

LINDA SILBERMAN'S CONTRIBUTION TO THE LAW
OF PERSONAL JURISDICTION: RECOGNIZING
THE CENTRALITY OF THE FORUM-STATE
INTEREST IN THE LITIGATION

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*Linda Silberman's work in the field of personal jurisdiction has been highly influential. This article traces the evolution of her thinking about personal jurisdiction from her early work on *Shaffer v. Heitner* up through her recent Amicus brief to the Supreme Court in *Ford Motor Co. v. Montana Eighth Judicial District Court* and attempts to identify some consistent themes that emerge from that work. In particular, Professor Silberman was one of the first scholars to recognize the centrality of the forum-state interest in assessing whether a state's assertion of jurisdiction comports with due process. Due process for Professor Silberman is not one-dimensional assessment of a defendant's contacts with the forum. Rather, due process appropriately balances numerous values, including predictability, defendant's autonomy, and the forum-state interest in providing a remedy to the plaintiff. Drawing on some of those insights, I suggest how the courts should approach the still-unresolved question of what makes a defendant's contact with the forum sufficiently related to support the exercise of specific jurisdiction.*

I am honored to speak to the contributions of my mentor, longtime coauthor, and dear friend, Linda Silberman to the field of personal jurisdiction. Linda's work in her many areas of study overlap; it is difficult to isolate her thinking about personal jurisdiction without taking account of her work in conflicts of law, enforcement of judgments, and even family law. But I will try.

When I entered the academy of the early 80's, Linda's seminal article¹ on *Shaffer v. Heitner*² shaped, more than any other, my understanding of the law of personal jurisdiction as well as my sense of what it was that legal scholars were supposed to be doing.

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1. Linda J. Silberman, *Shaffer v. Heitner: The End of An Era*, 53 N.Y.U. L. REV. 33 (1977) [hereinafter Silberman, *End of An Era*].

2. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

The hallmark of that article—providing a coherent conceptual framework to make sense of the cacophony of disparate approaches in the case law—is a quality that one can see in all of Linda’s scholarship. Her meticulous attention to detail lays the foundation for a nuanced theory that illuminates our understanding of legal precedent and sets out the practical implications of the doctrine. It is a style of doctrinal scholarship that has largely gone out of vogue. But it is, for my money, the most important service that legal scholars can perform. And no one does that better than Linda.

I will try to trace the development of Linda’s jurisdictional thinking from this first article up through her recent amicus brief in the *Ford Motor Company* case.³ Using some of the key insights Linda develops in that progression, I will try to clarify the appropriate scope of specific jurisdiction and the meaning of a “related contact.”

Shaffer v. Heitner: The End of An Era,⁴ grapples with the conceptual sea-change in the law of personal jurisdiction brought about by the Supreme Court’s curtailment of attachment of property as a means of acquiring personal jurisdiction over the owner for claims unrelated to the property. Some thirty years earlier, in *International Shoe Co. v. Washington*,⁵ the Court had significantly destabilized the conceptual foundation of *Pennoyer v. Neff*⁶ by permitting a state to assert jurisdiction over an absent defendant because of its prior connections with the state. Under *Pennoyer*, a state’s exercise of jurisdiction normally could satisfy the Due Process Clause of the 14th Amendment only if the state had power over a defendant’s person or property at the outset of the lawsuit. In permitting jurisdiction over an absent defendant, *International Shoe* cut off one of the two precepts of *Pennoyer*: that the presence of a defendant or their property in the forum is a *necessary* constitutional condition for jurisdiction to attach. *Shaffer*, in turn, undermined the inverse precept: that power over a defendant or their property is a *sufficient* condition for jurisdiction constitutionally to attach.⁷

Linda provided a deep dive into the implications of the Court’s apparent abandonment of power as the touchstone of

3. See *infra* notes 40–42 and accompanying text.

4. Silberman, *End of An Era*, *supra* note 1.

5. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

6. *Pennoyer v. Neff*, 95 U.S. 714 (1878).

