”).

¹⁴⁵ *Id.* at 850–954.

¹⁴⁶ *See* Part III.A.4, *infra* (discussing informal specialization as a result of path dependence absent choice).

¹⁴⁷ *Infra* Part II.A.

¹⁴⁸ *Infra* Part II.B.

choice. We also suggest that it is possible to conceive of the degree of specialization in two different ways. First, to consider is how far the practice reflects a departure from the overall baseline presumption of generalism. Second to consider is whether the specializing judge is already a specialist: perhaps there is a difference between judges on the Federal Circuit assigning opinions according to subject-matter expertise as compared to judges on a “baseline” generalist appellate court.¹⁴⁹

Table 1 below gathers the various examples on which we focus in this Part and organizes them along each of these axes. We group instances of informal specialization by cause and also indicate which examples constitute what we call hyperspecialization—further informal specialization by a judge or court that is already in some sense specialist. We further identify whether examples of specialization represent adjudicator specialization, centralized adjudication, or both. This axis of taxonomy is more challenging with informal than with formal specialization, and other ways of organizing the Part’s examples are certainly possible. The Table further indicates whether any given instance of specialization occurs at the trial or appellate level. Finally, because Part IV’s normative analysis, below, includes as one key consideration whether instances of informal specialization achieve large-scale or system-wide effects without appropriate authoritative process, the Table notes whether the impact of each instance is properly categorized as local, national, or both.

Table 1

Example	Mode	Level	Scale of Effects
<i>Choices made by judges</i>			
Complex Chapter 11 case panels [†]	Both	Trial	National & local
Consumer bankruptcy assignments [†]	Both	Trial	Local
Patent “rocket dockets” (E.D. Tex. & W.D. Tex.)	Both	Trial	National & local
Related cases & transfer norms	Centralized adjudication	Both	Primarily local

¹⁴⁹ Cf. Wasserman & Slack, *supra* note 11, at 1448.

Senior judge docket composition	Mostly adjudication specialization	Both	Primarily local
Appellate opinion specialization	Mostly adjudicator specialization	Appellate	National & local
Non-random appellate panel assignment	Mostly adjudicator specialization	Appellate	National & local
<i>Choices made by litigants</i>			
Judge shopping/single-judge divisions	Both	Trial	National & local
Forum shopping by repeat players	Centralized adjudication	Trial	National & local
<i>Court staffing choices</i>			
Staff attorneys/ <i>pro se</i> clerks	Adjudicator specialization	Both	Local
Specialized law clerks [†]	Adjudicator specialization	Both	Local
<i>Path dependence absent choice</i>			
Geography	Centralized adjudication	Both	National & local
† denotes examples of hyperspecialization			

Although we seek to provide an organizing hierarchy, it must be a loose one. The “slipperiness” that scholars that have acknowledged informal specialization refer to once again plays a role here.¹⁵⁰ Even more so than in Part II, instances of informal specialization cannot neatly be sorted. Cause, in particular, is multi-faceted. Judges and litigants, for example, may both play a role in the emergence of some court as a forum for centralized adjudication. As the next section explains, various federal district courts in Texas have since the 2000s become focal points for centralized adjudication of patent cases.¹⁵¹ In discussing those examples, we focus primarily on the roles that judges on that court played in seeking to attract patent business to the courts. But Judges Ward and Gilstrap could not make Marshall, Texas the patent capital of the United States without the enthusiastic cooperation of plaintiffs’ attorneys prosecuting patent cases. Some examples fairly belong within more than one of the causal categories we identify below. We think this

¹⁵⁰ Cf. Oldfather, *supra* note 15, at 853–54 (acknowledging that any taxonomy of judicial specialization requires some simplification to be workable).

¹⁵¹ Part III.A.1. *infra*.

slipperiness is an inevitable consequence of the way that informal specialization typically emerges; precisely because there is typically no clear decision-making process, practice on the ground is shaped by the ad hoc choices of all actors involved. Acknowledging that reality, the following sub-Part attempts to give an account at least of the predominant causes of various instances of informal specialization.

A. The Many Causes of Judicial Specialization

1. Choices Made by Judges

Judges Attracting Cases. Again recognizing the blurriness of some of the lines that we seek to draw between formal and informal specialization, this section begins by further scrutinizing the complex case panel in the Bankruptcy Court for the Southern District of Texas, which the previous Part characterized as an intermediate or quasi-formal instance of specialization.¹⁵² That court’s division of Chapter 11 cases into complex and non-complex cases is a formal practice insofar as it is prescribed in the local rules of that court.¹⁵³ But both explaining the evolution of the Houston complex case panel and assessing its normative implications requires examining the indispensable role of a single judge—the Southern District of Texas’s former Judge Jones—in creating and promoting it.¹⁵⁴ In many ways, Houston’s status as a bankruptcy capital of the United States was quite simply the choice of Judge Jones.¹⁵⁵ Judge Jones spoke openly about the lack of complex bankruptcies and his “worr[y] [that] we would not have a generation of bankruptcy lawyers left in Texas.”¹⁵⁶ Transforming Houston’s bankruptcy practice was a passion project that allowed him to “put so much time and focus into making this work.”¹⁵⁷

The judge- and forum-shopping literature can help explain this. Complex Chapter 11 practice is highly centralized. Large-case Chapter 11 debtors have an essentially free choice on where to file a bankruptcy case; in practice, they cluster in a handful of districts. That suits the judges on those

¹⁵² Part II *supra*. Although the Northern District of Georgia also maintains a complex case panel, we focus from this point forward on the Southern District of Texas because of the outsize impact of that court’s pathbreaking complex case panel on Chapter 11 practice.

¹⁵³ *Supra* note 137.

¹⁵⁴ Robert Rasmussen, *The Most Disfavored Venue in Large Chapter 11 Cases* (USC CLASS Rsch. Paper No. 2519, Sept. 28, 2024), <https://ssrn.com/abstract=5365334>.

¹⁵⁵ Mark Curriden, *Meet the Judge Who Saved the Texas Bankruptcy Practice*, *The Texas Lawbook*, HOUS. CHRON. (Sept. 1, 2020), [<https://perma.cc/4RPV-9MSJ>]; Sujeet Indap, *The Downfall of the Judge that Dominated Bankruptcy in America*, *Fin. Times* (Nov. 21, 2023), <https://www.ft.com/content/574f0940-d82e-4e4a-98bd-271058cce434>

¹⁵⁶ Curridan, *supra* note 155.

¹⁵⁷ *Id.*; see also Levitin, *supra* note 136 at 373–74.

avored courts, who care about the mix of cases that make up their docket. For decades, bankruptcy scholars have theorized that some bankruptcy judges gain utility from working on prominent, complex, and at least arguably more prestigious complex Chapter 11 cases, and at least to some extent, try to increase their chances of obtaining such cases.¹⁵⁸ For at least some judges, those cases are “challenging, glamorous, and career-enhancing.”¹⁵⁹

Judge Jones and the Southern District of Texas’s complex case panel have been much criticized by academics.¹⁶⁰ But Houston has at least the virtue of transparency. Individual judges that care about whether their courts figure within the handful of de facto Chapter 11 megacase specialist courts have many levers to pull. A virtual prerequisite to being considered as a venue for large-case filing, for example, is a bankruptcy judge’s willingness to schedule an early-case hearing known as a “First Day Hearing,” in which the judge considers a package of motions designed to set the case on a pathway towards successful completion.¹⁶¹ Nothing in the Bankruptcy Rules requires that judges promptly accommodate large debtors with first day hearings; rather, the practice has emerged over time as one “tell” that indicates whether a bankruptcy court is “consumer friendly” – the consumers here being the corporate debtors that may choose to shop into that court.¹⁶² Centralized adjudication of Chapter 11 bankruptcy cases may be driven in part by apparently quotidian judicial decisions—both adjudicatory and managerial—entirely opaque to a generalist observer.

Before moving on from bankruptcy, it is worth noting that not all examples of this kind of quasi-formal, judge-driven centralized adjudication

¹⁵⁸ Normative conclusions about this vary. It has been characterized as a largely benign phenomenon that promotes efficiency and expertise. *See, e.g.,* David Skeel, *What’s So Bad About Delaware*, 54 VAND.L. REV. 309 (2001). It has also been criticized as a mere short step away from overt corruption. Lynn M. LoPucki, *Chapter 11’s Descent into Lawlessness*, 96 AM. BANKR. L.J. 247, 254–59 (2022).

¹⁵⁹ Lynn LoPucki & Joseph Doherty, *Routine Illegality in Bankruptcy Court, Big-Case Fee Practices*, 83 AM. BANKR. L.J. 423, 426 (2009).

¹⁶⁰ Letter from Bankruptcy Academics to Hon. Eduardo V. Rodriguez, Chief Judge, U.S. Bankr. Ct. for the S. Dist. of Tex. (Nov. 1, 2023), available at <https://blogs.illinois.edu/files/7000/1905560292/220995.pdf> (urging S.D. Tex. to abolish the complex case panel); Levitin, *supra* note 136, at 381-88 (describing a “repeat-player dynamic that chills creditor and attorney behavior”); *cf.* Alexander Gouzoules, *Choosing Your Judge*, 77 SMU L. REV. 699, 739 (2024) (acknowledging that bankruptcy scholarship is “generally opposed” to judge shopping but suggesting that it “remains partially defensible”); *see also* Rasmussen, *supra* note 154, at 14 (encouraging Bankr. C.D. Cal. to “mimic Houston” by allowing “a small number of trusted judges” to hear complex cases).

¹⁶¹ *See* Jonathan Seymour, *Managerial Bankruptcy Judges* (manuscript on file with authors).

¹⁶² *Id.*; *cf.* Levitin, *supra* note 136, at 373 (quoting Judge Isgur of the Southern District of Texas explaining that his court had decided that “everything we did would be more consumer friendly.”).

need be high stakes. The Bankruptcy Court for the District of Delaware overwhelmingly hears business bankruptcy cases, which are randomly assigned across the eight judges of that court.¹⁶³ Delaware generates a much smaller volume of consumer bankruptcy cases. The judges of that court assign their tiny consumer Chapter 13 docket to one judge, Judge Shannon, while consumer Chapter 7 cases are split between two judges.¹⁶⁴ In terms of basic system architecture, this is exactly the same kind of design choice as that reflected in the complex case panel: to assign all cases of one type to a narrow set of adjudicators who can specialize in them. Yet it appears plainly to have different motivations. Indeed, decisions by judges of this kind receive very little attention and may be all but invisible to the business debtors that make up the lions' share of the Delaware docket. Arguably, though, they still matter. Bankruptcy judges that do hear individual consumer cases—as most Delaware bankruptcy judges do not—speak candidly about how impactful that experience can be.¹⁶⁵

Decision-making by individual judges that quasi-formally or informally centralized adjudication into their courts is a broader phenomenon than bankruptcy. Much scholarly attention has been paid to the centralization, at the trial level, of patent cases into the Eastern and then Western Districts of Texas.¹⁶⁶ Prior to 2017, the small town of Marshall in the Eastern District of Texas hosted the busiest trial court for patent litigation in the country.¹⁶⁷ Marshall had launched itself as a patent venue by 2006 under the auspices of Judge John Ward, who “change[d] the world of patent law and . . . put Texas on the map” before retiring in 2011;¹⁶⁸ Judge Rodney Gilstrap succeeded him

¹⁶³ U.S. Bankr. Ct. for the Dist. of Del., *Bankruptcy Case Assignment Procedures*, DEB.USCOURTS.GOV, <https://www.deb.uscourts.gov/bankruptcy-case-assignment-procedures> (last visited Jan. 29, 2026).

¹⁶⁴ *Id.* Other busy commercial bankruptcy courts have made similar decisions. Bryan J. Hall & Hon. Alan S. Trust, *Judicial Profile: Hon. Robert D. Drain, U.S. Bankruptcy Judge, Southern District of New York*, FED. BAR ASS'N (2013), <https://www.fedbar.org/wp-content/uploads/2019/10/drain-JanFeb13-pdf-3.pdf> (discussing S.D.N.Y.).

¹⁶⁵ See, e.g., Hon. Marvin Isgur, *Presentation Remarks in Honor of Judge Jones*, 39 EMORY BANKR. DEV. J. 487, 488–89 (2023).

¹⁶⁶ See, e.g., Anderson & Guglizza, *supra* note 14, at 421; J. Jonas Anderson, *Reining in a “Renegade” Court: TC Heartland and the Eastern District of Texas*, 39 CARDOZO L. REV. 1569 (2018); Alexander Krois, *The Evolution of Patent Venue in the Aftermath of TC Heartland*, 34 BERKELEY TECH. L.J. 1023 (2019); Timothy Hsieh, *A Tale of Seven Districts: Reviewing the Past, Present and Future of Patent Litigation Filings*, 31 TEX. INT'L PROP. L.J. 131 (2023).

¹⁶⁷ Alexander Krois, *supra* note 166, at 1023; Hsieh, *supra* note 166, at 1023.

¹⁶⁸ Hilda Galvan et al., *The America Invents Act: A Tribute to the Honorable John Ward*, 15 SMU SCI. & TECH. L. REV. 459, 459 (2012). By 2006, the Eastern District of Texas had the second highest number of patent cases in the country; by 2014, it was the national leader. Krois, *supra* note 166, at 1027–28.

as the country's "busiest patent judge."¹⁶⁹ At its height, almost half of all patent cases nationwide were filed in the district.¹⁷⁰ In 2017, the Supreme Court narrowed the venue options for patent plaintiffs.¹⁷¹ Patent litigation flowed away from Texas to Delaware, where more defendants were incorporated.¹⁷² But from 2018, plaintiffs again moved in bulk to the Western District of Texas, choosing to file cases in the Waco division where they could be guaranteed assignment to Judge Alan Albright.¹⁷³ Waco's heyday lasted until 2022, when the Western District of Texas moved to randomly assign patent cases filed in Waco¹⁷⁴ and after which Judge Gilstrap and Marshall restored their dominance.¹⁷⁵ But during their respective ascendancies, Judges Ward, Gilstrap, and Albright can be fairly characterized as patent specialists; each appears to have been proud of it.¹⁷⁶

Most interesting for our purposes is the *mechanism* of specialization. First, as with the Southern District of Texas's bankruptcy complex case panel, it is fair to characterize the Texas patent explosions as the product of idiosyncratic choices by individual judges. Judge Albright in the Western District of Texas, in particular, spoke openly about the perceived benefits of specialist adjudication in patent cases and most transparently signaled his intention to try to attract business to his court.¹⁷⁷ Some aspects of the race to

¹⁶⁹ Kaleigh Rogers, *The Small Town Judge Who Sees a Quarter of the Nation's Patent Cases*, VICE (May 5, 2016), <https://www.vice.com/en/article/the-small-town-judge-who-sees-a-quarter-of-the-nations-patent-cases/>.

