



Developing Specialized Court Services
International Experiences and Lessons Learned

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Legal Vice Presidency
The World Bank

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Table of Contents

About the Authors	i
Abstract	1
1. Introduction	2
2. Why Specialize?	3
3. The Advantages and Disadvantages of Specialized Courts	6
3.1. Advantages	6
3.2. Disadvantages	7
4. The Different Models of Specialized Courts and Judges	10
5. Criteria for Considering the Establishment of Specialized Courts	14
6. Determining and Developing the Needed Specialization Model	17
6.1. The Data Needed	17
6.2. Choosing an Appropriate Model	19
6.3. Implementing the Specialization Model	20
7. Developing a Cadre of Specialized Judges and Other Court Staff	21
7.1. What Expertise is Needed?.....	21
7.2. What Specialized Training is Required?	23
7.3. How Many Judges and Staff are Needed in Specialized Positions?.....	24
8. Conclusions	25

Developing Specialized Court Services: International Experiences and Lessons Learned

by Heike Gramckow and Barry Walsh¹

Abstract

Court specialization is commonly considered to be an important reform initiative to advance the development of a successful judicial system. Court specialization is thought useful even to address broader development constraints, such as the need for more effective access to contract enforcement, improvements in the investment climate, or more adequate protection of the environment. Studies from the United States, Australia, and other countries have shown that specialization can be helpful in improving the processing of court cases that are more complex or require special expertise beyond the law, such as in bankruptcy, the environmental, or mental health issues, or cases that must be handled differently to better reflect the needs of a particular court user group, such as business cases or family matters.

These studies have also pointed to some drawbacks, however. For example, special attention to, and the allocation of additional resources for, handling business cases can lead to the perception that a court provides preferential services to the business community but not the average person. In some instances, special courts have been created when the caseload did not actually justify the additional investment, raising questions as to whether the resources could have been better spent on improving overall court operations. In other cases, it was noted that judges who work on only one type of case may develop a deep but narrow expertise that may limit their focus and lead to a restricted view of the law, which may in turn lead to a reduced ability to consider new legal and societal trends that are reflected in other areas of the law. Judges may also develop too close a relationship with a particular group of lawyers and interest groups that are involved in special case types, especially if those groups are relatively small and if judges serve in this special capacity exclusively and for an extended period.

This report outlines the international experiences and good practices related to establishing specialized courts and creating the associated judicial expertise. It specifically highlights the information that is needed to determine if specialization is required in particular areas, as well as the specialization model that may be most appropriate, the requirements of the different models, and the approaches to training and selecting judges for special assignments. The paper also outlines the next steps a jurisdiction might take to examine the potential need and demand for further specialized judicial services and to consider what would be needed to meet those which are justified.

¹ This paper, which was adapted from advice the authors provided to the Abu Dhabi judiciary in 2012 as part of a fee-based technical assistance contract, offers an example of the Bank's research and analytical work in evaluating options for improving justice administration. The paper was peer reviewed by Guenter Heidenhof (Sector Manager, Poverty Reduction and Economic Management Department) and Fabian Seiderer (Senior Public Sector Management Specialist, Public Sector and Governance Unit).

1. Introduction

Court specialization is a rapidly growing trend in the United States, Europe, and many other regions of the world.² Studies have indicated that particularly in developing or recently developed countries, the current trend has been to create specialized courts and tribunals to deal especially with environmental cases, which appears to be improving access to justice for citizens generally, as well as for nongovernmental organizations (NGOs) and disadvantaged groups. A recent study found that as of September 2010, there were approximately 360 environmental courts and tribunals in place across the globe, with the majority of them created in the previous five years.³ A 2012 study conducted by the International Intellectual Property Institute cataloged specialized intellectual property rights courts in 90 countries in Asia, the Asia Pacific region, Europe, the Middle East and North Africa, Sub-Saharan Africa, North and South America, and the Caribbean.⁴ The creation of specialized family courts and the growing number of therapeutic courts has also been documented worldwide.⁵

Box 1. Why is the Business Court in Delaware an International Good Practice Model?

The Delaware Court of Chancery, established in 1792, is one of only three pure equity courts in the United States and focuses mainly on business and corporate law. Its jurisdiction includes cases involving fiduciary duties, alternative entity litigation (limited liability companies [LLCs], limited liability partnerships [LLPs]), partnerships and business trusts, estates, trustees, zoning matters, guardianships, and contested wills.

This court has several distinctive features that contribute to its popularity:

1. Its jurisdiction is purely equitable. All cases are heard without a jury and the judge is responsible for making findings of facts, rulings and writing the final opinions. The result is an extensive body of case law.
2. The scholarly culture of the court emphasizes the expression of varying opinions by the judges.
3. The geographic proximity of the court's five judges fosters a tradition of collaboration and collegiality, allowing them to consult each other on new and complex issues that arise in their cases.

² See Working Party of the Consultative Council of European Judges (CCJE), "Report of the 22nd Meeting" (Strasbourg, CCJE, March 26–28, 2012), [https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-GT\(2012\)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-GT(2012)3&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864). See also Lawrence Baum, *Specializing the Courts* (Chicago: University of Chicago Press, 2011).

³ See George Pring and Catherine Pring, "Specialized Environmental Courts and Tribunals: The Explosion of New Institutions to Adjudicate Environment, Climate Change, and Sustainable Development at the Confluence of Human Rights and the Environment" Yale University & U.N. Institute for Training and Research 2d Global Conference on Environmental Governance and Democracy (Yale Law School, Sept. 19, 2010, 3)

⁴ *Ibid.*

⁵ For an overview of specialized courts in the US see for example. Marcus Zimmer. "Overview of specialized courts." *International Journal For Court Administration*, August 2009. For drug courts see for example Caroline S. Cooper, Brent Franklin, Tiffany Mease. *Establishing Drug Treatment Courts: Strategies, Experiences and Preliminary Outcomes*. Vol. 1. Prepared for the Drugs Summit: European, Latin American and Caribbean Mayors and Cities, April 21 -23, 2010, Lugo, Spain. For domestic violence courts see Division for the Advancement of Women. *Handbook for Legislation on Violence against Women*. United Nations, 2010.