7. *Shaffer*, 433 U.S. 186.

jurisdictional propriety under the Due Process clause.⁸ The article is chock-full of brilliant insights as well as an ample dose of Linda's irrepressible wit. For many years, I read to my class the account of her encounter with the Harvard-educated pan-handler in Washington Square Park who was able to accurately brief *Pennoyer*.⁹ Her profile of *Pennoyer's* "colorful" protagonists is a lesson in the joy of reading footnotes.¹⁰ And her pithy observation that requiring more contacts to sustain jurisdiction than choice of law "is to believe that an accused is more concerned with where he will be hanged than whether" they will be perfectly captured the perversity of *Shaffer's* disregard for Delaware's interest in regulating the behavior of corporate officers because that was only germane to choice of law.¹¹

Less witty but equally provocative is her analysis of the conceptual limitations of both *Pennoyer*, and *Shaffer*. She convincingly critiques *Pennoyer's* insistence that defendant's property needed to be attached prior to judgment,¹² and questions *Shaffer's* disregard of Delaware's interest in the conduct of the officers in a Delaware corporation simply because the state had not expressed that interest in a long-arm statute.¹³

But I want to focus on the puzzle that she addresses toward the close of the article (and which provides the reason that understanding *Pennoyer* may still be worth the price of a cup of coffee): if, as *Shaffer* purports to hold, that there is a single standard of minimum contacts for all forms of personal jurisdiction, why, given the choice, would any rational litigant proceed *quasi-in-rem* rather than *in personam* after *Shaffer*?¹⁴

Linda offers several different possibilities. First, she highlights the Court's implication that attachment might be a sufficient basis for jurisdiction where there has been a prior judgment against the defendant, and plaintiff is seeking enforcement of that judgment in subsequent enforcement proceeding.¹⁵ The

8. Notwithstanding *Shaffer*, the Court seemed to revive the power justification in *Burnham v. Superior Ct.*, 495 U.S. 604 (1990), which permitted the assertion of general jurisdiction over any individual served with process within the forum state, *id.* at 619–20.

9. Silberman, *End of An Era*, *supra* note 1, at 33–34.

10. *Id.* at 44 n.53.

11. *Id.* at 84–88.

12. *Id.* at 45–46.

13. *Id.* at 65–66.

14. *Id.* at 67.

15. *Id.* at 77–78.

nature of the claim and its relationship to defendant's forum connections matter.

She also suggests that there may be a "double-standard" where attachment counts as a "plus factor" that can nudge the due-process balance toward permitting jurisdiction.¹⁶ Such an exception might be justified, she suggests, because plaintiff's recovery in *quasi in rem* would be limited to the value of the attached property¹⁷ and thus, presumably, requires less affiliation by the defendant with the forum. In other words, in some circumstances, power still may matter a little.

Such a double standard would be particularly appropriate in case of a resident plaintiff:

[P]erhaps the plaintiff's residence together with some other contact like the physical presence of the defendant's property in the state or a connection between the claim and the property might be enough to trigger the lower (or quasi in rem) level of a newly fashioned *International Shoe* inquiry.¹⁸

Finally, she offers the related argument that jurisdiction by necessity may justify attachment jurisdiction on behalf of a resident plaintiff without other domestic-forum options.¹⁹

These arguments, I think, foreshadow themes that she would return to in her subsequent scholarship. Although *Shaffer* purports to announce as a universal standard that all exercises of personal jurisdiction are subject to the "minimum contacts" standard of *International Shoe*, the sufficiency of a defendant's connection must be considered in light of other considerations, including the nature of the claim²⁰ and the forum's interest in providing a remedy to the plaintiff.²¹

Linda was one of the first scholars to recognize that due-process constraints on personal jurisdiction encompass several distinct values that must be balanced. Jurisdictional laws need to be predictable so that defendants can structure their

16. *Id.* at 72, 72 n.11.

17. *Id.* at 74.

18. *Id.* at 72.

19. *Id.* at 76-77.