¹⁷⁰ Krois, *supra* note 166, at 1028.

¹⁷¹ *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258 (2017); Anderson & Gugliuzza, *supra* note 14, at 452.

¹⁷² Hsieh, *supra* note 166, at 138, 151.

¹⁷³ Anderson & Gugliuzza, *supra* note 14, at 449.

¹⁷⁴ Order Assigning the Business of the Court as It Relates to Patent Cases (W.D. Tex. July 25, 2022); Ashley Pennington, *(Judge) Shop 'til You Drop: The Wild West of Patent Venue*, SCI. & TECH. L. REV. (Apr. 14, 2024), <https://journals.library.columbia.edu/index.php/stlr/blog/view/605>.

¹⁷⁵ See Ryan Davis, *New Patent Cases Rebound As EDTX Seals Top Venue Spot*, LAW360 (Jun. 11, 2025), <https://www.law360.com/articles/2349305/new-patent-cases-rebound-as-edtx-seals-top-venue-spot>. But even thereafter, Judge Albright continued to hear a disproportionate share of patent cases. See Ashley Pennington, *(Judge) Shop 'til You Drop: The Wild West of Patent Venue*, SCI. & TECH. L. REV. (Apr. 14, 2024), <https://journals.library.columbia.edu/index.php/stlr/blog/view/605>.

¹⁷⁶ See, e.g., Yan Leychis, *Of Fire Ants and Claim Construction: An Empirical Study of the Meteoric Rise of the Western District of Texas as a Preeminent Forum for Patent Litigation*, 9 YALE J. L. & TECH. 193, 207 (2007); Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. CAL. L. REV. 241, 254 (2016); Anderson & Gugliuzza, *supra* note 14, at 448–452.

¹⁷⁷ Anderson & Gugliuzza, *supra* note 14, at 448–452. Judge Albright, for example, gave a presentation to IP lawyers explaining “Why You Should File Your Next Patent Case” in Waco. *Id.* at 450. He has weighed in on public policy issues with views favorable to

attract patent cases are quasi-formal to the extent they reflect rules—although unlike, say, Houston’s rules for the assignment of bankruptcy megacase, these rules need not openly signal any intent to specialize. Most notably, both Judges Ward and Albright adopted rocket docket procedures, generally perceived by intellectual property litigators as favorable to plaintiffs rather than defendants, that moved cases towards trial far faster than in most other courts.¹⁷⁸ Other rules were even more opaque: patent litigators could know, for example, that Judge Albright would assign almost all nondispositive motions to a magistrate—*except* in intellectual property cases, where parties could be guaranteed his personal attention.¹⁷⁹ And some attractive features were wholly informal; scholars found that Judge Gilstrap was significantly less likely to grant summary judgment to a defendant in a patent case than a typical trial judge.¹⁸⁰ Some academics have similarly concluded that Judge Albright’s preference against deciding cases on the pleadings gave an outsize advantage to patent plaintiffs.¹⁸¹

The campaigns to pull patent cases into the Eastern and Western Districts of Texas were much criticized.¹⁸² The typical justification proffered

patent prosecutors *See, e.g.*, Emily R. Siegel, *Leading Patent Judge Albright Snubs Call for Funding Disclosures*, BLOOMBERG L. (Jan. 14, 2026), <https://news.bloomberglaw.com/business-and-practice/leading-patent-judge-albright-snubs-call-for-funding-disclosures>

¹⁷⁸ Anderson & Gugliuzza, *supra* note 14, at 438, 453–57.

¹⁷⁹ *Id.* at 453. In 2025, just over a year before announcing his plan to retire from the bench, Judge Albright issued a standing “Magistrate Judge Referral Order” purporting to automatically refer almost all non-patent civil proceedings and all criminal matters to a magistrate judge. *See* Standing Order of U.S. District Judge Alan D. Albright, “Magistrate Judge Referral Order” (W.D. Tex. Jan. 31, 2025). Notably, Judge Albright is likely to saddle his colleagues on the Western District of Texas with hundreds of languishing cases and civil motions upon his expected retirement in August 2026. Ryan Autullo, *Albright Leaves Hundreds of Cases for Busy Colleagues to Finish*, BLOOMBERG LAW (Apr. 27, 2026). As of the September 2025 Civil Justice Reform Act (CJRA) report Judge Albright was flagged for 446 motions that had been pending for six months or longer. *September 2025 Civil Justice Reform Act, Motions Pending More Than Six Months (CJRA 8)*, U.S. Crs., <https://www.uscourts.gov/data-news/reports/statistical-reports/civil-justice-reform-act-report/september-2025-civil-justice-reform-act>. By comparison, more than half of judges have between zero and two motions listed on a typical CJRA report and it is exceedingly rare to have more than a few dozen. *See* Jonathan B. Petkun, *Non-Monetary Incentives and Bureaucratic Performance: Evidence from U.S. Courts* 8–9 (June 1, 2026) (unpublished manuscript) (on file with authors).

¹⁸⁰ Brian Love & James Yoon, *Predictably Expensive: A Critical Look at Patent Litigation in the Eastern District of Texas*, 20 STAN. TECH. L. REV. 1, 18 (2017) (finding a grant rate for defendants’ summary judgment motions in E.D. Tex. roughly half the national rate). Judge Gilstrap required patent defendants, uniquely, to file a motion seeking leave to file for summary judgment. Anderson & Gugliuzza, *supra* note 14, at 439.

¹⁸¹ Anderson & Gugliuzza, *supra* note 14, at 475.

¹⁸² *Id.* at 422–23.

by defenders of those courts is that the centralized adjudication of patent cases by a few expert judges promotes efficiency.¹⁸³ It is worth pausing, therefore, to contrast this flashpoint of centralization with the raft of other kinds of decisions made by judges to promote efficiency, and that contribute to specialized adjudication while attracting far less attention. Random assignment ensures that district judges remain more or less generalist in nature, but in many districts, “related case” rules and lax transfer norms can nonetheless create a meaningful degree of judge-level specialization.¹⁸⁴ Local rules typically require parties to notify the court whenever a related case is pending before another district judge; when the court agrees, the cases will be consolidated before a single judge.¹⁸⁵ Whether or not cases are officially deemed related, judges possess a great deal of discretion to transfer a case to one of their colleagues. In some districts, for example, new “frequent filer” *pro se* complaints are informally directed to a single judge who is familiar with the individual plaintiff.¹⁸⁶

Senior Judges. Senior judges offer another intriguing example of informal specialization. By statute, a senior judge is authorized to “continue to perform such judicial duties as he is willing . . . to undertake;”¹⁸⁷ in practice, individual district and circuit courts vary in the extent to which they honor senior judges’ docket preferences. Begin with trial courts. Each district court has its own process for determining overall case assignment, but it is not uncommon for senior district judges to opt out entirely from certain case types and thereby concentrate on other case types. In the Eastern District of New York, for example, Judge Frederic Block explained why he and other senior judges opted out of handling *pro se* litigation: though not all cases were frivolous, many were, and *pro se* matters occupied the precious time that senior judges might otherwise spend on matters they found “more

¹⁸³ *Id.* at 450; *see also* .

¹⁸⁴ Marcel Kahan & Troy McKenzie, *Judge Shopping*, 13 J. LEG. ANALYSIS 341, 341, 349-53 (2021) (explaining that related case rules allow for deviations from random assignment); Susan Willett Bird, *The Assignment of Cases to Federal District Judges*, 27 STAN. L. REV. 475, 482 (1975) (discussing relationship between related case rules and random assignment).

¹⁸⁵ *See, e.g.*, Local Rule 83-1.3.1 (Notice of Related Civil Cases) (C.D. Cal., Dec. 1, 2025) (requiring notice of related cases when two or more cases arise from the same transactions or events, present common questions of law or fact, or “for other reasons would entail substantial duplication of labor if heard by different judges”); *see also* Local Rule 40 (Assignments) (D. Conn., Apr. 10, 2017) (directing transferring to earliest presiding judge); *see also* Kahan & McKenzie, *supra* note 184, at 349-53; Bird, *supra* note 184, at 482.

¹⁸⁶ The authors are aware that this was a common practice in the District of Connecticut in recent years.

¹⁸⁷ *See* 28 U.S.C. § 294(b).

challenging and demanding.”¹⁸⁸ In other districts and also in some appellate courts, senior judges will choose to focus on either criminal *or* civil matters, but not both. In the District of Colorado, for example, Senior District Judge John L. Kane said “yes” to all criminal matters to which he was randomly assigned but said “no” to half the civil matters that came his way.¹⁸⁹

Opinion and Panel Assignments. Finally, this sub-Part focuses specifically on circuit court judges. The pretense of generalism holds out appeals court judges as quintessential generalists.¹⁹⁰ Scholars have found, though, that judges develop preferences for writing opinions in particular areas.¹⁹¹ Indeed, “opinion assignments are not randomly distributed, and in some instances, the frequency in which certain judges write is wildly disproportionate to their colleagues.”¹⁹² This does not hold consistently from court to court. The Eleventh Circuit, for example, states in its Internal Operating Procedures that “[j]udges do not specialize;” rather, “[w]riting assignments are made so as to equalize the workload of the entire session.”¹⁹³ Edward Cheng’s earlier empirical study, though, found opinion specialization spread broadly across much of the federal appellate judiciary, most notably in the Seventh, Ninth, and Tenth Circuits.¹⁹⁴ Opinion specialization may occur for positive reasons of preference: because judges arrive on the bench with particular expertise on which they wish to draw or on which colleagues wish to rely, or simply because they find some category of cases to be particularly interesting or important.¹⁹⁵ Senior circuit court

¹⁸⁸ Frederic Block, *Senior Status: An Active Senior Judge Corrects Some Common Misunderstandings*, 92 CORNELL L. REV. 533, 540–41 (2007).

¹⁸⁹ *Federal Senior Judges Carry a Growing Workload*, TRAC (July 15, 2015). The Tenth Circuit similarly allows senior circuit judges to choose whether they will be seated on panels for civil cases, criminal cases, or a mix of both. See JON O. NEWMAN & MARIN K. LEVY, WRITTEN AND UNWRITTEN 136–37 (2024).

¹⁹⁰ Wood, *supra* note 15, at 1759 (“My own experience on the court of appeals thus far ... has illustrated the “generalist” hypothesis only too well.”).

¹⁹¹ Cheng, *supra* note 11, at 540–544; cf. Wasserman & Slack, *supra* note 11, at 1415 (describing opinion specialization as “vastly undertheorized”).

¹⁹² Cheng, *supra* note 11, at 540. Cheng concludes that this specialization is unidirectional: “[j]udges take a disproportionate number of cases in their preferred subject areas; seldom do they shun unwanted ones.” *Id.*

¹⁹³ See *id.* at 541; Eleventh Circuit Internal Operating Procedures for Fed. R. App. Pro. 34 ¶15 (Dec 1, 2024), <https://www.ca11.uscourts.gov/sites/default/files/courtdocs/clk/Rules%20Bookmark.DEC24.pdf> (page 145 of document)

¹⁹⁴ Cheng, *supra* note 11, at 542.

¹⁹⁵ *Id.* at 543.

judges may be given first pick of opinion assignment,¹⁹⁶ allowing them in particular to build or put to use an area of substantive expertise. Yet it is difficult to disentangle the weight these preferences play as against other negative factors: a judge with a particular expertise in some narrow field may have no particular desire to write an outsize share of opinions, but find her colleagues defer to her expertise or struggle efficiently to produce opinions of the same quality that the specialist can write.

Judge Thomas Ambro provides a ready example of the potential significance of non-random opinion assignment.¹⁹⁷ Because the Bankruptcy Court for the District of Delaware hears an outsize share of complex Chapter 11 cases, the Third Circuit decides appeals of numerous pathbreaking bankruptcy issues with national significance and effect.¹⁹⁸ Judge Ambro practiced as one of the most prominent bankruptcy litigators in Delaware until his appointment to the Third Circuit in 1999; since then, he has played an outsize role in that court's bankruptcy decisions.¹⁹⁹ By our count, Judge Ambro wrote for the court in 50 out of 69 bankruptcy cases where a panel on which he sat produced a published opinion.²⁰⁰ It is precisely this judicial footprint that caused the bankruptcy bar to celebrate Judge Ambro as one of their own.²⁰¹

The next step beyond a judge leveraging opinion assignment to develop or indulge a special interest is for a judge to attempt to attract or retain an outsize share of panel assignments in a particular kind of case. Specialization in opinion assignment—for all that some judges and courts disclaim it—is at least winked at by lawyers and commentators. It would have surprised no bankruptcy practitioner to see Judge Ambro write the opinion in

¹⁹⁶ Marin K. Levy, *The Promise of Senior Judges*, 115 NW. U. L. REV. 1227, 1250 (2021); see also NEWMAN & LEVY, *supra* note 189, at 136 (discussing senior judge panel assignments generally).

¹⁹⁷ *Supra* Introduction.

¹⁹⁸ Theodore Eisenberg & Lynn M. LoPucki, *Shopping for Judges: An Empirical Analysis of Venue Choice in Large Chapter 11 Reorganizations*, 84 CORNELL L. REV. 967, 983–87 (1999); Levitin, *supra* note 136, at 360–62, 375–78.

¹⁹⁹ Arima, *supra* note 1, at 394.

²⁰⁰ A canvas of Third Circuit bankruptcy decisions using Westlaw found 72 bankruptcy appeals with published opinions in which Judge Ambro participated. Three of those decisions were en banc proceedings in which Judge Ambro did not write any opinion. In three more cases, Judge Ambro wrote a dissenting opinion. In one case, he wrote a separate concurrence in the court's majority opinion. In the remaining 65 cases, Judge Ambro wrote for the court 50 times; in one of those cases, *In re Tribune Media Co.*, 799 F.3d 272, 284 (3d Cir. 2015), he also wrote a separate concurring opinion. We counted through November 30, 2024.