4. The court has several approaches to process cases more efficiently and uses information and communications technology (ICT) solutions extensively.

Source: Paula Hannaford, “Focus on Business and Complex Litigation Courts,” *Civil Action 1*, no. 1 (2000).

Some argue that the main reason for this development is the increasing specialization of the law and the growing complexity of topics.⁶ Others cite a range of benefits that specialization brings, such as more efficient processes and greater understanding of the law and the impact of the court’s decision on the parties and their environment by judges. While there is evidence of greater efficiency and even effectiveness in reaching goals, such as, for example, reduced recidivism in certain circumstances,⁷ these outcomes require the right conditions, and evidence to support other claims, especially that the creation of a special business court improves the investment climate in a country, is quite mixed.

For example, in the United States, the number of trial courts that hear business cases primarily or exclusively has significantly increased in the past 20 years. It has been argued that this is driven largely by the contention that special business courts attract out-of-state businesses to a state and dissuade in-state businesses from moving elsewhere, thereby growing the state’s economy.⁸ Others have suggested that a business court attracts out-of-state corporations to incorporate in that state, thus generating franchise fees for the state, and that out-of-state companies will choose to litigate their disputes before that court, thereby generating fees for local lawyers.

However, a 2012 study by John Coyle failed to find evidence to support these claims.⁹ The study rather highlighted the courts, such as the Chancery Court in Delaware, operate within a very favorable legal framework and highly supportive environment and it is difficult to contribute positive outcomes solely to court specialization.

2. Why Specialize?

Judicial specialization generally means that judges have special knowledge of and expertise in a particular area of the law. More specifically, it also means that certain types of cases are handled somewhat differently, possibly even separately from the rest. While specialization in this sense is a growing trend, it is not new and there are many examples of judicial specialization all over the world and in all types of legal systems. Courts that handled particular criminal offenses were described in ancient Rome,¹⁰ and courts specializing on maritime law in England reach back to the 14th century.¹¹ In the United States, reports of specialized courts date to at least the creation

⁶ See Working Party of the CCJE, “Report of the 22nd Meeting.”

⁷ See Michael W. Finigan, Shannon M. Carey, and Anton Cox, “Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs (Final Report)” (Portland, OR: NPC Research, 2007).

⁸ Baum, *Specializing the Courts*.

⁹ John F. Coyle, “Business Courts and Interstate Competition,” *William and Mary Law Review* 53, no. 6 (2102): 1915ff.

¹⁰ See Joan Jahnige, “The Roman Legal System,” “Mores,” 2005, <http://www.dl.ket.org/latin3/mores/legallatin/legal01.htm>.

¹¹ See “High Court of Admiralty,” *The National Archives*, <http://www.nationalarchives.gov.uk/records/research-guides/high-court-admiralty.htm>.

the Delaware Chancery Court in 1792.¹² Other examples include the *conseils des prud' hommes* (labor courts) created in 1806 in France,¹³ the founding of juvenile courts in Illinois in 1899,¹⁴ the establishment of a special labor court in Denmark in 1910,¹⁵ and the development of Sweden's water courts in 1918.

Box. 2. The Value of Specialized Family Violence Courts

A number of studies from Australia, the United States, and the United Kingdom provide some evidence of the benefits of specialized family violence courts. These include:

- greater sensitivity to the context of family violence and the needs of victims through specialized training and skills of staff;
- greater integration, coordination, and efficiency in the management of cases through identification and clustering of cases into a dedicated list, case tracking, inter-agency collaboration, and the referral of victims and offenders to services;
- greater consistency in the handling of family violence cases both within and across legal jurisdictions;
- greater efficiency in court processes;
- the development of best practice, through the improvement of procedural measures in response to regular feedback from court users and other agencies; and
- better outcomes in terms of victim satisfaction and victim safety, improvements in the rates of reporting, prosecution, convictions, and sentencing, and—potentially—changes in offender behavior.

Source: Australian Law Reform Commission (ALRC), *Family Violence – A National Legal Response* (Sydney: ALRC, 2010).

Today's growing trend toward court specialization can be observed throughout the globe, but also with some distinct differences across legal systems and regions. History and codification has led to more system-wide specialization in many civil law countries; in common law countries, the traditional approach of establishing courts of general jurisdiction in combination with more local flexibility in determining court operations has led to a greater variety of specialized court operations.¹⁶ The degree of specialization in either system tends to increase as economic development and the legal framework evolve. The more complex and specific the legal framework becomes and the more sophisticated the economic environment, the greater the calls for specialization.

Although specialization can also be a result of constitutional requirements,¹⁷ most often it results from particular needs or demands, frequently stemming from sources external to the courts that have to be considered carefully to determine if

¹² See William Quillen and Michael Harahan, "Short History of the Delaware Court of Chancery, 1792–1992," Delaware State Courts, 1993, <http://courts.delaware.gov/chancery/history.stm>.

¹³ See Béatrice Craig, "Justice Bourgeoise? Justice Masculine? Les Conseils de Prud'hommes au Début du XIXe Siècle: l'Exemple de Tourcoing," *Social History* 25, no. 50 (1992).

¹⁴ Joan McCord, Cathy Spatz Widom, and Nancy A. Crowell, eds., *Juvenile Crime, Juvenile Justice* (Washington, DC: National Academy Press, 2013).

¹⁵ See Reinhold Fahlbeck, "Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features" (Stockholm: Stockholm Institute for Scandinavian Law, 2009).

¹⁶ See Baum, *Specializing the Courts*.

¹⁷ For example, in the United States, there is a specialized Federal Bankruptcy Court because insolvency actions in that country are constitutionally limited to federal tribunals. Similarly, the Australian Family Court was established

specialization would be helpful and if so, which form or model of specialization would be best. Even legal requirements to create specialized courts (such as juvenile or family courts) tend to be the result of an external demand sometimes fueled by dissatisfaction with how particular cases are handled or progress. Oftentimes the drive for changes is a result of research that outlines special requirements that are not met by courts or explains why certain cases take longer than they should, or from economic or societal trends that suggest a need to reform through the specialization of processes.