20. *Id.* at 77 (suggesting the possibility that attachment would be permitted as security pending outcome of litigation in another forum).

21. Linda J. Silberman, "Two Cheers" for *International Shoe* (and None for *Ashai*): An Essay on the Fiftieth Anniversary of *International Shoe*, 28 U.C. DAVIS L. REV. 755, 758 (1995) [hereinafter Silberman, *Two Cheers*].

behavior to control where they are amenable to jurisdiction;²² defendants cannot be subject to a governmental authority that they have not deliberately connected themselves with;²³ and (although I don't know that she would put it this way) a state's assertion of specific jurisdiction must be in service of a forum connection to the underlying claim,²⁴ either in redressing an injury to a domicile (a remedial interest), or protecting inhabitants from injury within the state (a regulatory interest).

Due process for Linda is a product of the sum of those considerations, and a defendant's purposeful contacts with the forum are but one dimension of constitutional propriety under the Due Process clause. *Asahi's* apparent relegation of the forum-state interest to a separate, second-order, jurisdiction-divesting consideration was thus, for Linda, a wrong turn, particularly accompanied by its free-form consideration of "fairness."²⁵ *Asahi*, in her view, wrongly reduced contacts to a static, "end in themselves."²⁶ In short, minimum contacts for Linda—the level of a defendant's connection with the forum necessary to sustain jurisdiction—are not a constant:

I had always understood the "minimum contacts" test to require that the defendant's activities in the state be balanced against the state's regulatory and litigation interests—hence the requirement that the defendant have "certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." In other words, the level of contacts required depended on the

22. Linda J. Silberman, *Judicial Jurisdiction and Forum Access: The Search for Predictable Rules*, in PRIVATE INTERNATIONAL LAW 332 (Franco Ferrari & Diego P. Fernández Arroyo eds., 2019) (lauding the narrowing of general jurisdiction to forums where defendants are essentially at home in on the ground that it provides a predictable jurisdiction standard); Linda J. Silberman, *Reflections on Burnham v. Superior Court: Toward Presumptive Rules of Jurisdiction and Implications for Choice of Law*, 22 RUTGERS L.J. 569, 576 (1991).

23. Silberman, *Two Cheers*, *supra* note 21, at 758.

24. *Id.* at 758–59.

25. *Id.*; see Linda J. Silberman, *Jurisdictional Imputation in Daimler Chrysler AG v. Bauman: A Bridge Too Far*, 66 VAND. L. REV. EN BANC 123, 131–32 (2013) [hereinafter Silberman, *A Bridge Too Far*] (urging the jettison of the *Asahi* two-part test and a return to "balancing a state's interest in asserting jurisdiction in light of the defendant's contacts with the forum.").

26. Silberman, *Two Cheers*, *supra* note 21, at 760.

particular nature of the claim, the type of litigation, and possibly the parties.²⁷

This perspective, I believe, is one of the central tenets of Linda's jurisdictional scholarship, and one that ties together much of her work. Contacts that may be sufficient where property has been attached may fall short for *in personam* jurisdiction.²⁸ Contacts through an agent may be inappropriate to impute to the principal for claims unrelated to the forum, but appropriate where there is a forum-nexus.²⁹ Contacts that might be deemed sufficient for a case involving a forum-plaintiff may not be enough to justify jurisdiction over a non-resident's claims.³⁰

Recognizing the different threads of due process gave Linda a perspective on relatedness that was largely vindicated in the *Ford Motor Co.* case.³¹ Ever since Von Mehren and Trautman suggested that personal jurisdiction could be divided into categories of specific and general jurisdiction,³² the doctrine has been plagued by a still-unresolved question: what makes a claim sufficiently "related" to defendant's contacts with the forum to bring the case within the category of specific jurisdiction? In Lea Brilmayer's terms, why do contacts count?³³ Does it suffice for purposes of specific jurisdiction that defendant's forum contact was in the causal chain that resulted in plaintiff's harm, or does the contact itself need to be actionable?³⁴ Is it necessary that the contact was in the causal chain at all? What if it was defendant's out-of-forum conduct that injured the

27. *Id.* at 759.