²⁰¹ *Supra* Introduction. Anecdotally, it seems likely that this celebration has further magnified Judge Ambro's influence over his chosen area of specialization; bankruptcy practitioners that respect Judge Ambro's expertise preferentially cite his opinions and argue, at least implicitly, that they carry greater weight than those written by other judges

a high-profile bankruptcy case argued before him. And Judge Ambro is not alone as an opinion specialist. Drawing upon his prior experience as a professor of oil and gas law, for example, Judge Stephen Williams authored an outsize share of the D.C. Circuit's energy regulatory opinions.²⁰² In a ceremony of tribute held a few years after Judge Williams took senior status, his colleague Judge Tatel observed that he had written the opinion in 133 of the 200 FERC cases on which he sat—and, indeed, that “his colleagues especially appreciate his willingness to write [FERC] opinions.”²⁰³ And Edward Cheng's earlier empirical study identified further examples: Judge Stephen Trott of the Ninth Circuit, a former prosecutor, wrote an outsize share of opinions in criminal cases, and Judges Posner and Easterbrook of the Seventh Circuit a disproportionate share of antitrust opinions.²⁰⁴

At least on paper, though, gaming panel assignments is generally thought to be taboo.²⁰⁵ Yet there is evidence that it happens. Adam Chilton and Marin Levy present evidence of ideological balancing in panel assignment across four circuits, with fewer panels comprising either all or no Republican judicial appointees than would be expected based on purely random selection.²⁰⁶ Marin Levy has also suggested various nonsubstantive and likely uncontentious reasons for non-randomness, including that courts attempt to promote collegiality, efficiency, and training for new judges.²⁰⁷ Other scholars have suggested mechanisms for non-random panel assignment that more directly implicate judicial specialization. Margaret Sachs details how Judges Posner and Easterbrook were able to increase their footprint over antitrust law by choosing to retain appeals assigned to a motions panel on which they sat through to the merits stage.²⁰⁸

Examining the record of Judges Posner and Easterbrook in antitrust cases helps define a final and even looser sense in which appellate judges could be said to specialize. Some judges exercise an outsize footprint on a particular area of the law simply because they are known to have mastery over their field and their opinions are particularly respected. To some extent, that is true of each of the examples we have given in this discussion on

²⁰² Cheng, *supra* note 11, at 542.

²⁰³ D.C. Cir. Hist. Soc'y, Portrait Presentation Ceremony: Stephen F. Williams (Oct. 27, 2006) (transcript at 11), <https://dcchs.org/wp-content/uploads/2019/02/Stephen-F-Williams-Portrait-Transcript.pdf>.

²⁰⁴ Cheng, *supra* note 11, at 541–42.

²⁰⁵ See Chilton & Levy, *supra* note 6, at 2 (describing random assignment to panels as a “fundamental academic assumption” made of the federal courts).

²⁰⁶ *Id.* at 38–40.

²⁰⁷ Marin Levy, *Panel Assignment in the Federal Courts of Appeals*, 103 CORNELL L. REV. 65, 81–82 (2017).

²⁰⁸ Margaret Sachs, *Superstar Judges as Entrepreneurs*, 48 U.C. DAVIS L. REV. 1207, 1256 (2015).

appellate judges.²⁰⁹ But Judge Posner's record here is particularly noteworthy. Take his opinion in *Khan v. State Oil*, in which he concluded that a result was dictated by precedent, while criticizing the governing Supreme Court opinion as resting on "increasingly wobbly, moth-eaten foundations."²¹⁰ The Supreme Court immediately took the case and unanimously reversed, reaching Judge Posner's preferred conclusion and endorsing the reasoning he had explicated below.²¹¹ And the list of judges closely associated with and praised for their command of a particular field extends beyond Judge Posner. Former Judge Canby of the Ninth Circuit was recognized for his expertise in Indian law.²¹² And former Judge Shira Scheindlin of the Southern District of New York is known not so much for her expertise in a particular field of law as in transsubstantive procedure, as the "mother of e-discovery" who exerted tremendous influence emerging electronic discovery law.²¹³ To be clear, we do not mean to suggest that there is necessarily anything troublesome about judges allowing a colleague known to be an expert in some space to influence the development of the law. But it does provide an additional qualifier to the claims of a Judge Wood or other advocate of generalism that law in federal courts is decided by "judges of all trades."²¹⁴

2. Choices Made by Litigants

Exploiting Single-Judge Divisions. Litigants also drive judicial specialization through their choices of forum or judge. Most commented on in recent scholarly literature is the choice of litigants to file cases in single-judge divisions that guarantee assignment of a case to a judge with known (and presumably favorable) priors. Donald Trump in 2024, for example, chose to file a multibillion-dollar lawsuit against CBS News in the Amarillo Division of the Northern District of Texas, where the suit was guaranteed to

²⁰⁹ Even so, specialization need not always produce deference. Some of Judge Ambro's colleagues, for example, offered sharp criticism of his views on some flashpoints in contemporary bankruptcy practice. See *In re One2One Commc'ns*, 805 F.3d 428 (3d Cir. 2015) (Krause, J., concurring).

²¹⁰ *Khan v. State Oil Co.*, 93 F.3d 1358, 1363 (7th Cir. 1996).

²¹¹ *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997).

²¹² See, e.g., Kevin Washburn, *The Next Great Generation of Indian Law Judges*, 81 COL. L. REV. 959, 961-63 (2010).

²¹³ See, e.g., A. Marco Turk, *Ethical e-discovery began with Scheindlin*, DAILY JOURNAL (Apr. 16, 2016); Monica McCarroll, *Discovery and the Duty of Competence*, 26 REGENT U. L. REV. 81, 85 (2013).

²¹⁴ Diane P. Wood, *Judge of All Trades: Further Thoughts on Specialized Courts*, 99 JUDICATURE 11 (2015).

be assigned to Judge Matthew Kacsmaryk.²¹⁵ That choice of venue reflected a by then well-established practice among litigants espousing conservative causes.²¹⁶ During the Biden administration, Judge Kacsmaryk was presented with requests to order withdrawal of the FDA’s approval of mifepristone and misoprostol;²¹⁷ require the Biden administration to retain the Trump administration’s remain-in-Mexico policy for asylum adjudications;²¹⁸ set aside Department of Education regulations prohibiting discrimination based on sexual orientation and gender identity in schools²¹⁹ and EEOC guidance regarding treatment of transgender employees in the workplace;²²⁰ declare unlawful the federal government’s COVID-19 vaccine mandate;²²¹ enjoin DHS rules more favorable to immigrants seeking asylum;²²² and eliminate rules permitting retirement plan managers to consider non-pecuniary ESG benefits when making investment decisions.²²³ In many cases, the state of Texas was a lead plaintiff; other cases involved a proliferation of private plaintiffs but just as much called for adjudication of weighty public law issues.²²⁴ Scholarly criticism on this practice most closely focused on the appearance of impropriety generated by allowing repeat player litigants and lawyers to choose a single judge, and on the assumption by those litigants that Judge Kacsmaryk would view their causes favorably.²²⁵ We think it is

²¹⁵ Robert Tait, *Trump Sues CBS News for \$10bn, Claiming Kamala Harris Interview Was Edited*, GUARDIAN (Nov. 1, 2024, 9:55 AM EDT), <https://www.theguardian.com/us-news/2024/nov/01/trump-cbs-harris-interview-lawsuit>

²¹⁶ Gouzoules, *supra* note 160, at 703.

²¹⁷ Complaint, All. for Hippocratic Med. v. U.S. Food & Drug Admin., No. 2:22-cv-00223-Z (N.D. Tex. filed Nov. 18, 2022).

²¹⁸ Complaint, State of Tex. v. Biden, No. 2:21-cv-00067-Z (N.D. Tex. filed Apr. 13, 2021).

²¹⁹ Amended Complaint, State of Tex. v. United States, No. 2:24-cv-00086-Z (N.D. Tex. filed May 13, 2024).

²²⁰ Complaint, State of Tex. v. U.S. Equal Emp. Opportunity Comm’n, No. 2:21-cv-00194-Z (N.D. Tex. filed Sept. 20, 2021).

²²¹ Complaint, State of Tex. v. Ctrs. for Medicare & Medicaid Servs., No. 2:21-cv-00229-Z (N.D. Tex. filed Nov. 15, 2021).

²²² Complaint, State of Tex. v. Mayorkas, No. 2:22-cv-00094-Z (N.D. Tex. filed Apr. 28, 2022).

²²³ Complaint, Utah v. Walsh, No. 2:23-cv-00016-Z (N.D. Tex. filed Jan. 26, 2023).

²²⁴ See, e.g., Complaint, Tex. Bankers Ass’n v. Off. of the Comptroller of the Currency, No. 2:24-cv-00025-Z (N.D. Tex. filed Feb. 5, 2024) (challenge to Community Reinvestment Act final rule); Complaint, Am. Health Care Ass’n v. Becerra, No. 2:24-cv-00114-Z (N.D. Tex. filed May 23, 2024) (challenge to CMS nursing-home staffing final rule); see generally Gouzoules, *supra* note 160, at 722 (discussing judge-shopping by impact litigation groups).

²²⁵ See, e.g., Paul Gugliuzza, *Procedure, Substance, and Judge Shopping*, 174 U. PA. L. REV. (forthcoming 2026) (manuscript at 21) (Apr. 2025),

worth making an additional observation that may seem obvious but is often, at least unstated: This extraordinary centralization of cases turned Judge Kacsmaryk, in effect, into a specialized public law judge.²²⁶ That, in turn, may create its own set of problems.²²⁷

Judge Robert Drain, who sat for many years as the single bankruptcy judge in the White Plains division of the Bankruptcy Court for the Southern District of New York, provides a second stark example. Before taking the bench, Judge Drain had been a corporate bankruptcy lawyer at a prominent New York firm; he began his judicial career in Manhattan.²²⁸ His views were broadly typical for an elite bankruptcy practitioner and a judge on a court favored by corporate bankruptcy filers, including a willingness to grant relief particularly sought out by debtors.²²⁹ When Judge Drain transferred to the White Plains division of the Southern District, corporate debtors could ensure their case would be heard by a judge who was, at the very least, a known quantity. For several years thereafter, debtors on a wide scale engaged in a quite extraordinary campaign to ensure that Judge Drain heard their cases. Debtors leased short-term office space in White Plains to list on their bankruptcy petitions, used the address of local White Plains law firms, and selected White Plains addresses for registered agents for service of process, succeeding on each occasion in ensuring that Judge Drain would hear their cases.²³⁰ By 2020, Judge Drain heard as many large public company bankruptcy cases as did the eight judges in the Manhattan division combined.²³¹

We characterize such judge-shopping as primarily reflecting litigants' rather than judges' choices because the decisive step is taken by the litigant—

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5212982; Gouzoules, *supra* note 160, at 724; Katherine Macfarlane, *Constitutional Case Assignment*, 102 N.C. L. REV. 977, 981 (2024).

²²⁶ We claim this only for the axis of centralized adjudication. Judge Kacsmaryk continued to hear other non-public law cases. *Cf.* Macfarlane, *supra* note 225, at 1010.

²²⁷ We leave our broader normative discussion until Part IV. But another way of stating this point might be that critical accounts of forum shopping into Amarillo focus generally on Judge Kacsmaryk's known conservative views and note that, absent the single judge division, each of these cases might have been assigned to a judge with a different ideological background. But even holding ideology steady—assuming, for example, that *only* judges with judicial philosophies or ideological backgrounds akin to Judge Kacsmaryk were available to judge these cases—there may be reasons for concluding that it is suboptimal for system design to select for just *one* of those judges and turn him into a specialist, rather than spreading cases across a range of (albeit similar-thinking) judges.

²²⁸ Hall & Trust, *supra* note 164.

²²⁹ *Cf.* Levitin, *supra* note 136, at 353 (“Judge Drain’s courtroom had already become a favored destination . . . based on debtors’ attorneys’ sense that he would approve their restructuring proposals.”).

²³⁰ *Id.* at 353, 399, 402.

²³¹ *Id.* at 377.

who converts what is a facially random assignment process into a predictable judge-selection mechanism that allows for the effective centralization of cases. Unlike the examples with which we opened the previous section, Judge Kacsmaryk and Judge Drain did not manipulate court architecture in establishing their de facto specialized courts; rather, they operated within existing case-assignment rules that allowed litigants to sort themselves into their courtrooms. That said, the two categories inevitably intertwine with each other. To become a de facto specialist, a judge sitting in a single-judge division must at least tolerate the litigants that sort into their courts. A judge that does not play ball will not continue to receive cases. Judge Kacsmaryk, for example, routinely denied motions to transfer venue away from his court in high profile cases.²³² And Judge Drain sharply criticized commentators worried about any appearance of impropriety attributable to debtors sorting themselves into a single judge's courtroom.²³³

And ultimately, predictable assignment within single-judge divisions itself exists only to the extent that district courts tolerate it. Some courts have changed course. In 2021, the Bankruptcy Court for the Southern District of New York moved to a system of district-wide random assignment for all megacases exceeding \$100 million, even as smaller cases continue to be assigned according to division.²³⁴ The Eastern District of Virginia, whose Richmond division had briefly emerged as a heavyweight contender in the competition for megacases, made the same change on the same day.²³⁵ Criticism of case centralization into the two-judge Richmond division extended to the district court, with one judge on that court going so far as to order a case on remand to be transferred outside of the division.²³⁶ At the

²³² Order, *United States v. Planned Parenthood Fed'n of Am., Inc.*, No. 2:21-cv-00022-Z (N.D. Tex. Sept. 20, 2022), ECF No. 183 (denying defendants' motion to transfer venue); Order, *Texas v. Biden*, No. 2:21-cv-00067-Z (N.D. Tex. July 8, 2022) (denying motion to transfer venue); Opinion and Order, *State of Utah v. Walsh*, No. 2:23-cv-00016-Z (N.D. Tex. Mar. 28, 2023), ECF No. 68 (denying motion to transfer venue).

²³³ Levitin, *supra* note 136, at 386.

²³⁴ In re Amendment to Local Bankruptcy Rule 1073-1 Relating to Assignment of Mega Chapter 11 Cases, Gen. Order M-581 (Bankr. S.D.N.Y. Nov. 30, 2021) (effective Dec. 1, 2021).