As stated in a March 2012 report issued by the Working Party of the Consultative Council of European Judges (CCJE), “The main reason for [court] specialization is the increasing specialization of the law and the growing complexity of topics.” The CCJE also indicated that the drive to specialize can be internal as well as external (a societal demand requiring that judges demonstrate a better expert knowledge and efficiency), and that the specialization of judges is increasingly needed due to the specialization of lawyers and prosecutors.¹⁸

These statements show that it is important to distinguish between the internal need and the external demand for specialization when considering the need and appropriate model for specialization in a particular jurisdiction. The internal need will determine if specialization would ensure better processing and decision making and which model would best address this deficiency. The external demand is important to ensure that user needs, other agency requirements, or even broader jurisdiction requirements are addressed. Often, however, external demand may not match the internal need; while the former may push for specialization in a certain area, an analysis of the latter may indicate that specialization is not the best choice. Since external demand—and political pressures—for specialization cannot easily be disregarded (nor should they), options for low-key specialization and alternatives to address external demand might be the answer. These can include adjustments in overall court operations, non-court settlement options, and improved information sharing and specific outreach activities. As further addressed below, weighing the costs and benefits of specialization based on good information, and then communicating this information to those demanding specialization, are important parts of planning for and implementing the needed changes that may or may not include specialization.

Is Specialization Justified?

“The current proliferation of specialized forums clearly cuts against the grain of court reform during the twentieth century. This leaves the burden of proof that the benefits of specialization outweigh the costs to the larger reform movement on those promoting specialization. One consideration is the source of the impetus to specialize. It is possible that the current wave of specialization will end only when every victim and interest group has his or her own forum.”

Source: David Rottman, “Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)?” *Court Review* 37 (2000): 25.

as a national court to process cases concerning marriages and children of marriages, but not initially to children born out of wedlock, as the federal powers in that country apply only to marriage disputes.

¹⁸ See Working Party of the CCJE, “Report of the 22nd Meeting.”

3. The Advantages and Disadvantages of Specialized Courts

3.1. Advantages

Those supporting specialization generally argue that specialized courts have three advantages:

- *First, there is greater efficiency.* Specialized procedures and staff and judges who are well versed in these cases lead to streamlined operations and more efficient processing. And by diverting a class of cases to specialized courts, the burden of growing caseloads in the regular courts will be reduced, also positively impacting on their operations.
- *Second, a judiciary of specialists leads to higher-quality decisions, especially in complex areas of the law.* Their greater expertise and experience will lead to better decisions, better outcomes for the litigants, and greater user satisfaction.
- *Third, the creation of specialized courts with exclusive jurisdiction over particular areas of the law would enhance uniformity of decisions in those areas,* thereby contributing to greater predictability and confidence in the courts and possibly reduced appeal rates.

The experience of the Land and Environment Court of New South Wales, based in Sydney, Australia supports the claim of greater efficiency and higher-quality decisions.¹⁹ Specialized courts that were set up to process different case types according to complexity and for the main purpose of speedy processing, such as the first Expedited Drug Courts in the United States, are another example supporting the assumption that specialization can lead to greater efficiency, particularly if that is one of the aims of specialization and the design is focused on this aspect.²⁰

Advantages but with limitations

There are other examples that indicate that specialization may increase efficiency and possibly improve decisions, but an impact on the broader development issue that may have prompted the creation of the specialized court might not be achieved. A 2005 case study from Tanzania outlined in Box 3 found that the country's recently established commercial court had no impact on the business climate. This should not come as a surprise, however, given that the business community did not consider courts to be important to its decision making and that only a limited number of businesses would ever need to use this one court.²¹

¹⁹ See Brian Preston, "The Land and Environment Court of New South Wales: Moving towards a Multi-Door Courthouse – Part 1" (2008) 19 *Australasian Dispute Resolution Journal* 72 and "The Land and Environment Court of New South Wales: Moving towards a Multi-Door Courthouse – Part 2" (2008) 19 *Australasian Dispute Resolution Journal* 144.

²⁰ See Joan E. Jacoby, Edward C. Ratledge, and Heike P. Gramckow, "Expedited Drug Case Management Programs: Issues for Program Development" (Washington, DC: National Institute of Justice, 1992).

²¹ David L. Finnegan, "Observations on Tanzania's Commercial Court. A Case Study" (Paper for the World Bank Conference on "Empowerment, Security and Opportunity Through Law and Justice," Washington, DC, 2005).

Other studies question the value of developing extensive judicial expertise on specialized subject matters, or at least suggest caution to limit expectations related to significant quality improvements. Some research argues that specialized judges only duplicate the work of other experts (such as technical experts or social service and treatment providers) without adding more effective review of decisions.²² Studies that compared the decision making of experienced specialized judges in patent cases, for example, to those of less experienced ones showed no difference in the quality of their decisions, suggesting that long-term specialization in one field may not be desirable.²³ Then again, other research showed that decisions by judges with substantive knowledge in a particular subject area tend to be more highly regarded by litigants and the public, which is an important consideration.²⁴

Box. 3. Tanzania's Commercial Court: Efficient but no Impact on the Business Environment

A specialized commercial division of the High Court was created in 1999 in Dar es Salaam. Supported by Danida, Denmark's development agency, its aim was to improve the efficiency and fairness of commercial dispute resolution in the country. The idea was that the speedy and reliable handling of commercial cases would facilitate private sector development and improve investor confidence. There was a widespread perception among Tanzanian lawyers and business people that even routine commercial debt recovery cases take four–five years on average. The general view was also that most judges had an insufficient understanding of commercial laws and legal principles, a problem that specialization would be able to address.

Housed in a separate facility, with a separate registry and case management system and operated by specialized staff and three specialized judges, it is *de facto* a separate court. Originally, cases involving at least Tsh 10 million (about US\$9,425) could be brought before the court. This threshold was later raised to Tsh 100 million (US\$94,250) to reduce the high number of cases filed. Subject matter jurisdiction is not exclusive but shared with the general division of the High Court. Under certain conditions, cases may be transferred from the general division to the commercial court. Under this arrangement, there is some forum shopping (that is, when litigants attempt to use the court where they will find the best settlement). Debtors preemptively file their case with the general division to keep the creditor from filing it with the more efficient commercial court, and creditors preempt by filing cases with the commercial court, leading to increased caseloads in both courts.