28. Silberman, *End of An Era*, *supra* note 1, at 72–73.

29. Silberman, *A Bridge Too Far*, *supra* note 25, at 129–30.

30. See, e.g., Linda J. Silberman, *Comparative Jurisdiction in the International Context: Will the Proposed Hague Judgments Convention be Stalled?*, 52 DEPAUL L. REV. 319, 344 (2002) (suggesting that "doing business" as basis for general jurisdiction is strongest in case brought by resident plaintiffs).

31. *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021).

32. Arthur T. Von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1966).

33. Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77.

34. Compare *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312 (3d Cir. 2007) (plaintiff's injury in Barbados hotel was sufficiently related to defendant's forum conduct in promoting hotel services there), with *Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161 (2d Cir. 2013) (suggesting that some element of plaintiff's claim must arise out of defendant's forum conduct).

plaintiff, but defendant engaged in the same conduct within the forum?

I believe that focusing on the nature of the forum-state's interest in the controversy can help clarify what we mean by a claim that "arises out of" or is "related to" defendant's forum contacts. Although, to Linda's dismay, *Asahi* seemed to reduce "minimum contacts" to a one-size-fits-all measure of a defendant's forum affiliations, I would contend that the forum-state interest in the litigation bleeds into the minimum-contacts analysis through the distinction between specific and general jurisdiction, and in particular, in the courts' understanding of when a claim should be considered "related" to defendant's forum contacts.³⁵

The Supreme Court's recent foray into the problem of parallel conduct illustrates the point, and Linda's perspective on those cases helped clarify the problem. The pertinence of a defendant's forum—conduct that merely paralleled its out-of-forum conduct that injured plaintiff—was the subject of two recent Supreme Court cases. First, in *Bristol-Myers Squibb*,³⁶ the Court prohibited the exercise of personal jurisdiction over claims by out-of-state plaintiffs who were injured out-of-state by the same pharmaceutical distributed by defendant in the forum, notwithstanding that the out-of-state plaintiffs had joined with claims by in-state plaintiffs alleging injury from the same product.

Four years later, in *Ford Motor Co.*,³⁷ the Court sustained the exercise of jurisdiction over claims by resident plaintiffs who had obtained allegedly defective automobiles outside of the forum, but were injured by them in the forum, where the defendant sold the same model of automobile.

Sustaining jurisdiction in *Ford* required the Court to find space between two doctrinal constraints. *World-Wide Volkswagen*

35. Cf. Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 TEX. L. REV. 689 (1987) (arguing that personal jurisdiction doctrine continues to take into account forum state interest when considering whether the claim was 'related' to the forum state contacts); Allan R. Stein, *Personal Jurisdiction and the Internet: Seeing Due Process Through the Lens of Regulatory Precision*, 98 NW. U. L. REV. 411 (2004) (arguing that *ex ante* forum state regulatory interest, if not *ex post* remedial interest, remains a relevant part of proper jurisdiction).

36. *Bristol-Myers Squibb v. Superior Court*, 582 U.S. 255 (2017).

37. *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021).

deemed an in-state injury an insufficient forum-connection to sustain jurisdiction where defendant had no significant forum-contacts,³⁸ and *BMS* dismissed the relevance of parallel conduct in the forum where that conduct did not cause plaintiff's injuries.³⁹

Linda, along with several other NYU-affiliated scholars, submitted an amicus brief that charted a course for the Court to navigate those shoals.⁴⁰ The brief argued that, contrary to Ford's contention, *BMS* did not require a causal connection between defendant's forum conduct and plaintiff's injury.⁴¹ While a court may not assert jurisdiction over a defendant who has not deliberately connected themselves with the forum-state, the function of specific jurisdiction is different: it ensures that there is a connection between the plaintiff's claim and the forum.⁴² Thus in *Volkswagen*, there was a sufficient forum-connection, but no purposeful availment. And in *BMS*, there was sufficient purposeful availment, but an insufficient forum connection to the claim. Where both elements are satisfied, there does not need to be a causal connection between the two.