²³⁵ In re Judge Assignment Protocol for Mega Chapter 11 Cases, Standing Order 21-21 (Bankr. E.D. Va. Nov. 30, 2021) (effective Feb. 15, 2022); *see also* Levitin, *supra* note 136, at 376–77 (describing emergence of Richmond as a preferred Chapter 11 filing venue).

²³⁶ *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 703 & n.16 (Bankr. E.D. Va. 2022) (“[T]he interests of justice warrant reassigning this case to another Bankruptcy Judge in this district outside the Richmond division . . . the practice of regularly approving third-party releases and the related concerns about forum shopping call into question public confidence in the manner that these cases are being handled by the Bankruptcy Court in the Richmond Division.”).

district court level, though, the political valence of the issue has stymied reform. An “End Judge Shopping Act” filed in the House of Representatives in both 2023 and 2025 failed on both occasions to advance.²³⁷ And combined pushback from Republican Senators and Fifth Circuit judges forced the U.S. Judicial Conference to walk back an attempt to promote districtwide random assignment of significant public law cases.²³⁸ Litigants may be sorting themselves into specialized judging, but (many) judges are on board.

In brief summation, therefore, this section highlights the demand-side driven sorting of cases, as opposed to the supply-side proffering of a venue for centralized adjudication central to the Houston complex case panel or the Waco patent rocket docket described above.²³⁹ Yet we do not mean to suggest that this distinction is binary. Although we think the contrasts that we draw are meaningful, there is a sense in which each instance of this kind of centralized adjudication is co-produced. Judges’ choices on the supply-side matter insofar as litigants respond to them, and litigants’ choices to sort themselves into any given forum are impactful only insofar as system design allows such sorting.

The Broader Effects of Forum Shopping. Litigant choices of venue create patterns of centralized adjudication even absent the extreme sorting seen examining single-judge divisions. Impact litigation can have significant effects in its own right, as the story of Judge Kacsmaryk’s courtroom suggests.²⁴⁰ But the federal government is by far the most important player in generating court centralization, because it both brings an extremely high volume of cases and also typically has significant freedom to bring cases in its preferred venue.²⁴¹ And some trends are particularly notable; the federal government has effectively chosen the Eastern District of Virginia rather than the District for the District of Columbia as a centralized court for high-profile criminal cases involving national security issues—at least in part for reasons,

²³⁷ See End Judge Shopping Act of 2023, H.R. 3163, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/3163/all-actions> ; End Judge Shopping Act, H.R. 2795, 119th Cong. (2025), <https://www.congress.gov/bill/119th-congress/house-bill/2795/all-actions>

²³⁸ Gouzoules, *supra* note 160, at 704; Nate Raymond, *U.S. Judiciary Says Courts Have Discretion to Adopt ‘Judge Shopping’ Policy*, REUTERS (Mar. 15, 2024).

²³⁹ *Supra* Part III.A.1.

²⁴⁰ See, e.g., Stephen Vladeck, *Don’t Let Republican ‘Judge Shoppers’ Thwart the Will of Voters*, NY TIMES (Feb. 5, 2023); see generally Alex Botoman, *Divisional Judge Shopping*, 49 COLUM. HUM. RTS. L. REV. 297, 200-08 (2018). Gouzoules, *supra* note 160, at 722-23; and see *supra* notes 215-224 and accompanying text.

²⁴¹ Admin. Office of the U.S. Courts, Federal Judicial Caseload Statistics 2025, tbl. C-2 (over 3,000 civil suits brought by United States in 2025); 28 U.S.C. § 1391(b)(2) (venue proper in any district in which a “substantial part of events” occurred); cf. Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC. REV. 95, 99-109 (1974) (theorizing repeat player advantage in litigation).

like the perceivedly more conservative jury pool in Virginia, that are entirely beyond the control of the judges.²⁴²

The federal government, however, is not the only frequent forum shopper. As digital commerce created new opportunities for counterfeiting, brand owners in recent years got creative, often suing dozens or hundreds of alleged counterfeiters in a single action.²⁴³ Known as “Schedule A” litigation—so named because the defendants are so numerous as to be named only in a “Schedule A” exhibit attached to the end of the complaint²⁴⁴—the cases have had their epicenters in the Southern Districts of New York and Florida and, most especially, the Northern District of Illinois. Why these forums have been such magnets is not entirely clear,²⁴⁵ though it seems to be driven by plaintiffs’ preference for judges already experienced with Schedule A litigation,²⁴⁶ circuit precedent staking out a relatively liberal approach to personal jurisdiction over foreign defendants,²⁴⁷ and, possibly, a perception that these courts take a relatively plaintiff-friendly view of the underlying

²⁴² See Ben Penn, *Trump DOJ Upheaval in Virginia Hobbles National Security Unit*, BLOOMBERG LAW (Oct. 22, 2025), <https://news.bloomberglaw.com/us-law-week/trump-doj-upheaval-in-virginia-hobbles-national-security-unit>; Jerry Markon, *7 Named on Short List for U.S. Bench: Senators Identify Talent; Choice Is In Bush’s Court*, WASH. POST (May 16, 2007) <https://www.washingtonpost.com/archive/local/2007/05/17/7-named-on-short-list-for-us-bench/2157e651-3ba5-466a-b03e-f98db02d7adf/>; Robert Timothy Regan, *National Security Case Studies: Special Case-Management Challenges* 137 n. 890 (7th ed., Fed. Jud. Ctr. 2022) (citing Karen J. Greenberg, *Rough Justice* at 78 (2016)) (describing decision to prosecute 9/11 conspirator Zacharias Moussaoui in Alexandria).

²⁴³ See, e.g., Christopher Keleher, *Schedule A: Where Convenience & Civil Procedure Clash: A Schedule A Tactic to Herd Alleged Infringers into a Single Action Is Testing the Limits of Civil Procedure Rules, Prompting Pushback from the U.S. District Court for the Northern District of Illinois*, 114 ILL. B.J. 32 (2026).

²⁴⁴ See, e.g., Eric Goldman, *A Sad Scheme of Abusive Intellectual Property Litigation*, 123 COLUM. L. REV. FORUM 183, 186 (2023); Sarah Fackrell, *The Counterfeit Sham*, 138 HARV. L. REV. 471, 493–94 (2024).

²⁴⁵ In the Northern District of Illinois, the judges themselves have occasionally expressed surprise and confusion over what is driving the rise in Schedule A litigation. See, e.g., Transcript of Hearing Before Judge Manish S. Shah, *Ali Gulec v. The Partnerships and Unincorporated Associations Identified on Schedule A*, No. 22-C-6276, at 3 (“THE COURT: . . . [T]hese cases are coming with a level and frequency that is making some of us wonder, why? Why us? Why this district? And have we been too easy and not skeptical enough on this practice? Are we getting taken advantage of by the plaintiffs’ bar in bringing these cases?”), <https://assets.law360news.com/1568000/1568802/01-19-23b%20ali%20gulec%20v.%20the%20partnerships%20-%20hearing.pdf>.

²⁴⁶ Riddhi Setty & Isaiah Poritz, *Brands Flock to Chicago Court in War on Internet Counterfeiters*, BLOOMBERG LAW (Apr. 5, 2023).

²⁴⁷ See Lauraan Wood, *Northern Ill. A Surprise Magnet For Counterfeiting Suits*, LAW360 (Jan. 24, 2023), <https://www.law360.com/articles/1568802/northern-ill-a-surprise-magnet-for-counterfeiting-suits>.

intellectual property law.²⁴⁸ As with the bankruptcy and patent hotspots discussed above, however, the courts and judges themselves bear at least partial responsible for attracting the litigation.²⁴⁹ Judges on the Northern District of Illinois in particular have rolled out standing orders and forms intended to streamline Schedule A cases.²⁵⁰

3. Court Staffing Choices

The first section of this sub-Part explained local rules and standing orders can be used to facilitate and intensify judge- or litigant-driven specialization.²⁵¹ But outside of an individual judge’s chambers, court-wide institutional choices can be another driver of specialization. Such specialization is often accomplished through the specialized employment of non-judge court personnel.

In *pro se* and especially prison litigation, district and circuit judges are often assisted by “*pro se* clerks” and staff attorneys who guide self-represented litigants through the maze of civil litigation and,²⁵² in the case of staff attorneys, provide judges with substantive analysis of *pro se* filings, often in the form of draft orders.²⁵³ In many courts non-Article III staff attorneys are likely to write the first draft of the pre-service screening orders required in prison litigation.²⁵⁴ Unlike chambers law clerks, staff attorneys are typically hyper-focused on a narrow variety of case types (namely, the types of cases filed by *pro se* litigants, especially prisoner petitions). Although the staff attorney’s recommendation must ultimately be endorsed by a district judge, it’s noteworthy that the first substantive review of a *pro*

²⁴⁸ Chelsea R. Feagle, *Fighting the Faceless Foe Known as the Online Trademark Counterfeiter: Forum Shopping Tactics in the Digital Age*, 26 J. INTELL. PROP. L. 303, 324 (2019) (hypothesizing that plaintiffs’ preference for the Southern District of Florida stemmed in part from “how Florida courts have liberally interpreted the Lanham Act’s language concerning . . . statutory damages in trademark counterfeiting cases.”).

²⁴⁹ Wood, *supra* note 247 (describing the “symbiotic” relationship between Schedule A plaintiffs’ attorneys and judges in the Northern District of Illinois).

²⁵⁰ See, e.g., Chief Judge Kendall’s Standing Order for “Schedule A” Litigation (N.D. Ill. May 18, 2026), https://www.ilnd.uscourts.gov/assets/_documents/_forms/_judges/Kendall/Standing%20Order%20-%20Schedule%20A%20-%205-2026.pdf; Goldman, *supra* note 244, at n. 54 & accompanying text.

²⁵¹ See, e.g., *supra* notes 136-138 and accompanying text (discussing local rules and standing orders authorizing complex case panels in bankruptcy cases)

²⁵² See, e.g., Andrew Hammond, *The Federal Rules of Pro Se Procedure*, 90 FORDHAM L. REV. 2689, 2724 (2022). Across districts and circuits, the terms “*pro se* clerk” and “staff attorney” are often used interchangeably. See, e.g., Katherine A. Macfarlane, *Shadow Judges: Staff Attorney Adjudication of Prisoner Claims*, 95 OR. L. REV. 97, 103 (2016).

²⁵³ *Id.* at 105–11 (describing the duties of district court staff attorneys).

²⁵⁴ *Id.* at 120.

se complaint may be conducted not by a generalist judge or even a generalist law clerk but rather a specialist court employee, and judges are often said to “rubber stamp” the recommendations of staff attorneys.²⁵⁵ Further, when *pro se* matters *do* command a district judge’s attention, there’s a chance that the district judge may already have some insider knowledge; in some courts, when a self-represented litigant is deemed a frequent filer, all future complaints by the same self-represented plaintiff are channeled to the same district judge.

There are other non-judge actors that exercise decision-making power. Chambers law clerks are typically employed as generalists, but some judges will task their clerks in a more specialized manner. Judges presiding over a multidistrict litigation may hire a specialized “MDL clerk,” for example.²⁵⁶ Judges in Indian country have been known to hire a clerk with specialized expertise in Indian law.²⁵⁷ Likewise, some judges on the Federal Circuit may seek law clerks with particular technical backgrounds, such as in electrical engineering.²⁵⁸ And at least one federal judge has been known to designate one of his term clerks each year as the so-called (and presumably tongue-in-cheek) “death clerk,” who will assist the judge in all death penalty matters.²⁵⁹ Just like with staff attorneys, when generalist courts rely on the work of specialized law clerks, the court’s overall production function ceases to be fully generalized.

4. Path Dependence Absent Choice

Finally, and briefly, sometimes cases centralize in particular courts for exogenous reasons of path dependence that do not reflect choice by any particular actor. Simply because of proximity to the border, both district and appellate courts in the Ninth and Fifth Circuits hear a greater proportion of immigration-related cases than do courts within the interior.²⁶⁰ “For better or

²⁵⁵ RICHARD A. POSNER, REFORMING THE FEDERAL JUDICIARY: MY FORMER COURT NEEDS TO OVERHAUL ITS STAFF ATTORNEY PROGRAM AND BEGIN TELEVISIONING ITS ORAL ARGUMENTS 44 (2017).

²⁵⁶ Barbara J. Rothstein & Catherine R. Borden; *Managing Multidistrict Litigation in Products Liability Cases*, F.J.C. 2 (2011).

²⁵⁷ Conversations with federal judges.

²⁵⁸ Conversations with former law clerks.

²⁵⁹ Conversations with federal judges. The Supreme Court employs its own non-chambers “death clerk,” formally titled the emergency applications clerk. *See, e.g.,* Adam Liptak, *To Beat the Execution Clock, the Justices Prepare Early*, N.Y. TIMES (Sep. 3, 2012).

²⁶⁰ The Administrative Office of the U.S. Courts reports that 90% of all criminal immigration cases in federal court in 2024 were filed in the five districts adjoining the southern border. ADMIN. OFFICE OF THE U.S. CTS., JUDICIAL BUSINESS 2024: U.S. DISTRICT COURTS (2024), <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/us-district-courts-judicial-business->

worse,” one Pasadena-based Ninth Circuit judge observed “we *are* the Court of Appeals for the Hollywood Circuit.”²⁶¹ And the Southern District of New York serves as a de facto centralized and specialist court for the financial sector, hearing an outsize share of federal securities litigation.²⁶² And that same court has long been the “preeminent” venue for admiralty in large part because of the presence of ports and the bar and bench that developed around them.²⁶³

B. How Specialized? The Extent of the Departure

An additional dimension of analysis that warrants mention, even if only in brief, is the degree of specialization—or the extent to which the various instances of specialized adjudicators and centralized adjudication that we have discussed depart from baseline pretenses of generalism. Again, we believe that the most interesting observations here concern quasi-formal or informal specialization, and so we include this discussion in this Part. That reflects our conclusion that informally specialized arrangements distinguish themselves from their formal cousins by the lack of any intentional institutional commitment to the move away from generalism.²⁶⁴ The grab-bag docket of the Federal Circuit, including its patent specialism, for example, reflects a very substantial departure from the baseline expectation that court of appeals judges are generalists, but it does so at least pursuant to a deliberate and considered decision from Congress.²⁶⁵ In contrast, the surge of patent cases in the Western District of Texas between 2018 and 2022 reflects no institutional decision-making process but rather an ad hoc campaign of sometimes opaque and generally unreviewable choices made idiosyncratically by Judge Albright.²⁶⁶ Once again, our ultimate conclusion

2024. Meanwhile, 58% of all appeals from the Board of Immigration Appeals were filed in the Ninth Circuit. ADMIN. OFFICE OF THE U.S. CTS., U.S. COURTS OF APPEALS—JUDICIAL BUSINESS 2024 (2024) <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024/us-courts-appeals-judicial-business-2024>.