In the end, although the specialized court is more efficient, it has had little impact on business decision making or the investment climate. A survey showed that the existence of the court is simply not very important to business decision making. Similarly, within the financial sector there is no evidence that the existence of the court has positively affected the credit process.

Source: David L. Finnegan, "Observations on Tanzania's Commercial Court. A Case Study" (Paper for the World Bank Conference on "Empowerment, Security and Opportunity Through Law and Justice," Washington, DC, 2005).

²² Martin Shapiro, *The Supreme Court and Administrative Agencies* (New York: Free Press, 1968).

²³ Jeffrey J. Rachlinski, Chris Guthrie, and Andrew J. Wistrich, "Inside the Bankruptcy Judge's Mind," *Boston University Law Review* 86 (2006): 1227–65.

²⁴ Isaac Unah, *The Courts of International Trade: Judicial Specialization, Expertise, and Bureaucratic Policy-Making* (Ann Arbor, MI: University of Michigan Press, 1998).

Martin Shapiro, *The Supreme Court and Administrative Agencies* (New York: Free Press, 1968).

²⁴ Jeffrey J. Rachlinski, Chris Guthrie, and Andrew J. Wistrich, "Inside the Bankruptcy Judge's Mind," *Boston University Law Review* 86 (2006): 1227–65.

²⁴ Isaac Unah, *The Courts of International Trade: Judicial Specialization, Expertise, and Bureaucratic Policy-Making* (Ann Arbor, MI: University of Michigan Press

3.2. Disadvantages

There is also some evidence that specialization can have negative effects. These include limits to the resources available for general courts, the perception of preferential treatment for cases and litigants that are handled in specialized courts, the risk of exposing the judges to the greater influence of specialized lawyers, and the possible effect on the judges of developing too narrow a view of the matters the court focuses on.

There is concern, backed up by evidence from some studies,²⁵ that since judges, lawyers, experts, and other actors involved in the litigation of cases handled by specialized courts tend to be a small group in each jurisdiction, judges will become very familiar with these actors, resulting in more informal and potentially preferential engagement, thus increasing the danger of corruption.²⁶ Others point out that knowing the parties too well can also lead to bias and prejudice in the judges' decisions;²⁷ the smaller the jurisdiction, it is felt, the higher the risk of being too "close" to the parties that are appearing in front of the specialized judges.

Those concerned about the adverse effects of specialization on the quality of decisions also point to the value of non-specialized judges who bring broader experience to the specialized cases, such as the economic and social implications of their decisions.²⁸ Others suggest that specialization can lead to a loss of perspective, in the form of over- or underestimating the relevance and impact of special legal issues. It has also been pointed out that the lack of a general knowledge and experience of the law as it evolves may have negative consequences on the career mobility and general competence of judges and other staff, making specialized positions less attractive. Sometimes, seemingly trivial matters, such as the relative status and importance of judges in specialized courts, can become sources of discontent among the judiciary itself.

Another concern is the additional resources required to set up specialized courts and the need to ensure that the *entire* court system is working well, not just the specialized courts that may cater only to a specific group of court users. Sometimes the creation of a special court for one area of the law may be a less than sufficient quick fix to a larger problem. The decision to improve the handling of one case type may initially be well justified if the need is great, its impact can be significant, and experience from the special court can inform broader future reforms for improvements in all courts. But if the changes benefit only a small group of court users and positive results and lessons learned are not transferred to other court operations, the special focus and investment become questionable.

Organizationally, many issues need to be addressed to ensure that specialized courts are specific only with regard to the type or manner of cases that are handled, not biased or preferential in the

²⁵ See Lawrence Baum, "Probing the Effects of Judicial Specialization," *Duke Law Journal* 58 (2009):1667–84.

²⁶ See Friederike Henke, "Specialised Court Systems. Comparative Paper Analysing the Possibilities of Implementing a Specialised Court System in India," 2005, http://www.fdrindia.org/publications/CourtSystemInIndia_PR.pdf . Self-published.

²⁷ *Ibid.*

²⁸ See John Pendergrass, "Role of Judiciary in Pollution Management," Guidance Notes for Tools on Pollution Management (Washington, DC: World Bank, 2010).

way decisions are issued and published, or in the way judges and other staff are selected, evaluated, promoted, or paid beyond what is justified by the need for greater experience or effort. In this vein, some experts criticize the potential for specialized courts to exercise undue power over the development of law in their fields of specialization, especially if a specialized court issues a somewhat eccentric interpretation of more general rules. It is thus of particular importance that specialized courts are set up without circumventing the legal requirements of due process or unduly limiting the rights of the parties in the name of more efficient processing.

Mirroring similar concerns raised in several countries, the CCJE, in its March 2012 report, outlined the limits and dangers of specialization:

- Risks to the independence and impartiality of the judge (as a result of being too familiar with the parties or their lawyers);
- Risk of exposure to interference by the executive and the administration who may disagree with the decisions in general courts and therefore aim for different outcomes via special courts;
- Risk to the unity of the judiciary;
- Potential inequalities in access to justice in some locations, stemming from the impossibility of having a specialist in every subject matter needed;
- Concern that, due to the complexity of a particular subject matter and to the continuous development of the law, specialized judges will no longer have knowledge of different areas beyond their own specialty, an important link that will be lost if all of their work and education is detached from the general courts;
- Risk that the compartmentalization of a judge's activity and knowledge of the law may actually lead to lower quality decisions in the long run;
- Risk of a loss of flexibility in the development of the law if judgments are always delivered by the same limited number of persons.²⁹

In deciding for or against specialization in different forms, these issues should be carefully reviewed and reflected in the choice of specialization approach, model, and strategy. Those studies that have been undertaken to identify the impact of specialization support the notion that greater efficiencies can be achieved, and that greater understanding of the subject matter at least improves litigant trust in the decision. There is also little doubt that judges should have enough understanding of the subject matter to understand information provided by the parties and other experts. The value of specialization *per se* is thereby not questioned, but rather, these findings caution that specialization can only achieve so much, and thus the cost and potential drawbacks of this course of action should be carefully weighed before the decision to pursue specialization is taken and a particular model is chosen.