The Supreme Court, by and large, bought the argument.⁴³ The *Ford* case arose out of two separate accidents brought in two different state courts by residents who had purchased their vehicles out-of-state, but who were injured in the forum due

38. *Worldwide Volkswagen Inc. v. Woodson*, 444 U.S. 286 (1980).

39. *Bristol-Myers Squibb*, 582 U.S. 255.

40. Brief of Amici Curiae Professors of Jurisdiction in Support of Respondents, *Ford Motor Co. v. Montana Eight Judicial District Court*, 141 S. Ct. 1017 (2021), 2020 WL 1852283 [hereinafter "NYU Brief"].

41. *Id.* But see Linda J. Silberman, *The End of Another Era: Reflections on Daimler and Its Implications for Judicial Jurisdiction in the United States*, 19 LEWIS & CLARK L. REV. 675, 683 (2015) [hereinafter Silberman, *End of Another Era*] (suggesting that defendants' California contacts in *Bristol-Myers Squibb* could not be deemed to be sufficiently related to the out-of-state plaintiffs' claims to fall within the court's specific jurisdiction: "There is no causal connection between the claims of the California plaintiffs and the residents of other states. . . . The claims of the California and nonresident plaintiffs are merely parallel.").

42. NYU Brief, *supra* note 40, at 4.

43. Justice Kagan's opinion hedged on causation slightly by noting that Ford's forum activity in promoting the sales and maintenance of Fords in the forum states may have contributed to plaintiffs' decisions to buy Fords outside the forum. *Ford Motor Co.*, 141 S. Ct. at 1029 ("[T]he owners of these cars might never have bought them, and so these suits might never have arisen, except for Ford's contacts with their home States.").

to alleged defects in the vehicles.⁴⁴ Ford sold the same models of vehicles in the forum states. The Court rejected Ford's contention that its forum contacts could not be considered sufficiently related to plaintiffs' claims to support specific jurisdiction simply because defendant's forum activities did not cause plaintiffs' injuries. In fact, the Court accepted Linda's prior assertion⁴⁵ that there would have been specific jurisdiction in *Worldwide Volkswagen* over the manufacturer and U.S. distributor of Audi vehicles notwithstanding the fact that their activity in Oklahoma was not the cause of plaintiffs' injuries.⁴⁶

In *Ford*, three separate factors linked plaintiff's claim to the forum: the same model of vehicles were sold there; the claims were brought by resident plaintiffs; and the injuries were sustained in the forum. Unresolved by the case (and by the NYU brief) is what happens if one or more of those elements are absent.

What if Ford did not sell the identical model car in the forum? The danger of completely separating purposeful availment from relatedness is that it can collapse distinction between general and specific jurisdiction.⁴⁷ If Ford had only sold paper clips in the forum, and a resident plaintiff had been injured in the forum by a Ford truck that they obtained outside the forum, it would be hard to characterize the court's jurisdiction over the case as "related to" defendant's contacts with the forum *even though there would be a strong connection between the forum and plaintiff's claim*.⁴⁸ And selling paper clips would

44. In the case brought in Montana, plaintiff alleged that a crash was caused by a defect in the tire on their Ford Explorer. In the case brought in Minnesota, plaintiff alleged that the airbag in their Crown Victoria failed to deploy when they were rear-ended. *Id.* at 1023.

45. Linda J. Silberman, *Some Reactions to the Daimler/Chrysler v. Bauman Roundtable*, 66 VAND. L. REV. EN BANC 191, 192 (2013).

46. *Ford Motor Co.*, 141 S. Ct. at 1027. Since the large corporate defendants did not challenge personal jurisdiction in *Worldwide Volkswagen*, the Court did not have to decide on whether they were subject to general or specific jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

47. *Accord* Silberman, *End of Another Era*, *supra* note 41, at 687 (noting that the lower court holding in *BMS* "appears to reintroduce general jurisdiction by another name. There is no causal connection between the claims of the California plaintiffs and residents of other states.").