²⁶¹ *White v. Samsung Elecs. Am., Inc.*, 989 F.2d 1512, 1521 (9th Cir. 1993) (Kozinski, J., dissenting from denial of rehearing en banc).

²⁶² See Kevin M. LaCroix, *Federal Court Securities Class Action Lawsuit Filings Increased in 2024*, D&O DIARY (Jan. 5, 2025), <https://www.dandodiary.com/2025/01/articles/securities-litigation/federal-court-securities-class-action-lawsuit-filings-increased-in-2024/>

²⁶³ See generally George Chalos, *Admiralty Law and the Federal District Courts of New York Go Hand in Hand*, 65 FED. LAW. 70 (2018); see also Irving R. Kaufman, *New Remedies for the Next Century of Judicial Reform*, 57 FORDHAM L. REV. 253, 254 (1988).

²⁶⁴ *Supra* note 150 and accompanying text. We discuss the normative implications of this intentionality question in more detail in Part IV.D, *infra*.

²⁶⁵ *Supra* Part II.

²⁶⁶ *Supra* Part III.A.1.

is that the magnitude of specialization is not binary; it exists along a spectrum and lacks clear and definable metrics for measurement. Nevertheless, we suggest that informal and ad hoc specialization that also represents a dramatic departure from the baseline of generalism is particularly worthy of attention.

We propose two ways in which it is helpful to conceive of degree or magnitude of specialization. First, as the previous discussion suggests, is the degree of departure from a system-wide baseline, which we take to be the broad presumption (or pretense) of federal judicial generalism that we explain in Part I. Within the categories we have identified, departures may be modest—as with a senior judge that decides to hear no more capital cases but that will take any other matter off the wheel. Such a judge may in some sense have specialized his docket but still operates broadly as a generalist; much less so, in contrast, a judge who sheds all her other cases after she is assigned to some complex and high-profile matter.²⁶⁷

The second axis that may be helpful is to contrast informal specialized adjudication by generalists with further informal specialization by actors that already specialize—or “hyperspecialization,” as we call it. Otherwise stated, we can consider the extent of the departure from the particular and context-specific baseline that applies to the judge in question. A line district court judge that has just taken senior status sits perhaps as close as any judge to the baseline presumption of generalism, at least before they make the decision to narrow their docket.²⁶⁸ In contrast, a bankruptcy judge that sits on the Southern District of Texas is already a specialized adjudicator even before they join that district’s complex case panel.²⁶⁹

The distinction between these two types of actors may matter. Melissa Wasserman and David Slack suggest that opinion specialization on the ordinary federal circuit courts of appeals may be “a development to embrace” but find hyperspecialization within the Federal Circuit highly troublesome.²⁷⁰ Alex Gouzoules, meanwhile, suggests the opposite, at least implicitly, defending case concentration of complex Chapter 11 cases in bankruptcy while suggesting that hyper-specific sorting of cases at the district

²⁶⁷ In 2017, after Judge Barbara Houser was assigned to lead the mediation team for the Puerto Rico restructuring, the Bankruptcy Court for Northern District of Texas announced that, on an interim basis, “substantially all” of her docket would be heard by other judges on the court. *Clerk’s Notice 17-02: Notice Regarding Preliminary Designation of Chief Judge Houser as Lead Judicial Mediator in Puerto Rico Insolvency Cases* (Bankr. N.D. Tex. June 15, 2017), <https://www.txnb.uscourts.gov/sites/txnb/files/clerks-notices/17-02ClerksNoticeRegardingPreliminaryDesignationofChiefJudgeHouserAsLeadJudicialMediatorinPuertoRicoInsolvencyCases.pdf>.

²⁶⁸ *Supra* notes 187-189 and accompanying text.

²⁶⁹ *Supra* notes 136-138 and accompanying text; *cf.* Gouzoules, *supra* note 101 (challenging the “prevailing academic consensus” that bankruptcy judges are specialists).

²⁷⁰ Wasserman & Slack, *supra* note 11, at 1415–1421, 1448.

court level is problematic.²⁷¹ We turn to the normative implications in the next Part, but there are at least some possible reasons why hyperspecialization might be of particular concern: judges that already specialize, for example, lose to an even greater extent opportunities for cross-fertilization of ideas across subject-matters and the benefit of percolation of issues among different decision-makers,²⁷² while democratic legitimacy and accountability for judges that become de facto technocrats is all the more threatened.²⁷³

IV. THE PROMISES AND PERILS OF INFORMAL SPECIALIZATION

Judicial specialization is a subject of perennial debate. Judges, policymakers, and scholars have long weighed a familiar set of competing values—ranging from arguably “neutral” values like efficiency, decisional quality, and uniformity, to deeper, more substantive values like doctrinal development and cross-fertilization, judicial bias and capture, and institutional legitimacy.²⁷⁴ That debate, however, has proceeded almost entirely with reference to well-known examples of formal specialization. As Part III of our article demonstrates, this blindered emphasis on formally specialized tribunals and judges leaves unexamined the numerous instances in which Article III courts and judges have moved in the direction of informal specialization. This Part first summarizes the existing normative debate and then turns to what we regard as its most significant gap: the distinctive promises and perils of informal specialization.

A. The State of the Debate

The normative debate over judicial specialization has generated a rich and wide-ranging literature. Among the most frequently discussed considerations—both for and against specialization—are the following:

Efficiency. Judicial specialization is often defended on efficiency grounds. That specialization should tend to yield efficiency gains is an idea

²⁷¹ Gouzoules, *supra* note 160, at 749.

²⁷² *Infra* notes 288-291 and accompanying text.

²⁷³ *Infra* notes 295-297 and accompanying text.

²⁷⁴ See BAUM, *supra* note 10 at 4, 32-41; see also Lawrence Baum, *Specializing the federal courts: neutral reforms or efforts to shape judicial policy?*, 74 JUDICATURE 217 (1991). We note that the neutral/non-neutral distinction is a fragile one, both because trades between seemingly neutral virtues can themselves prove normatively contentious, and also because purportedly “neutral” improvements may have non-neutral effects, for example when reducing cost and delay redounds to the benefit of certain classes of litigants more than others. See, e.g., Danya Shocair Reda, *The Cost-and-Delay Narrative in Civil Justice Reform: Its Fallacies and Functions*, 90 OR. L. REV. 1085, 1123 (2012) (arguing that the persistence of efficiency-based critiques of the civil justice system reflect interest-group influence, especially from corporate defendants.).

with deep roots in economics²⁷⁵ and organizational theory.²⁷⁶ In a specialized tribunal, the hypothesis is that greater subject-matter expertise and specialized procedures may result in economies of scale.²⁷⁷ Proponents further argue that specialization can relieve generalist courts of the burden of highly technical cases—patents being the canonical example²⁷⁸—thereby improving speed and predictability in the cases that remain.²⁷⁹ Consistent with these views, the congressionally formed Federal Courts Study Committee identified expanded specialization as one possible response to the perceived caseload “crisis” of the late 1980s.²⁸⁰

Decisional Quality. Expertise may also improve decisional quality. Judges with greater subject-matter expertise may do better both with complex statutory or doctrinal schemes as well as with technical fact patterns,²⁸¹ potentially resulting in fewer errors of law or fact,²⁸² and an expert judge may simply write better opinions.²⁸³ Empirical scholarship has provided some limited support for the “decisional quality” hypothesis.²⁸⁴

Uniformity. Whereas expertise would seem to flow more from adjudicator specialization than centralized adjudication, uniformity would seem to work the other way. The hoped-for outcome is that a specialized tribunal with exclusive or near-exclusive jurisdiction over a particular case type will result in greater uniformity of decisions and, at the appellate level,

²⁷⁵ See ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 3–12 (Edwin Cannan ed., Random House 1937) (1776).

²⁷⁶ Herbert A. Simon, *The Proverbs of Administration*, 6 PUB. ADMIN. REV. 53, 53 (1946).

²⁷⁷ BAUM, *supra* note 10, at 32–33.

²⁷⁸ See John B. Pegram, *Should There Be a U.S. Trial Court with a Specialization in Patent*, 82 J. PAT. & TRADEMARK OFF. SOC’Y 765, 787–88 (2000);

²⁷⁹ BAUM, *supra* note 10, at 32–33.

²⁸⁰ Report of the Federal Courts Study Committee 11–12 (Apr. 2, 1990), available at <https://www.fjc.gov/sites/default/files/2012/RepFCSC.pdf>.

²⁸¹ *Cf.* Parke-Davis & Co.

²⁸² See Baum [Probing], *supra* note 13, at 1676–77; see also Fletcher, *supra* note 55 (criticizing Supreme Court’s lack of expertise on Indian law).

²⁸³ See Cheng, *supra* note 11, at 549.

²⁸⁴ In patent litigation, district judges with greater prior patent experience appear to resolve cases more quickly and are reversed slightly less frequently on appeal. See Jay P. Kesan & Gwendolyn G. Ball, *Judicial Experience and the Efficiency and Accuracy of Patent Adjudication: An Empirical Analysis of the Case for a Specialized Patent Trial Court*, 24 HARV. J.L. & TECH. 393, 427, 436 (2011). Similarly, Rafael Pardo and Jonathan Nash find that courts of appeals are more likely to affirm decisions by bankruptcy appellate panels (staffed by specialist bankruptcy judges) than by non-specialist district judges, and BAP decisions are cited more frequently. Jonathan R. Nash & Rafael I. Pardo, *An Empirical Investigation into Appellate Structure and the Perceived Quality of Appellate Review*, 61 VAND. L. REV. 1745, 1791, 1795 (2008).

less divergence in legal precedent.²⁸⁵ Without inconsistency across forums, specialization may also diminish incentives for “unseemly” forum shopping.²⁸⁶

Doctrinal Development & Coherence. Closely related to uniformity are the ideas of doctrinal development and coherence, both frequently cited as benefits of specialization. When cases of a certain type are centralized in a single forum, the judges in that forum have greater ability and incentive to develop a coherent body of doctrine. Just as owners with well-established property rights might make greater investments in their land, judges with monopolistic control over a given field might be more likely to invest in it.²⁸⁷

Cross-Fertilization & Percolation. If there is a flipside to the coherence coin it might be lost opportunities for “cross-fertilization” and “percolation,” which defenders of generalism often point to as two of its virtues.²⁸⁸ Cross-fertilization refers to the capacity of generalists to draw connections across doctrinal domains;²⁸⁹ percolation describes the process by which ideas may be exchanged, tested, and refined when a single issue comes before multiple independent courts or judges.²⁹⁰ Critics have raised both concerns in relation to the Federal Circuit, arguing that its exclusive and limited appellate jurisdiction has stood in the way of an exchange of ideas between the regional circuits and ultimately led to a static, isolated, and overly rules-based body of substantive patent law.²⁹¹ Though related, cross-fertilization is primarily associated with adjudicator specialization whereas percolation is more associated with centralized adjudication.

Bias & Capture. Also typically offered as pitfalls of specialization are the related but conceptually distinct problems of professional or ideological bias and judicial capture. Bias refers to the possibility that specialization may tilt the ideological profile of a court, either because

²⁸⁵ Dreyfuss, *supra* note 13, at 378.

²⁸⁶ David P. Currie & Frank I. Goodman, *Judicial Review of Federal Administrative Action: Quest for the Optimum Forum*, 75 COLUM. L. REV. 1, 65 (1975).

²⁸⁷ See, e.g., Dreyfuss, *supra* note 15, at 378–79 (“Absolute responsibility over an entire corpus of law should, at least theoretically, be exciting, for it provides a unique opportunity to oversee the development of a coherent body of doctrine, whose elements are carefully chosen to mesh effectively.”)

²⁸⁸ See, e.g., Wood, *supra* note 15, at 1767 (celebrating opportunities for cross-fertilization among generalist judges); Dreyfuss, *supra* note 15, at 380 (noting lost opportunities for percolation in specialist arrangements).

²⁸⁹ Specialists judges, on the other hand, become insulated from other areas of the law and may experience a kind of tunnel vision.

²⁹⁰ See, e.g., Rochelle C. Dreyfuss, *Forums of the Future: The Role of Specialized Courts in Resolving Business Disputes*, 61 BROOK. L. REV. 1, 17 (1995); see generally Michael Coenen & Seth Davis, *Percolation’s Value*, 73 STAN. L. REV. 363 (2021).

²⁹¹ Gugliuzza, *supra* note 125, at 1442; Rochelle Cooper Dreyfuss, *The Federal Circuit: A Case Study in Specialized Courts*, 64 N.Y.U. L. REV. 1, 25 (1989).

specialist judges are selected differently from generalist judges or because the experience of sitting on a specialized court tends to affect their behavior.²⁹² Capture is subtly different, positing that specialized judges can become overly responsive to discrete interest groups with business before them.²⁹³

Stereotyping & Inurement. Another potential cost of specialization—frequently overlooked in the normative literature—is that repeated exposure to similar claims may lead specialized judges to become routinized or overly reliant on heuristics. We call these the problems of *stereotyping* and *inurement*: the risk that judges may rely on decisional heuristics inapposite to the individual case,²⁹⁴ or that specialist adjudicators may become desensitized to individual nuance within a recurring class of claims. Stereotyping and inurement are conceptually distinct from the above-described problems of isolation or tunnel vision; they concern not diminished doctrine but diminished attentiveness to individual claims.

Democratic Legitimacy & Accountability. Last, critics of specialization also warn that it may undermine the judiciary’s democratic legitimacy and accountability. Even the appearance of judicial capture risks or professional insularity can erode public confidence and foster perceptions of judges as policymakers in robes.²⁹⁵ As Judge Diane Wood has observed, “[g]eneralist judges cannot become technocrats; they cannot hide behind specialized vocabulary and ‘insider’ concerns.”²⁹⁶ If generalist judges have a specialty, in other words, it is in “demystify[ing]” legal doctrine and rendering their decisions legible to a democratic public.²⁹⁷

²⁹² See BAUM, *supra* note 10, at 36; see also *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 839 (2002) (Stevens, J., concurring) (“Moreover, occasional decisions by courts with broader jurisdiction [than the Federal Circuit] will provide an antidote to the risk that the specialized court may develop an institutional bias.”).