²⁹ See Working Party of the CCJE, "Report of the 22nd Meeting."

4. The Different Models of Specialized Courts and Judges

Judicial specialization can take a variety of forms. The model chosen should reflect the weight of the underlying problem that it aims to address as well as the local circumstances, especially the number of cases of the type that is targeted for specialization and the external demand for special treatment. The higher the number of cases that require special treatment, be it in the form of judicial expertise, processes, or services, the greater the need for more comprehensive specialization and the higher the justification for investing in it. The specialization models outlined below are presented in order of comprehensiveness, starting with the most comprehensive option, which involves specialization on all court levels from trial courts to final appeals courts.

- *Establishment of a separate court or even separate court system.* Such a court may be located in its own building, often applying processes that differ from other courts. Specialized courts may be established either to better accommodate differences in the procedural codes (such as in criminal cases), or because administrative processes and internal court rules have been adjusted to better reflect and address the special needs of the cases the courts handle (for example, business courts, family courts, therapeutic courts).

These courts can be organizationally part of the jurisdiction's general court system or a separate hierarchy of specialized courts that may include distinct specialized appeals courts. One example is the German court system, which comprises several separate specialized branches, each having its own hierarchy of appeals courts. The German courts have a structure consisting of a general court branch, with special civil, criminal, and family divisions, and separate branches that focus on administrative, social, labor, and financial and intellectual property cases, each branch including specialized first instance and appeals levels and each independently organized and funded.

Box 4. Dayton (Ohio) Municipal Court - Mental Health Court Docket

Created in 2003, the mental health court docket in Dayton, Ohio is designed to assist persons with mental health problems charged with misdemeanor crimes. These individuals must be stable enough to understand and comply with the program requirements. The mental health court docket team consists of representatives from the probation department, prosecutor's office, public defender's office, and several behavioral health care centers. This group meets weekly, prior to the candidates court date. The probation officer is responsible for compiling comprehensive information packets, including criminal histories, for review. The health care centers provide a mental health assessment to determine eligibility criteria. Subsequently, the roundtable makes a recommendation to the mental health docket judge, who has the final decision.

Accepted candidates are immediately connected to health care services and placed on intensive probation for a period not to exceed 24 months. As needed, status court hearings are set to ensure program compliance. If a defendant successfully completes the treatment plan and has no new criminal charges during the 24-month period, the prosecutor files a motion to dismiss the charge.

A review of the operations of the special docket indicated that jail time was reduced by 60 percent, providing for effective time in treatment.

Source: Dayton Municipal Court website, <http://www.daytonwejis.com/specialdocket.html>.

- *Creation of a separate court division or bench within a court.* A specialized court division of an existing court may be established with less formality than by special legislation (if that is legally possible), sometimes only by administrative direction or by rules adopted by the court itself. A court division or bench of this kind can have several judges, prosecutors, staff members, and courtrooms assigned to it and it may also have a separate building so that in most respects, it operates as if established by state legislation (although seldom having its own budget). Judges may be allocated to a special division either indefinitely or as needed to meet temporary specialization needs, or to test specialized processes and services to inform future expansion. The use of specialized divisions or benches is very common in British Commonwealth countries, such as India and New Zealand.

Special divisions or benches can be a highly flexible way of pursuing specialization without significantly greater administrative effort or other costs. Their use is more often found in common law countries, where courts tend to have more authority to adjust court rules without referring to a central ministry or the state legislature. For example, in U.S. courts, where concepts of “caseflow management” were first developed and applied in the early 1970s, presiding judges took advantage of their ability to set up special dockets or lists to introduce case tracks for the processing of particular kinds of cases, often initially as pilot tests.³⁰ Today such approaches are very common in the United States, Canada, and several other common law countries. Once these initiatives move beyond the pilot stage, they are frequently institutionalized by creating court rules or even some form of formal legislation. In civil law countries in Latin America and Europe, such approaches are also increasingly used, but tend to require a more formal approach, which may mean a change in the law pertaining to courts, and sometimes even a change in the procedural code.

- *Developing judges with special expertise to serve on ad hoc established court panels to process cases that require particular expertise that a court may occasionally receive.* A court that does not receive a sufficient volume of cases that might benefit from specialized processing and expertise, or that cannot predict the future volume of such cases, may encourage judges to develop this special subject expertise so they can be assigned to handle these cases when they come before the court. Where these cases are ordinarily handled by panels, one judge with specialized expertise per panel may be sufficient and may be assigned a special role on that panel.

For example, in the German Federal Constitutional Court, a judge with a particular expertise is often assigned to a panel as “rapporteur.” The role of the rapporteur is to initiate the first step in outlining the panel’s considerations by drafting a detailed report on all aspects of the case, describing the background and facts of the dispute, related court precedents, relevant legal literature, and arguments advanced on both sides of the question, and concluding with the judge’s own view of how the case should be decided. The report must then summarize

³⁰ See David C. Steelman, John A. Goerd, and James E. McMillan, *Caseflow Management. The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts, 2000).

the case and include reasons for any recommendations. The rapporteur judge then presents his or her findings and arguments to the other judges in order to gain their consent.³¹

Within each of these models, specialization can take different forms, including:

Box. 5. The Mixed-Model Approach to Intellectual Property Rights (IPR) Cases in New Zealand

New Zealand has designated courts to hear IPR disputes (in addition to other cases), and also has an administrative tribunal that hears copyright licensing disputes. IPR infringement proceedings are usually conducted in the High Court rather than the district court, and many types of IPR proceedings are required to be filed there. High Court judges are seen as more knowledgeable about IPR than their district court counterparts. Patent and trademark oppositions can also be conducted through the Intellectual Property Office of New Zealand.

New Zealand also has a Copyright Tribunal to adjudicate copyright licensing disputes. The tribunal consists of a president, who must be a barrister or solicitor of the High Court with at least seven years experience, and five other people, all appointed by the Governor-general on recommendation of the Minister of Commerce. The tribunal can pass questions of law to the High Court, which also hears appeals of the tribunal's decisions.

Source: Rohazar Wati Zuallcoble and others, "Study on Specialized Intellectual Property Courts" (Washington, DC: International Intellectual Property Institute and United States Patent and Trademark Office, 2012).