48. *See, e.g.*, *Equine Legal Sols. v. Fireline Farms, Inc.*, No. 3:22-cv-01850, 2023 U.S. Dist. LEXIS 67489 (D. Or. Apr. 18, 2023) (defendant's extensive business connections to Oregon were unrelated to its actions outside of Oregon that aided and abetted infringement of plaintiff's intellectual property);

not be sufficient to satisfy the “essentially at home” standard of *Daimler*.⁴⁹ This was not a problem in *Ford* since defendant sold the exact same model vehicle in the forum. However, in future cases, courts will have to decide how similar the forum conduct that did not cause plaintiff’s injury must be to characterize the claim as “related to” defendant’s forum contacts.

Seen through the lens of measuring the forum-state interest in the litigation, the defendant’s non-causal forum-conduct must closely mirror the wrongful out-of-state conduct that caused plaintiff’s injury. Such a test gives effect to a state’s legitimate interest in protecting forum residents from that dangerous conduct: Even though that specific conduct did not cause plaintiff’s injury, it still threatened the well-being of forum residents.⁵⁰ Although that protective interest standing alone was insufficient to justify jurisdiction in *BMS*, when coupled with a compensatory interest in redressing a resident plaintiff’s injury, it should suffice. Thus, selling the same defective automobile (or at least the same defective component) in the forum justifies the assertion of jurisdiction over a resident plaintiff’s claim, but other, non-wrongful forum conduct should not. Selling a different model of car that is not defective should not be considered a “related” contact because the forum state has no interest in regulating that conduct.⁵¹

N. Am. Elite Ins. Co. v. Gen. Aviation Flying Serv., Civil Action No. 18-14575, 2022 U.S. Dist. LEXIS 122715 (D.N.J. July 12, 2022) (third party’s tortious damage to airplane in Missouri, which was then negligently repaired by New Jersey resident in New Jersey, not related to extensive business conducted by third-party defendant in New Jersey); *Watters v. Coopersurgical, Inc.*, No. 5:22-CV-223, 2023 U.S. Dist. LEXIS 24056 (E.D.N.C. Feb. 13, 2023) (defendants’ promotion and distribution of allegedly defective medical device in North Carolina several years after plaintiff was injured by that device in North Carolina not sufficiently related to plaintiff’s claim for purposes of specific jurisdiction). *Cf.* NYU Brief, *supra* note 40, at n.5 (“This is not to say that specific personal jurisdiction would be appropriate under the Court’s three-part test in situations where there is no relationship whatsoever between the defendant’s forum contacts and the plaintiff’s forum-located injury.”).

49. *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

50. *Cf.* Lea Brilmayer, *Colloquy, Related Contacts and Personal Jurisdiction*, 101 HARV. L. REV. 1444, 1457 (1988) (“Adjudication of a dispute is a means towards the legitimate end of regulating local conduct or prescribing its legal consequences.”).

51. *Id.* at 1455–57 (advocating “relatedness” test tied to the substantive relevance of defendant’s forum contact).

The meaning of parallel wrongful conduct will not always be clear. Imagine that a defendant car manufacturer sells the same model car in the forum, but plaintiff's injuries were caused by a manufacturing error specific to the car obtained by plaintiff out-of-state—an assembly-line worker forgot to attach the brake line, for instance. Does the forum state have a regulatory interest simply because defendant distributes *non-defective* models of the same car in the forum? Conversely, suppose the manufacturing error was the consequence of poor quality-control at the factory. Distributing any vehicle made in that factory could thus be thought to implicate the forum-state's regulatory interest in protecting its residents from that poor quality-control even if defendant did not sell the same model car within the forum. Courts will have to draw some lines balancing the strength of the forum's regulatory interest against spill-over effects on other states' sovereign interests.⁵²

Although such an approach might also lead courts to a more restrictive definition of a "related contact" where the forum contact *was* in the causal chain that led to a resident plaintiff's injury, I think that situation is different. Take for instance a case in which a resident plaintiff books in Pennsylvania a hotel stay in Barbados after being sent by the defendant a brochure for the hotel, where she is the victim of a tort due to the negligent operation of the hotel.⁵³ She then files suit in Pennsylvania. My instinct here is that the forum does have a legitimate interest in regulating conduct that led to the injury of its residents even where that conduct was not itself wrongful. And allowing suit by forum residents does not create the forum-shopping potential that exists where non-residents can file in any state that has some causal connection to their claims.