²⁹³ *Id.* at 37–38 (discussing interest group influence generally); see also Richard A. Posner, *Will the Federal Courts of Appeals Survive until 1984? An Essay on Delegation and Specialization of the Judicial Function*, 56 S. CAL. L. REV. 761, 789–90 (1983) (suggesting that the D.C. Circuit exhibits both bias and capture with respect to its review of regulatory issues).

²⁹⁴ See BAUM, *supra* note 10, at 36 (discussing possibility of specialist judges forming “stereotypes” vis-à-vis certain case or litigant types).

²⁹⁵ See Wood, JUDICATURE, *supra* note 214, at 14–15. *But see* Fletcher, *supra* note 55 (calling for greater Native American influence in the adjudication of Indian law issues as a matter of “self-determination.”).

²⁹⁶ Wood, *supra* note 15, at 1767.

²⁹⁷ *Id.*

B. The Problems of Informality

In this section, we turn to our own normative critique. We suggest three dimensions along which one could assess the propriety of informal specialization: what we call *authoritativeness*—itself a compound concept which we attempt to unpack in first subsection below; the notion of fidelity to the judicial role and its virtues; and the special concerns that arise when mixing informal specialization with narrower or more insular fields of law that already possess distinctive internal cultures. We should be clear that, although we highlight normative concerns, we do not propose to eliminate informal judicial specialization. Indeed, doing as much strikes us as a practical matter as impossible. Many of the examples that we catalog in Part III reflect deeply rooted practices among judges and litigants. Others have causes beyond the reach of the most determined reformers—such as the fact that financial cases tend to cluster in the country’s financial capitals and immigration cases along the border.²⁹⁸ Meanwhile, regulating much of what is left would involve substantial encroachment upon judicial independence, including the ability of judges to fix case assignment procedures for their own courts, to delegate to non-Article III actors, and to share work among the courts’ members.

And we also acknowledge that informal judicial specialization carries with it its own benefits. In addition to potential virtues—including the promotion of efficiency and the effective deployment of expertise—well known from debates over formal specialization, informal specialization seems particularly and distinctly valuable as a mechanism for experimentation and adaptation within the federal judiciary. Our ultimate conclusion is that informal specialization is something of a double-edged sword; although it brings benefits, it both amplifies many of specialization’s most familiar risks and generates some hazards of its own. In the following section, we turn to some of those perhaps underappreciated hazards.

1. *The “Authoritativeness” Problem*

We use *authoritativeness* as an umbrella term for a collection of different interests that informal and quasi-formal specialization may place in jeopardy. Our overarching connecting theme here is that decisions about specialization should be made by an appropriate institutional decision-maker given the nature and magnitude of the specialization involved. What is “appropriate,” of course, will vary from case to case. From a system design perspective, the creation of a *de facto* national specialized patent trial court in Waco, Texas, hearing a quarter of the nation’s patent suits would seem to require more robust institutional grounding to justify as appropriate and

²⁹⁸ *Supra* note 260 and accompanying text.

authoritatively established than, say, division of labor among magistrate judges as to different categories of non-dispositive motions in a single district. In giving content to this notion of an authoritative or appropriate grounding, therefore, we propose a series of inquiries regarding the intentionality of the specialization, the extent to which the decision to specialize, even if intentional, can properly take account of resulting externalities, the transparency of the process and outcome, and the extent to which it is consistent with values of legitimacy and accountability.

Intentionality. One distinctive feature of informal specialization is that many instances occur as a by-product of retail decisions about individual preferences taken without regard to effect on the centralization of adjudication (in particular) or the specialization of adjudicators. Take Judge Ambro. In any given case in which Judge Ambro was assigned a bankruptcy opinion by a more senior colleague, the other judges on the panel likely did not have at front of mind the outsized share of bankruptcy opinions Judge Ambro has authored in comparison to his colleagues or the extent to which his footprint on bankruptcy law departed from the generalist ideal.²⁹⁹ Far more likely, case-by-case decisions like this reflected a more informal analysis about the most efficient opinion writer and the in-the-moment workload and preferences of the three judges. Likewise, say, a senior judge in a small district with only one or two active judges who chooses to focus on criminal or civil matters can cause, *de facto*, a centralization of civil adjudication in one of the active judges not intentionally but simply as a byproduct of her own preferences.

The point is not, nor could it be, to seek to extirpate exercises of retail action upon preferences by individual judges. As we have acknowledged, the elimination of informal specialization would sit uneasily with judicial independence, and it seems plain that, say, micro-managing Third Circuit opinion assignment to ensure that Judge Ambro receives only a proportionate share of bankruptcy opinions would be a major invasion of that territory. Rather, a starting point is to counsel mindfulness.

System-Wide Externalities. Authoritativeness extends beyond intentionality. Building on the examples we have given in the immediately previous discussion of intentionality, we note that informal specialization is primarily a retail phenomenon. But even retail actors may intend to specialize. At the extreme, Judge Jones openly declared his intention to centralize complex Chapter 11 cases in the Bankruptcy Court for the

²⁹⁹ *Supra* notes 197-201 and accompanying text (describing share of bankruptcy opinions authored by Judge Ambro); Cheng, *supra* note 11, at 543 (briefly suggesting possible explanations for opinion specialization).

Southern District of Texas.³⁰⁰ We find problematic, though, the dynamic of local and retail decisions that drive system-wide effects—something clearly so with a Judge Jones, a Judge Albright, or a Judge Kacsmayk. Some portion of our concern relates to the legitimacy of such decisions, which we discuss below.³⁰¹ But we also posit that in cases with such system-wide effects, system-level decision-makers will be far better placed to manage the externalities that arise from any decision to specialize (which likely will not be purely local) and also comprehensively to weigh the trade-offs inherent in the decision.

The list of tradeoffs and externalities potentially involved is endless; we do not and could not mean here to explore them all. Indeed, the entire judicial specialization literature, in a sense, concerns itself with the balance of such tradeoffs. Some examples, though, are vivid indeed, as with Judge Albright’s neglect of his docket increasing work for other judicial actors.³⁰² Beyond that, we believe it is worth highlighting a few externalities that we believe distinctively apply to the informal specialization on which we focus.

A lesson is that important tradeoffs stem from the link between informal judicial specialization and competition for cases. For some judges—à la Judge Jones—that wish to centralize adjudication in their own courts, this competitive aspect is explicitly acknowledged.³⁰³ Through the efforts of Judges Jones and Isgur, the Southern District of Texas became a “consumer-friendly” bankruptcy court.³⁰⁴ In other situations, competition among judges must be inferred. To the extent that judges in multiple locations seek to compete for a particular type of case—or even just to remain a possible venue for case filing in a world in which litigants are seeking aggressively to forum shop into favorable courts—judges risk a dynamic of one-upmanship. Delaware could dominate the Chapter 11 bankruptcy world in the late 1990s and 2000s based on the promise of one judge at random from a wheel of judges all acknowledged to be corporate bankruptcy experts, affording

³⁰⁰ *Supra* notes 154–157 and accompanying text. Judge Kaplan has made somewhat similar remarks about the U.S. Bankruptcy Court for the District of New Jersey, for which he serves as chief judge, describing a “pride factor” when New Jersey companies filed out of state and insisting that “myself and my colleagues can do and handle any case that’s filed anywhere.” Akiko Matsuda, *Bankruptcy Judge Kaplan Walks a Fine Line to Position New Jersey as Top Venue*, WALL ST. J., Dec. 26, 2024, <https://www.wsj.com/articles/bankruptcy-judge-kaplan-walks-a-fine-line-to-position-new-jersey-as-top-venue-7b4e1dfa>. New Jersey has similarly emerged in recent years as a destination venue for large Chapter 11 cases. *See, e.g.*, Adam Levitin, *What’s Going on with New Jersey Chapter 11 Case Assignments?*, CREDIT SLIPS (Mar. 23, 2026), <https://creditslips.org/2026/03/23/whats-going-on-with-new-jersey-chapter-11-case-assignments/>.

³⁰¹ *Infra* notes 326–336 and accompanying text.

³⁰² *Supra* notes TK XX–YY and accompanying text.

³⁰³ *Supra* notes 154–157 and accompanying text.

³⁰⁴ *Id.*

litigants predictability that their case would be handled by an experienced (and in-culture) adjudicator.³⁰⁵ To supplant Delaware, Houston offered large Chapter 11 debtors the even greater predictability of a draw from just two judges.³⁰⁶ And any jurisdiction seeking to add itself to the list of destination venues for Chapter 11 megacase practice must now plausibly match or exceed that same degree of predictability.³⁰⁷

Another way of stating this is that judges may compete in a “race to the bottom,”³⁰⁸ resulting in a one-way ratchet in favor of the “consumer.” Mechanically, cases collect, and thus the law develops, in pro-consumer destinations and can be expected as competition or selection pressure increases to shift ever further in a “consumer-friendly” direction. Who the consumer—effectively, the party entitled to its choice of forum—is will vary from case to case. Chapter 11 debtors in bankruptcy and non-practicing entity patent plaintiffs are much studied examples.³⁰⁹ But there are others. Some courts and judges have become de facto MDL specialists in part because both plaintiffs and defendants have preferred venues and are almost always successful in securing such venues.³¹⁰

In some other cases, the consumer may be a defendant. CAFA in particular gives class action defendants extraordinarily broad latitude to remove cases from state to federal court. At least one possible margin for competition effecting this kind of pro-consumer ratchet is that some federal district courts that have a preference for hearing high-stakes commercial litigation make their courts attractive to defendants making a choice as to removal.³¹¹ And again, even absent intentional judicial action, defendants

³⁰⁵ See, e.g., David Skeel, *What’s So Bad About Delaware*, 54 VAND. L. REV. 309, XXX (2001); *Bankruptcy Case Assignment Procedures*, U.S. Bankr. Ct. D. Del., <https://www.deb.uscourts.gov/bankruptcy-case-assignment-procedures> (last visited May 29, 2026) (providing for random assignment of Chapter 11 cases).

³⁰⁶ *Supra* notes 154-157 and accompanying text.

³⁰⁷ The Richmond “bubble,” during which the Eastern District of Virginia briefly became an additional hotspot for Chapter 11 filing, illustrates this. *Supra* notes 235-236 and accompanying text.

³⁰⁸ Cf., e.g., William L. Cary, *Federalism and Corporate Law: Reflections Upon Delaware*, 83 YALE L.J. 663, 666 (1974) (describing a “race for the bottom” in state corporate law); Richard L. Revesz, *Rehabilitating Interstate Competition: Rethinking the Race-to-the-Bottom Rationale for Federal Environmental Regulation*, 67 N.Y.U. L. REV. 1210, 1213 (1992) (describing the “race to the bottom” rationale for federal versus state environmental regulation).

³⁰⁹ *Supra* Part III.

³¹⁰ Andrew D. Bradt & Zachary D. Clopton, *Party Preferences in Multidistrict Litigation*, 107 CORNELL L. REV. 1713, 1727 (2022).

³¹¹ One possible mechanism is case management rules. For example, Local Rule 23-3 in the U.S. District Court for the Central District of California once required class action

may simply evaluate local federal courts differently such that the calculus in favor of removal is more pronounced in one court than a sister court. And although the market of defendants as consumers is limited insofar as defendants may only remove vertically from state court rather than selecting among federal district courts as plaintiffs may, one might similarly imagine a mini-market in which courts that desire such cases make themselves attractive targets for motions to transfer venue.

The greater the ultimate degree of centralization, the more concerning these pro-consumer ratchets become, as the center of gravity of both substantive law and process as actually applied in most cases on the ground shifts. Otherwise stated, at least one potential risk of informal specialization, insofar as it pits one set of actors against another, is systematic redistribution from litigation targets to “consumers.” Our point, once again, is not that such risks will necessarily come to pass, that competition among courts is inherently negative, or that the benefits of allowing organic, litigant-driven case centralization could not outweigh the costs. We simply note that these are system-wide effects that reach far beyond the retail decisions of the judges and litigants that may prompt centralization. And we are troubled by informal specialization insofar as it entrenches this mismatch between retail-scale inputs and system-scale outputs.

A final example of a potential system-level externality that retail-level actors may not factor into decisions about specialization: As cases narrow into a small set of centralized decision-makers, so too narrows the number of judges that construct the law as it actually operates for practical purposes. Formal specialization openly narrows the law in this way. Lawyers know to look to the Federal Circuit to understand the law on some patent-related issue. Informal specialization is much messier. Judges that are informal specialists may have no more authority to pronounce the law than any of their colleagues even as they have *de facto* command over their legal “fiefdom.” And to the extent that such specialists have idiosyncratic views—as may itself be common³¹²—the risk is that a gap grows between the law on paper or as it appears to outsiders and the law as actually applied. Thus, to the extent that Judges Posner and Easterbrook are held up as experts or quasi-specialists in antitrust law, their particular views on antitrust, once far from common wisdom, in fact reflected “the law as is” to a degree that could not be discerned simply by a canvass of federal appellate opinions.³¹³ Bankruptcy provides a second example. The law on paper as to a variety of extraordinary

plaintiffs to move for class certification within 90 days of filing the case—earlier than substantial discovery would typically be available. Rule 23-3. *ABS Entertainment, Inc. v. CBS Corp.*, 908 F.3d 405, 427 (9th Cir. 2018).

³¹² *Infra* Part IV.B.3.

³¹³ *Cf. supra* notes 209-214 and accompanying text.

remedies in bankruptcy—such as, before the Supreme Court declared them unlawful in *Purdue Pharma*, the approval of nonconsensual third-party releases—is that they should be granted only when necessary in rare circumstances.³¹⁴ Yet any bankruptcy practitioner knows that within the specialized world of large Chapter 11 practice, the rare case becomes typical, as special remedies become ordinary features of the legal landscape.³¹⁵ Perhaps this dynamic is harmless.³¹⁶ But we view the attendant tradeoff between specialization and legal legibility as a real one, and once again suggest that it will typically counsel in favor of system-wide rather than retail and ad hoc decisions about when to specialize.