- A particular type of case or specific topic, such as criminal, commercial, or land issues or special subcategories, such as family, bankruptcy, corruption, or drug offenses;
- A particular user group, for example, trading banks, juveniles, immigrants, or indigenous groups;
- A particular process step, referring to case-screening chambers, sentencing, or enforcement courts;
- A particular geographic area within a court's jurisdiction, such as tribal courts or community courts;
- A particular additional service requirement, such as family courts, drug treatment courts, and other therapeutic courts.

Specialization may be needed at only the first instance level or for different stages of appeals. This can mean that only some courts or benches in a particular location have sufficient need or demand for specialized operations (for example, in the capital, the main commercial city, a harbor city for maritime cases). Two models to address different territorial specialization needs can be found in the Netherlands, where in one instance, "traveling judges" visit different locations for the adjudication of special case types, while in another, fraud cases from several districts are

centrally handled by the *Noordelijke Fraudekamer*, a specialized central fraud court.³² In other countries, the entire system may have several specialized branches, with subspecializations only at some court levels or select locations. The family courts in the Republic of Korea (South Korea) are one such system and provide a good example of the value of creating specialization based on needs and case volume. Although the first family court was established in Seoul in 1963, it was only in 2011 that another family court was created in Busan and since then, family

³¹ See Donald P. Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany*, 2nd ed. (Durham, NC: Duke University Press, 1997).

³² See Elaine Mak, "Balancing Territoriality and Functionality. Specialization as a Tool for Reforming Jurisdiction in the Netherlands, France and Germany," *International Journal for Court Administration* October (2008), http://www.iaca.ws/files/LWB-Elaine_Mak.pdf.

courts have been created in three additional districts. In all other districts, these cases are handled by the general jurisdiction court.³³

There are also variations in the other ways specialized courts or benches can differ from the regular courts:

- *Specialization can mean that court processes and their aims differ.* Procedures in specialized juvenile and family courts, for example, are often less formal and more focused on reconciliation. To ensure that family law cases are effectively administered in Egyptian courts, the Egyptian legislature enacted a law to establish a system of independent family courts in 2008, the design of which was influenced by the structure of the Family Court of Australia (established in 1975). The family court divisions of the Singapore courts are similarly located in separate facilities that are designed to better reflect the different procedures and focus of these cases and the parties involved.

Major crime cases, such as organized crime or high-level corruption cases, tend to require special witness or victim protection and handling. They also tend to demand special expertise

Mixed Specialization within a Special Court: the Criminal Justice Division of the Singapore Subordinate Courts

To improve efficiency in Singapore's criminal division, which handled almost 59,000 criminal charges, over 60,000 traffic cases, and over 128,000 statutory charges and summons in 2012, seven specialized groups of courts were created. Three of these groups focus on concentrated processes, such as the centralized pretrial conference court, and four groups focus on specific crimes.

Source: Singapore Subordinate Courts, "Annual Report" (Singapore: Subordinate Courts, 2012).

from judges and prosecutors and more effort in preparation, which can mean that judges need to have the relevant expertise to ensure that witness and victim services are in place and that procedural timelines are adequate. The Sandiganbayan of the Philippines (an anti-corruption tribunal) is an example of a major crime court and there are similar tribunals established in a range of former British colonies and in Europe. In Indonesia, there is an independent anti-corruption court that works exclusively on high-level crime. Another example is the special court for war crimes and organized crimes in Belgrade, Serbia. As the name indicates, this special court houses two separate specializations served by two distinct, specialized judicial and prosecutorial structures.³⁴

Minor crime cases, such as traffic infringement or the possession of small amounts of illegal drugs, on the other hand, can be handled more effectively and quickly using highly streamlined, low-cost processes, an approach

adopted in many jurisdictions in the United States and other countries. Traffic courts in particular are often established as independent tribunals, sometimes distinct from the general courts, for processing very large volumes of parking fines and other kinds of lower level motor vehicle and road offenses.

³³ See the Supreme Court of Korea, "Annual Report" (Seoul: Supreme Court of Korea, 2012), 21.

³⁴ See Organization for Security and Co-operation in Europe (OSCE), "Judicial Institutions in Serbia" (Warsaw, OSCE, 2011).

- *Specialization can mean that different non-legal expertise and additional services are required throughout or as part of the process.* In addition to offering special services and procedures for victims, especially in cases involving children or sexual abuse cases, a range of what are often called “problem solving” or “therapeutic courts” have emerged in North America, the United Kingdom, and Australia, and are also increasingly being created in many Caribbean, Latin American, and European countries.³⁵ These courts combine essential therapy with sentencing options and may address drug or mental health issues, for example, with the purpose of qualitatively improving outcomes for litigants and society in cases involving individuals with underlying health, social, and emotional problems. A problem-solving orientation is the most fundamental characteristic of these specialized courts, which were created with the rationale that some categories of cases (and associated litigants) require more and a different kind of attention than that which general courts can usually offer within the vast volume and mix of cases. A problem-solving approach, while possibly more appropriate and effective than the traditional court process for certain types of cases (i.e., drug crimes, cases involving offenders with mental health issues, etc.), also tends to require special knowledge and personal attributes on the part of the judicial “problem solver” and others. It also requires that the court is connected to additional services, such as treatment options, throughout the court proceedings.³⁶

5. Criteria for the Establishment of Specialized Courts

There are many external and internal influences and issues to consider in determining how a particular court system should best be structured and operated, and the criteria for creating specialized courts or benches are not always easy to establish.

In the 1980s, the U.S. Congress created a Federal Courts Study Committee to examine a variety of issues, including an overall evaluation of specialized courts.³⁷ The Committee’s 1990 report, among other recommendations, set out criteria for determining when to create a specialized court, including whether:

- The subject is a focused area of decision making that can be segregated from other claims;
- The subject area has a high volume of cases, which might alleviate the burdens on general courts if diverted to a specialized court;
- There is a predominance of scientific or other technical issues affecting a proposed area of specialization that might require special expertise on the part of decision makers;

³⁵ See United Nations Office on Drugs and Crime (UNDOC), “Drug Treatment Courts Work!” (Vienna: UNDOC, 2005), http://www.unodc.org/pdf/drug_treatment_courts_flyer.pdf.