This, in turn, suggests that the courts should be more cautious about allowing a *non-resident* plaintiff to file suit in a place that was in the causal chain, but where the forum has

52. See Stein, *Seeing Due Process Through the Lens of Regulatory Precision*, *supra* note 35 (defining "regulatory spillover" as "an interference with the authority of other states to regulate the same underlying conduct.").

53. *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 315 (3d Cir. 2007). *Cf. DeLorezo v. Viceroy Hotel Grp.*, 757 Fed. App'x 6 (2d Cir. 2018) (holding plaintiff's injury in foreign hotel did not "arise out of" the booking of the hotel in New York).

no significant interest in regulating the defendant's conduct.⁵⁴ Consider a case in which plaintiff is injured in her New York home by a product negligently manufactured in Ohio, but shipped by defendant through Pennsylvania, which would apply an unusually long statute of limitations. If plaintiff were to file suit in Pennsylvania, defendant's contact with Pennsylvania should not be considered related to plaintiff's claim unless the shipment through the forum created some danger to Pennsylvania residents. A looser definition of a "related" claim would give plaintiff an unjustifiable ability to forum shop in any forum that was anywhere in the causal chain of her injuries without advancing any legitimate state interest.⁵⁵

However, the balance may shift again in the case of a foreign defendant where a U.S. plaintiff has no other possible domestic forum. *J. McIntyre* deprived the New Jersey plaintiff the right to proceed against the British manufacturer in New Jersey, the place of injury, because defendant had insufficient contacts with New Jersey.⁵⁶ I agree with Linda that this was a wrong turn.⁵⁷ As Justice Ginsburg argued in dissent, the foreign defendant availed itself of the entire U.S. market, and foreclosing New Jersey's adjudicatory authority did not protect the sovereign interests of any other State.⁵⁸ But, borrowing from Linda's *Shaffer* analysis, it would compound that injustice if plaintiff were left without a domestic remedy altogether. Thus, I think in that situation, plaintiff ought to be able to pursue its claim in any U.S. forum that was in the causal chain, specifically

54. *Accord* *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1030 (2021) (suggesting that it would have been inappropriate for the plaintiffs to sue in the states in which their cars were originally purchased by third parties).

55. See Stein, *Seeing Due Process Through the Lens of Regulatory Precision*, *supra* note 35, at 42 (arguing there that constitutional limits on personal jurisdiction are properly seen as a balance between the forum-state's regulatory interest and the "spill-over" on other states' regulatory claims). Cf. *Ford Motor Co.*, 141 S. Ct. at 1025 ("The law of specific jurisdiction thus seeks to ensure that States with "little legitimate interest" in a suit do not encroach of State more affected by the controversy.") (quoting *Bristol-Myers Squibb v. Superior Court*, 582 U.S. 255, 263 (2017)).

56. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011).

57. Silberman, *End of Another Era*, *supra* note 41, at 682-83 (2015) (suggesting enactment of a federal statute to confer jurisdiction over a foreign defendant based on its aggregated U.S. contacts).

58. *J. McIntyre Machinery*, 564 U.S. at 899.

in Ohio, where defendant's machine was shipped to its U.S. distributor.⁵⁹

I'm not sure that Linda would agree with all of these conclusions, (and given the endless disagreements we have had over the course of producing our casebook, I would be shocked if she did). But I believe she could legitimately take credit for giving us the analytic tools necessary for a coherent resolution of the problem.

59. *Accord* Silberman, *End of Another Era*, *supra* note 41.