Transparency. Another component of our notion of authoritative informal specialization is transparency. Here again, we draw a sharp distinction from formal specialization where, as we have observed, Congress itself most concretely and most typically acts via legislation.³¹⁷ Informal specialization, in contrast, may be non-transparent in at least three ways:

Sometimes, at least to the uninitiated, our current judicial system may actively mislead as to the degree or even existence of specialized adjudication. Take a *pro se* prisoner whose complaint is referred to a court's internal *pro se* clerk or staff attorney. If his complaint is dismissed, he will likely receive an order to that effect signed by a federal district court judge. The presumed inference for the prisoner is that the judge has taken the time to familiarize herself with the complaint, analyze its legal claims, and determine that they have no merit. Yet this may not be at all what happened. More likely, the staff attorney is all but entirely responsible both for the decision and for the form in which it is presented to the prisoner; our speculation is that many judges serve effectively as a rubber stamp.³¹⁸ And we think that prisoners and *pro se* litigants of this type might plausibly have a quite different reaction, independent of the decision itself, to the news that their lawsuits are passed on not by judges coming to the case fresh but by specialist staff attorneys whose job day-in and day-out is to review every lawsuit of this kind and, overwhelmingly, to reject them. The plaintiff's task becomes to an even greater extent to prompt the discovery of a needle in a haystack. We would similarly characterize as misleading informal specialization the apparent reality of non-random panel assignment on the courts of appeals given the essentially universal understanding among lawyers that appellate panel draws are random.

³¹⁴ See, e.g., *In re Continental Airlines*, 203 F.3d 203, 212 (3d Cir. 2000).

³¹⁵ Jonathan M. Seymour, *Against Bankruptcy Exceptionalism*, 89 U. CHI. L. REV. 1925, 1965 (2022).

³¹⁶ But see *id.* at 1966–69 (suggesting reasons why this dynamic is harmful).

³¹⁷ *Supra* notes 74–77 and accompanying text.

³¹⁸ *Supra* notes 253–255 and accompanying text.

Many other informal specialization practices, meanwhile, are best characterized as opaque. We mean by this situations in which, although neither courts nor judges ever indicate to the contrary, there is simply no indication to the public that informal specialization is occurring. This is largely the case with opinion-assignment specialization—though, as we noted, the Eleventh Circuit disclaims this practice entirely.³¹⁹ It is likewise true of senior judges, who may make no public declaration of their intent to eschew hearing some particular kind of disfavored case.³²⁰ Although perhaps scarcely consequential, the same is true of a judge that uses one law clerk as the “death clerk” or clerk for all bankruptcy matters.³²¹ In general, informal specialization may have different implications for opacity in the trial versus appellate context. Informal specialization of any kind in the appellate setting is necessarily opaque because it arises from the decisions of a panel of multiple judges whose internal deliberations are not disclosed; informal specialization by individual trial judges at least has the virtue of being more easily tracked to the decisions of a single judge.

A final category is illegible specialization—what we call situations where the extent of informal specialization or the procedures for invoking it are perceived only by insiders or careful observers. One example is a situation in which a district court judge or court decides that all criminal matters should be delegated to a magistrate judge.³²² And indeed, this category could be extended to any instances of informal specialization effected via local rules or standing orders, which Zach Clopton and Marin Levy explain can be a complex, continually evolving, and hard-to-access body of local practice and authority with which unsophisticated litigants will struggle to contend.³²³ Finally, case law as applied on the ground may lead to specialization illegible at least in its degree. That Chapter 11 debtors have significant control over venue of Chapter 11 cases is blackletter law, and few legal commentators would be startled to learn that, in turn, has driven aggressive forum shopping.³²⁴ Yet it is still likely illegible except to the bankruptcy insider how extreme such forum shopping (and attendant case centralization dynamics) have become. Other lawyers may not understand, for example, that some bankruptcy judges read the Judicial Code’s grant of bankruptcy venue in the location of a filing entity’s principal assets to encompass a recently created

³¹⁹ *Supra* note 193 and accompanying text.

³²⁰ *Supra* notes 187-189 and accompanying text.

³²¹ *Supra* notes 256-259 and accompanying text.

³²² *Supra* note **Error! Bookmark not defined.**

³²³ Zachary Clopton & Marin Levy, *Local Rules*, 111 VA. L. REV. 1187 (2025); Zachary Clopton & Marin Levy, *Local Rulemaking*, 75 DUKE L.J. 816 (2026).

³²⁴ *See* 28 U.S.C. § 1408.

bank account owned by an otherwise empty shell subsidiary of a corporate debtor.³²⁵

Complete judicial transparency is neither attainable, nor likely desirable. Yet, in considering what an appropriate decision-maker looks like for any given instance of informal specialization, a preference for some degree of transparency makes sense. That should be so if only because transparency is the meta-virtue that reveals whether the specialization has been authoritatively established in the first place. Again, we are concerned that many current examples fall short of this standard.

Legitimacy & Accountability. Transparency matters not just for its own sake, but also for the broader and longer-term legitimacy of the institution to which it attaches. “Sunshine,” a then-future Justice Brandeis observed, “is . . . the best of disinfectants.”³²⁶ Justice Brandeis was then speaking of the financial economy rather than his future employer the federal judiciary, but transparency would seem to be especially salutary for the latter, which exists to maintain rule of law, and where the off-the-books nature of informal specialization is more than a little ironic. Judicial legitimacy depends in no small part on an impartial judicial process, and when the courts’ informal rules for allocating work between and among judges is hidden from public view, the public could be forgiven for wondering whether the federal courts’ commitment to these principles has not started to waver.

Beyond this lack of transparency, the definitionally unauthoritative nature of informal judicial specialization may threaten the federal judiciary’s legitimacy in other ways as well. At the baseline, the federal judiciary reflects a distributed model of decision-making authority, with many hundreds of judges sharing the authority vested in Article III courts.³²⁷ Just as multi-member decision-making may tend to mitigate bias with respect to an individual decision—partly explaining a preference for jury trials over bench

³²⁵ *In re Multi-Color Corp.*, 2026 WL 735405, at *1, 17 (Bankr. D.N.J. Mar. 16, 2026). Adam Levitin describes other tenuous maneuvers to which debtors have resorted, including the use of what he characterizes as “sham addresses.” Levitin, *supra*, note 136 at 398-399.

³²⁶ Louis D. Brandeis, *What Publicity Can Do*, in *OTHER PEOPLE’S MONEY AND HOW THE BANKERS USE IT* 92, 92 (1914); *see also* VISCOUNT JAMES BRYCE, *THE AMERICAN COMMONWEALTH*, VOL. II 355 (1888) (“Public opinion is a sort of atmosphere, fresh, keen, and full of sunlight . . . and this sunlight kills many of those noxious germs which are hatched where politicians congregate.”).

³²⁷ In September 2025 there were 176 active circuit judges (out of 179 authorized by Congress) and 113 senior circuit judges serving on the courts of appeals as well as 629 active district judges (out of 677 authorized by Congress) and 468 senior district judges serving on the district courts. *See Status of Article III Judgeships—Judicial Business 2025*, U.S. Courts, (Sep. 30, 2025) <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2025/status-article-iii-judgeships-judicial-business-2025>.

trials and appellate panels over single-judge review—*distributed* decision-making similarly defends against bias in the aggregate. Each of the several judges in a district may have their own predispositions, but random assignment among the judges—and distribution among the districts and circuits in rough proportion to the geographic distribution of real-world disputes—ensures that no one judge’s predispositions dominate, and neither can litigants depend upon securing the beneficence of any one judge.

Informal judicial specialization, however, takes a system that is designed to distribute authority among many independent decision-makers and transforms it into a system where authority over a whole class of cases—be it patents, bankruptcy, anti-trust, or public law disputes³²⁸—are commended to the authority of one or a few judges. The same can be said to some extent of formal specialization, but the problem is heightened within informally specialized arrangements, which—as previously discussed—tends to operate at a “retail” rather than “wholesale” level. And while examples of “forum selling” and “judge shopping” represent the extreme case,³²⁹ a similar dynamic can be discerned from less extreme cases of informal specialization, including when opinion or panel assignments amplify the voices of individual circuit judges on certain matters,³³⁰ or even when senior judges are allowed to claim for themselves a disproportionate share of cases relating to their preferred subject matter.³³¹

The result is that the work of the federal judicial institution comes to be identified with one or a few particular individuals, and the incentives for individual judges and litigants are transformed accordingly. A centralized decision-making authority can be more easily captured than a distributed one, and—whether it is to pursue revolving-door opportunities away from the bench,³³² higher judicial office at a time of polarized appointments, or the psychic satisfaction of shaping the law—the federal bench becomes just a place for the individual federal judge to hang their shingle. When a whole system of dispute resolution comes to be identified with the personal agendas

³²⁸ See *supra* Parts III.A.1–2.

³²⁹ *Id.*

³³⁰ See *supra* Part III.A.1.

³³¹ *Id.*

³³² Notably, four years after the Western District of Texas moved to random assignment, see note **Error! Bookmark not defined.** and accompanying text, and after less than eight years of judicial service, Judge Albright announced that he would retire from the federal bench and return to private practice. See Ryan Autullo, *Albright Leaves Hundreds of Cases for Busy Colleagues to Finish*, BLOOMBERG LAW (Apr. 27, 2026). Similarly, it is not uncommon for U.S. bankruptcy judges to return to private bankruptcy practice. See Emily Glazer, *Lehman Bankruptcy Judge Peck to Join Morrison & Foerster*, WALL STREET J. (Feb. 19, 2024); Sara Merken, *Judge who oversaw Purdue, Sears bankruptcies to join law firm Skadden*, REUTERS (Apr. 13, 2023); Ben Edwards, *Willkie rehires high-profile US bankruptcy judge Shelley Chapman in New York*, GLOBAL LEGAL POST (Oct. 4, 2022).

of a few potentially captured individuals, the legitimacy of the system suffers. It becomes easier, moreover, for the personal failings of an individual judge to tarnish the public's image of the judiciary as a whole.³³³

And while some legitimacy concerns attach just as easily to formal specialization as they do informal specialization, the peril is heightened by informality because of its almost inherent unaccountability. Whether enacted by legislation or formal judicial rule, formal specialization is always the product of a participatory process,³³⁴ and that same process provides an obvious mechanism for amendment or repeal. Informal specialization has no equivalent mechanism. It often emerges organically, and precisely because of its unauthoritativeness, there exists no clear decision-making body with authority to reverse or revise it. And because it is so frequently judge-driven,³³⁵ even the attempt to reverse it can often be labeled—fairly or not—an attack on judicial independence.³³⁶

2. The “Fidelity” Problem

We think there is one more value—albeit a somewhat nebulous one—implicated distinctly by informal specialization. That is the notion of fidelity to the judicial role. We begin by observing that there are examples of informal specialization that strike us as problematic even though visible externalities are minimal. Take one perhaps extreme hypothetical example: a sitting district court judge who formerly served as a bankruptcy judge and is now approaching retirement. She decides to take senior status and thereafter to decline all matters except appeals from the district's bankruptcy judges. Plausibly, no one is harmed. Indeed, the only change in the alternative world in which the judge retires completely is a slightly greater concentration of bankruptcy appeals among the district's remaining judges. For all that, the hypothetical does not sit easily with us.

In trying to concretize our disquiet here, we suggest that the value threatened is one of fidelity to an element of the judicial role that in fact has

³³³ See Maureen Tkacik, *Moral Bankruptcy*, AM. PROSPECT (Jan. 31, 2024) (discussing S.D. Tex. bankruptcy judge's conflicts of interest, including romantic relationship with attorney leading to judge's resignation).

³³⁴ See, e.g., Laurence R. Helfer, *The Politics of Judicial Structure: Creating the United States Court of Veterans Appeals*, 25 CONN. L. REV. 155, 165 (1992) (describing contentious popular and congressional debate surrounding creation of the Court of Veterans Appeals, a specialized Article I court); Daniel J. Meador, *Origin of the Federal Circuit: A Personal Account*, 41 AM. U. L. REV. 581, 610 (1992) (describing process leading to creation of the Federal Circuit).

³³⁵ Part III.A.1 *supra*.

³³⁶ See, e.g., *supra* note 238 (noting pushback from conservative senators and Fifth Circuit judges to Judicial Conference's attempt counteract judge-shopping in single-judge divisions).

constitutional underpinnings. Federal judges are not generalists merely by accident or convenience. Rather, as Part I of this Article explains, the presumption of generalism has its roots in some fundamental assumptions made by the Framers about the nature of the legal system, as one in which all comers would have their cases heard by the same judges.³³⁷ The constitutional hinterland to this presumption is neither expressly stated nor absolute. As Part II explains, Congress began relatively early in the Republic to experiment with specialized adjudicators.³³⁸ But we posit nonetheless that the constitutional principles involved are real, and visible in the instinctive association that American legal culture makes between federal judges and generalism.³³⁹ Likewise, as Congress has established lower federal courts, it has done so generally based on the assumption that judges appointed to those courts will take on all matters within their jurisdiction, even when that jurisdiction is limited, as with the bankruptcy courts or the Federal Circuit. To the extent that departures from these presumptions of generalism occur to implement idiosyncratic individual preferences rather than to vindicate system-level interests, we question whether they are consistent with faithful execution of the judicial role.³⁴⁰

The same point can be understood through the more familiar procedural principle of transsubstantivity. Proceduralists typically invoke transsubstantivity to describe a body of doctrine—usually, procedural rules—that applies uniformly across substantive fields.³⁴¹ But transsubstantivity has an institutional analogue as well. The federal judiciary is largely organized around the premise that, subject only to Congress’s jurisdictional assignments, all federal disputes are funneled through a common system of adjudication staffed by the same roster of generalist judges. Generalism thus reflects not merely an allocation of judicial labor but also a commitment that litigants seeking their day in court will receive substantially the same form of judicial review regardless of the substantive area in which their claims arise. Informal specialization weakens that commitment by allowing a fundamental

³³⁷ *Supra* notes 27-30 and accompanying text (citing de Tocqueville).

³³⁸ *Supra* notes 75-77 and accompanying text.

³³⁹ *Supra* notes 27-30 and accompanying text.

³⁴⁰ *Cf.* Owen M. Fiss, *Foreword: The Form of Justice*, 93 HARV. L. REV. 1, 13 (1979) (“The judge is entitled to exercise power only after he has participated in a dialogue about the meaning of the public values. It is a dialogue with very special qualities . . . [among which is that] judges are not in control of their agenda, but are compelled to confront grievances or claims they would otherwise prefer to ignore.”).