³⁶ See David Rottman, “Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)?” *Court Review* Spring (2000): 22–27.

³⁷ See Federal Reports Study Committee, “Report of the Federal Courts Study Committee,” *Connecticut Law Review* 22, no. 4 (1990). A summary of its criteria for specialized courts appears in “Recommendations of the Administrative Conference of the United States,” ABA Administrative Procedure Database, Florida State University School of Law, <http://www.law.fsu.edu/library/admin/acus/305919.html>.

- There is uniformity in the administration of the particular matter.

The Committee also pointed out that it may not be necessary to create a new specialized court based only on external demand if existing general courts or tribunals are adequate to cope with the volume, and complexity, of those types of cases. I went on to suggest that some adjustments in the general courts, including the development of specialized judges or the streamlining of case processes, may be sufficient to adequately address those external complaints and demands. The Committee stressed the important of ensuring that these changes are then tracked for improvements and that results are communicated to the public are essential elements in responding to external pressures.

Based on the English legal system, Edward Cazalet has identified additional criteria or questions to determine whether there is a need for a specialized court.³⁸ These include:

- Is the need for the specialized court a continuous one into at least the mid-term future and not just a temporary need?
- Are there past experiences, such as a pilot test, to indicate elements that might contribute to the potential success of a specialized court?
- Has there been any important legislation that has led to or will prompt an increase in the number of cases being litigated in this area over a period of time? If so, are these cases likely to be in need of special handling or expertise?
- Have there been markedly inconsistent judgments or decisions in this area? If so, have inconsistencies led to a proliferation of litigation or, conversely, to a general reluctance to bring disputes before the courts?
- Is there a backlog in case processing and if so, how harmful is the delay in that particular field of law? What are the costs of the delay to the court, the government, and court users?
- Are there justified complaints from court users and other interested organizations or concerns internally about how certain types of cases are handled or how long cases take?³⁹

Reflecting these same concerns, work undertaken in South Africa outlines some of the main requirements for establishing specialized courts.⁴⁰ This study, like others before it, recommended that specialized courts be established only after an appropriate review of previous court practices, and ideally after running a carefully assessed pilot program.

³⁸ Edward Cazalet, “Specialised Courts: Are They a ‘Quick Fix’ or a Long-Term Improvement in the Quality of Justice?” (Washington, DC: World Bank, 2001), <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/SpecializedCourtsCazadet.pdf>.

³⁹ Ibid.

⁴⁰ See Antony Altbecker, “Justice Through Specialisation? The Case of the Specialised Commercial Crime Court,” ISS Monograph 76 (Pretoria: Institute for Security Studies, 2003).

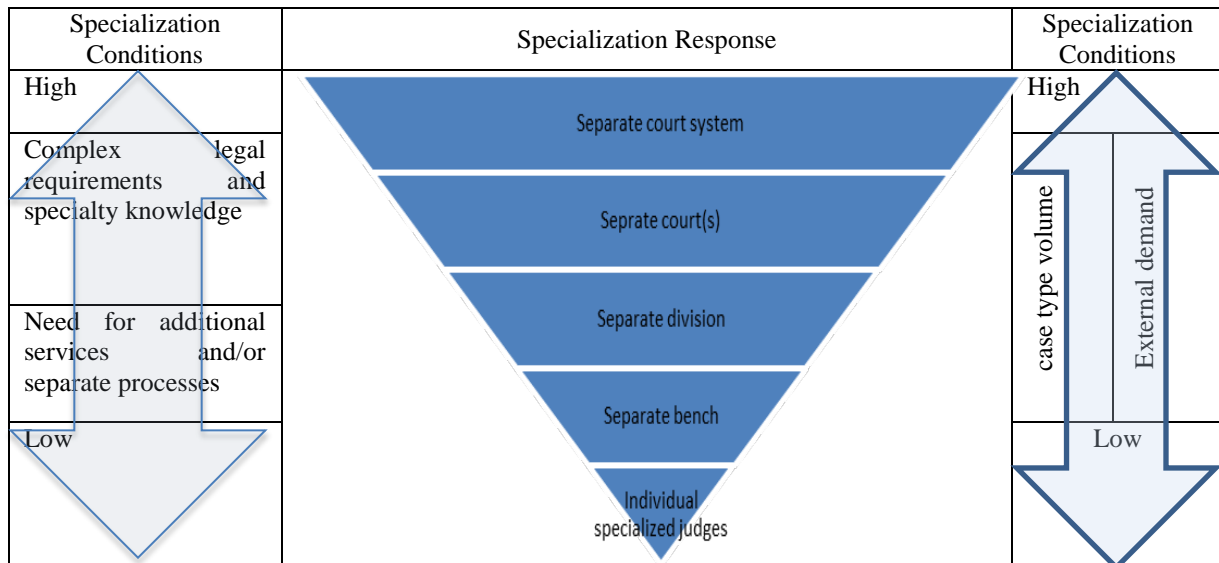
When deciding which model of specialization may be most appropriate, again, the main question is whether there is a sufficient volume of cases to warrant allocating judges exclusively to a particular case type. If the answer is yes, a special court or division may be appropriate. When the size of the potential workload and long-term implications and needs are still undetermined, a special bench or division model may be preferred, as it preserves the option of varying the numbers of judges used over time. Where there is uncertainty even about the number of judges to be exclusively dedicated to special case work, however, there is still the option of developing capacities to assign individual judges on an occasional basis to handle special cases as they arise.

In order to avoid these pitfalls and before decisions about specialization are made, it is important to first establish that there is truly a need for specialization and the impact that specialization might have on the court and its users. The below graph outlines a decision-making model that considers the four main reasons and conditions for specialization:

- Complex legal requirements and specialty knowledge
- Need for additional services and/or separate processes
- Case type volume
- External demand

The higher the need to address more than one of these reasons, the more comprehensive the chosen specialization choice should be. And as noted above, the decision to move forward has to be based on a solid analysis and ideally on a more limited pilot test of the envisioned changes.