³⁴¹ *See, e.g.*, David Marcus, *The Past, Present, and Future of Trans-Substantivity in Federal Civil Procedure*, 59 DEPAUL L. REV. 371, 372 (2010); Stephen N. Subrin, *The Limitations of Transsubstantive Procedure: An Essay on Adjusting the “One Size Fits All” Assumption*, 87 DENV. U. L. REV. 377, 378 (2010).

aspect of the adjudicatory experience—the identity of one’s decisionmaker—to vary according to subject matter.

Beyond the constitutional register, informal specialization tends to distort the judicial role in other, more concrete ways as well. Most acute are the threats to judicial impartiality. Economists have long theorized that consumers’ behavior “reveals” their preferences.³⁴² When an individual judge deviates from the norms of generalism and judicial passivity³⁴³ and instead takes active measures to attract discrete categories of case, it is natural to ask what that reveals about the judge’s preferences, and whether the judge can be trusted to hold those preferences in check.³⁴⁴ At the extreme, informal specialization can create the perception of judges who have prejudged an entire category of case.³⁴⁵

³⁴² Paul A. Samuelson, *Consumption Theory in Terms of Revealed Preference*, 15 *ECONOMICA* 243, 243 (1948) (“[T]he individual guinea-pig, by his market behavior, reveals his preference pattern—if there is such a consistent pattern”).

³⁴³ *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020) (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987)) (“Courts are essentially passive instruments of government. They do not, or should not, sally forth each day looking for wrongs to right. They wait for cases to come to them[.]”).

³⁴⁴ *See, e.g., Anderson & Gugliuzza, supra* note 14, at 435 (“[I]t is particularly troubling to see a court explicitly seeking to curry favor with a certain class of litigants: here, patent infringement plaintiffs. The impartial administration of justice is impossible to achieve when the scales are tipped in favor of one side.”).

³⁴⁵ We do not mean to suggest that it is unusual or improper for an Article III judge to arrive on the bench with certain preexisting jurisprudential commitments and views about the law. It is not unusual, for example, for an Article III judge to espouse (or reject) originalism, nor is it even improper for an Article III judge to harbor strong priors about the meaning of a particular constitutional or statutory provision. Our concern is narrower and, admittedly, conceptually somewhat imprecise: that informal specialization may encourage judges to hold themselves out as experts (relative to their Article III peers) on a discrete substantive area of the law in ways that cannot be defended on general principles. A difficult edge-case, for example, might be the novel “video dissent” to the Ninth Circuit’s *en banc* majority opinion in *Duncan v. Bonta*, where Judge VanDyke accused his colleagues of “lack[ing] the basic familiarity with firearms” necessary to properly decide the case. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, *Dissent Video in 23-55805 Duncan v. Bonta*, at 4:21 (YouTube, Mar. 20, 2025), <https://youtu.be/DMC7Ntd4d4c?si=B5CtboJt8FMK6OhU&t=261>. Indeed, at least one of VanDyke’s own colleagues seemed to perceive in the dissent a certain infidelity to proper judicial role. *See Duncan v. Bonta*, 133 F.4th 852, 884 (9th Cir. 2025) (Berzon, J., concurring) (“Second, and more egregiously, Judge VanDyke has in essence appointed himself as an expert witness in this case[.]”). This same point also underscores our focus—discussed in Part I *supra*—on Article III adjudication and our exclusion of ALJs, who may be chosen precisely for their expertise and substantive views on a particular subject matter. Although the APA guarantees ALJs decisional independence in individual cases, that independence has never meant insulation from the President’s policy priorities as embodied in regulations, agency policy, and agency oversight. *See Nash v. Bowen*, 869 F.2d 675, 680–81 (2d. Cir. 1989); *see also supra* note 70 and accompanying text.

A subtler but perhaps more pervasive impartiality concern arises from the aforementioned problems of inurement and stereotyping.³⁴⁶ The problem here is not that judges can be perceived to care too *much* about outcomes, but it is rather just the opposite: that judges who handle a high volume of similar claims can become inured to the subject matter, fall back on rough heuristics, and ultimately lose sight of both the uniqueness and real-world stakes of the individual case. The concept of judicial impartiality is usually understood to require that a judge approach each case free of bias toward any party or outcome, but just as important to judicial impartiality is the requirement of the “fresh look”—the idea that each party is entitled to a genuine, individualized consideration of her claims or defenses.

We suspect this problem of inurement is most likely to surface where informal or quasi-informal adjudicator specialization intersects with high-volume litigation involving socially marginalized litigants—for example, in magistrate judges’ review of Social Security appeals³⁴⁷ or staff attorneys’ screening of prisoner complaints.³⁴⁸ In such cases, it requires no conscious bias or concrete preference on the part of the specialized adjudicator for the principle of judicial impartiality to nonetheless be compromised.

3. The “Culture” Problem

Relative to the “authoritativeness” and “fidelity” problems discussed above, what we call the “culture” problem operates at more of a meta-level, not so much as stand-alone hazard of informal specialization but rather as a reality that amplifies and entrenches those other hazards. The reality is this: Whether formal or informal, specialized judicial arrangements always function against a backdrop of legal culture, and this frequently leads to a problem of misdiagnosis. The debate over judicial specialization is almost definitionally focused on questions of institutional design, but to the extent institutional arrangements yield positive or negative results, it depends as much on culture as it does on deliberate or implicit design choices.

It is perhaps an underappreciated virtue of judicial generalism that it tends to distance judges from the ambient culture of non-judge legal practitioners. As others have observed, part of what makes the persistence of

³⁴⁶ *Supra* Part IV.A.

³⁴⁷ *Cf.* Richard Arnold, *Mr. Justice Brennan and the Little Case*, 32 LOY. L.A. L. REV. 663, 669 (1999) (“I personally hope that we don’t get rid of [social security cases], because . . . people like a social-security claimant need a place to go where they can be heard by a generalist judge who is not so routinized that these cases become just one more instance on an assembly line.”);

³⁴⁸ *Cf.* Macfarlane, *supra* note 253 at 134 (“With respect to prisoners, if their cases are mixed in with all other cases district judges decide, as opposed to being singled out for special treatment and nonjudicial adjudication, it might be harder to make assumptions about the claims prisoners bring, and the kind of plaintiffs prisoners are.”).

the generalist judge so remarkable in the United States is that it runs counter to a broader legal professional culture that has otherwise moved in the direction of ever-increasing specialization.³⁴⁹ Whereas members of the bar specialize in antitrust, white collar criminal defense, or personal injury, “[federal] judges themselves are specialists in ‘judging[.]’”³⁵⁰ Thus, while internal judicial culture is no doubt an important input to the production function of the generalist court, judicial culture is to some extent firewalled; the broader legal culture is much less important.

The same cannot be said of the specialized judicial arrangements, where—at least in the case of adjudicator specialization—bar and bench coexist as parts of a unified cultural ecosystem.³⁵¹ Bankruptcy judges are predominantly former bankruptcy practitioners, Federal Circuit judges are often former patent examiners or patent litigators, and informal specialists like Judge Ambro (bankruptcy), Judges Posner or Easterbrook (antitrust), or Judge Albright (patents) often have roots in their area of informal specialization. Even when a specialist judge has no formal background in their area of specialized adjudication, it cannot be long before on-the-job experience makes them fluent in the relevant legal subculture.

As gestured at above, this leads to frequent problems of misdiagnosis, where what are commonly perceived to be the pathologies of the specialized judicial institution may be better understood as the pathologies of a specialized bar. Bankruptcy, for example, is often viewed as highly technical, culturally insular, and even “exceptional.”³⁵² Bankruptcy proceedings are generally channeled to specialist U.S. bankruptcy judges,³⁵³ but given the field’s distinctive legal subculture, how different would bankruptcy adjudication look if the bankruptcy courts were eliminated and bankruptcy litigation was returned to the generalist district courts? When bankruptcy actions are appealed to line district and circuit judges, the generalists often show a mix of disinterest in the field of bankruptcy and deference for those

³⁴⁹ See, e.g., Wood, *supra* note 15, at 1760–61 (discussing specialization of the U.S. legal industry).

³⁵⁰ *Id.* at 1768; cf. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024) (“The dissent ends by quoting *Chevron*: ‘Judges are not experts in the field.’ That depends, of course, on what the ‘field’ is. If it is legal interpretation, that has been, ‘emphatically,’ ‘the province and duty of the judicial department’ for at least 221 years.”) (internal citations omitted).

³⁵¹ Cf. Helen Hershkoff & Luke Norris, *The Oligarchic Courthouse: Jurisdiction, Corporate Power, and Democratic Decline*, 122 MICH. L. REV. 1, 10, 38–43 (2023) (arguing that judicial capture is enabled by professional networks, status affiliation, group identity, and other features of legal culture that connect judges to the broader legal profession).

³⁵² See generally Jonathan M. Seymour, *Against Bankruptcy Exceptionalism*, 89 U. CHI. L. REV. 1925 (2022).

³⁵³ Part II *supra*.

who specialize in it.³⁵⁴ In a counterfactual world where bankruptcy judges were eliminated and all original bankruptcy proceedings were returned to the district courts, it seems at least plausible district judges would continue to defer to the specialists—either members of the bankruptcy bar or the handful of generalist judges, like Judge Ambro,³⁵⁵ who are known for their acumen in the field—and the field of bankruptcy would largely continue in its exceptional, cultural insular ways.

The U.S. bankruptcy courts are examples of formal specialization, but what makes culture of particular interest for the subject of informal specialization is the two phenomena tend to interact in ways that can either amplify or attenuate their consequences. Specifically, we argue that the above-described perils of informal specialization are likely to be most problematic when the specialization is applied to areas of law with highly insular or entrenched legal subcultures and thus likely least problematic when it is applied to areas with more diffuse, less insular legal subcultures. One reason has to do with agenda-setting. Several of the above-described problems of informality rely on a kind of directional momentum—an unofficial nationwide specialist court for patent trials is at least somewhat less problematic if the judge has genuinely no predisposition toward the patent; complex case panels in bankruptcy are less problematic if the panel judges are neither pro-debtor nor pro-creditor; circuit judges with an academic interest in antitrust are less problematic if they use their expertise to faithfully apply the law as it exists rather than to pursue their academic projects. In other words, part of what makes informality problematic is that it is susceptible to judges with an agenda.

Lawyers from highly insular legal subcultures are eager to supply that agenda. Legal subcultures vary in terms of their insularity and cohesion, and the organized bar of a highly insular legal subculture is likely more able to coalesce around and communicate a coherent set of interests than the diffuse network of practitioners belonging to a less insular legal subculture. For example, through organizations like the American Bankruptcy Institute and the Maritime Law Association, practitioners in insular fields like bankruptcy and admiralty can speak with more or less one voice. In more diffuse areas of the law like constitutional and civil rights litigation, the bars are likely more ideologically diverse, more geographically dispersed, and less concerned with a common body of doctrine. In other words, that practitioners in employment discrimination, voting rights, police misconduct, and First Amendment law can all be called “civil rights” lawyers does not imply they share a common “civil rights” agenda.

³⁵⁴ See, e.g., Seymour, *supra* note 352, at 1973.

³⁵⁵ Part III.A.1 *supra*.

Insular cultures also make it harder to check or correct the institutions of informal specialization from the outside. Insular professional communities tend to generate deference from outsiders, and as we have already discussed, deference is an enabler of informal specialization. It is not just the eagerness of Judges Ambro, Posner, or Williams to speak out that make them informal specialists in bankruptcy, antitrust, or energy regulatory law; it is just as much the other judges' willingness to listen. That may depend on various factors. Appellate judges, for example, may be more willing to defer to other appellate judges who they regard as an expert in some field. And they may also be more willing to defer to a formal trial-level specialist like a bankruptcy judge than they are to a self-styled specialist like Judge Albright.

This tendency towards deference interacts in troubling ways with the doctrinal drift problem identified above: the gap between the law as it is written and the law as it is applied tends to widen precisely in those areas of practice where the culture is most insular and entrenched, as the culture both enables the divergence and insulates it from correction. What we call hyperspecialization—patterns of informal specialization layered onto formally specialized judicial arrangements, such as the bankruptcy judge sitting on the complex case panel—is particularly concerning on this account, since it compounds the insulating effect of culture with the structural features of formal specialization that may already limit percolation or cross-fertilization.

Altogether, our point is not that culture makes specialization categorically undesirable; it is rather just that the normative implications of any given specialized arrangement depend heavily on the cultural environment in which it operates, and that is especially true for informal versus formal specialization. Informal specialization as applied to an area of the law without an entrenched and insular professional community is a different phenomenon—likely an altogether less dangerous one—than informal specialization as applied to an area where the baseline insularity of the professional community already generates many of the stultifying effects critics have long associated with judicial specialization.

CONCLUSION

Judicial specialization is no anomaly in the modern federal judiciary. Nor is it a monolith. As this Article has shown, specialization takes many forms—formal and informal, adjudicator-centered and case-centered, trial- and appellate-level, and so on—each implying distinct institutional consequences. Treating specialization as a binary departure from generalism obscures these differences and undermines both descriptive accuracy and normative assessment. By offering a more comprehensive account of how specialization actually operates—including a first-ever comprehensive

account of informal specialization—we aim to move the debate beyond descriptive and normative abstractions. The central lesson is modest but consequential: Specialization’s virtues and vices are highly contingent. Whether the costs are worth the benefits depends not only on subject matter but also on how specialized arrangements are structured, how they emerge, and what safeguards accompany them.

More novel is our account of informal specialization, which we argue poses special challenges for the federal judicial system. It can function as a low-cost mechanism for institutional experimentation and learning, allowing judges and courts to flexibly respond to changing litigation patterns in a local setting. At the same time, informality amplifies many of the perils associated with specialization more broadly. Informally specialized arrangements operate primarily at the retail level—arising from the actions of individual judges, a single court, or local litigants—but their effects can reverberate system wide. And because they lack clear authorization, they tend to be non-transparent, unaccountable, and potentially dangerous for institutional legitimacy. Specialized judging is also inherently unlike the baseline model of generalist judging, calling into question whether a line district or circuit judge who takes it upon herself to adopt informally specialized practices is being faithful to her judicial role. These risks are likely to be even more pronounced when the specialization is applied to areas of law with highly insular or entrenched legal subcultures, where informally specialized judges are harder to check and more easily captured by a similarly specialized bar.