Figure 1. Decision-Making Model for Specialization Choice



6. Determining and Developing the Specialization Model

6.1. The Data Needed

In order to understand when specialization would be beneficial and effective with regard to cost and impact, a sufficient and wide range of information has to be available. When external demands to create some form of special court operations are strong, the need to gather more objective information about the benefits and drawbacks of specialization increases. The information needed includes:

- Case trend data to indicate the development of volume and the length of processing time for different case types at different court locations and levels over time.
- The views of judges, select court users, and other relevant interest groups on the special processing and service needs of select case types.
- The reason for specialization needed cited by key stakeholders and support by further analysis (i.e., high volume, legal complexity, need for other subject matter expertise, need for simpler or less formal processing, the need for provision of special treatment and other services) or due to special importance to the jurisdiction.
- Assessments of the benefits and value of different specialization models, especially considering long-term trends and needs and the public interest value over time. This would involve an assessment of the potential impact of specialization on the court and its users in terms of efficiency, easier access and cost, and potential quality implications.
- Assessments of investment and implementation requirements to determine the optimum preferred specialization models and how to maintain them. This would involve an assessment of staffing (judges and support staff), training, facilities, equipment, and other resource needs for different specialization models.

To address the above issues, the following should be collected:

- *Case volume.* Specific information on the number of cases by subject matter, court level, and location to establish which field of law has the highest case load and the biggest backlog, and therefore the highest statistical need for specialized treatment.

When demand for specialization is strong but the actual number of cases handled by the courts is too low to justify a specialized court, it could be that the lack of litigation in this area is because potential users perceive that the current judicial operations do not adequately address these types of cases. In such situations, establishing a specialized division or chamber may be an important first step to demonstrate the court's capacities and to test the actual need for specialization. It is also important to consider if the availability of specialized

alternative dispute-resolution options may address the demand more efficiently than the formal court alternative.⁴¹

- *Previous court decisions in the subject area proposed to be specialized.* The review should assess appeal patterns, the consistency of previous decision making by the courts, and other quality review information, such as the information collected by a Judicial Inspection Department, if such exists, to indicate if quality issues in the decision-making process in the subject area can be substantiated.
- *Internal and external complaints/concerns about process inefficiencies or quality issues in the subject matter.* This will include a review of actual complaints received about decisions or processes, and surveys or focus groups to assess the views of judges, court staff, various groups of court users, and impacted agencies on subject areas that would benefit from specialization, considering the perceived need for, and benefits of, specialization and the impact that perceived inefficiencies or deficiencies in quality may be having on the delivery of justice services.
- *An assessment of the importance society attaches to the subject matter.* This will involve interviews with, or focus groups or surveys of, key stakeholders to assess the importance that society, special interest groups, and key decision makers in government attach to the selected subject matter. The courts in the U.S. state of Maryland, for example, sought input from both the Maryland business and legal communities and then undertook a review of the experiences of other states in creating business courts before setting up such courts in their own jurisdiction.⁴²
- *A review of prior experiences with specialization.* This involves first, a review of the court's previous experiences, requiring interviews with those involved in the earlier creation of the special courts, along with a review of actual case data. It would be important to learn, for example, what was driving the earlier decision to specialize a certain set of cases, what the expectations were and whether these expectations have been met, and what information is available to determine what worked well and what did not. Next, a review should be conducted of experiences in other jurisdictions in setting up courts of the type being considered, involving also a review of the relevant literature and ideally, direct communication with those other courts.
- *A review of legislative trends.* Since specialization can be triggered—or made less effective—by changes in the legislative framework, it is important to have a good understanding of what legislative adjustments or new laws are being discussed. This would involve reviewing legislative proposals as well as conducting interviews with relevant legislative decision makers.

⁴¹ See Rohazar Wati Zuallcoble and others, “Study on Specialized Intellectual Property Courts” (Washington, DC: International Intellectual Property Institute and United States Patent and Trademark Office, 2012), <http://iipi.org/wp-content/uploads/2012/05/Study-on-Specialized-IPR-Courts.pdf>.

⁴² See Maryland Business and Technology Court Task Force, “Business and Technology Program Task Force Report” (Annapolis: Maryland General Assembly, 2000).

6.2. Choosing an Appropriate Model

When the information collected indicates that specialization in a particular subject matter would be beneficial, the next step is to identify what model of specialization would be most effective. The information already collected will provide most of the guidance. For example, if court data show that a large number of cases of a special case type would benefit from specialization, the creation of at least a special court division—if not a separate court—will likely be the best choice, ideally initially in just one location to test the approach before it is rolled out to other sites. Further, if the data and demand indicate that a group of otherwise simple cases need only to be handled more quickly, the best response may be to develop a new approach to streamline the processing and possibly concentrate the cases in one chamber or court.

Other questions for determining the model are:

- Can the jurisdiction of the subject matter be defined adequately for the purpose of creating a specialized court?
- Are there enough judges and other staff with the knowledge and expertise available to be assigned to special divisions or courts? How many are there, what is their experience level, how many are needed, and what experience is required?
- Does the case volume justify specialization in certain locations only?
- If a special court, division, or bench is introduced in only one or two locations, will litigants from other parts of the jurisdiction have adequate access?
- Will there be sufficient numbers of practicing advocates and specialists in the field to support the creation of a specialized court? Unless a corps of specialist advocates exists or can be expected to develop, much of the benefit of the specialized court may be lost. The public funding of lawyers to represent those who cannot afford to pay will often be a crucial factor, particularly where (as in family law cases) the area of law that is the subject of the specialist court does not lend itself to conditional fees, or where such a system is not yet in place.
- Are there sufficient resources to fund and maintain such a court, including trained court administrative staff, equipment, and organizational services? How long will it likely take to train staff and assign the needed resources?
- What are the potential costs of creating a specialized court and are those costs justified by the advantages? The higher the cost and the lower the advantages, the greater the need to choose a limited specialization option and to instead seek overall improvements in court operations.
- Does the creation of the specialized court require different procedures (such as earlier and more complete discovery of evidence, stricter time limits, or fewer options for appeals) and are these procedures still protecting the rights of all parties involved?

To answer these questions—and others that may be specific to the jurisdiction—court officials will need to engage with all affected internal and external stakeholders to be able to assess and address the implications of the specialization.

The information collected and communication with all stakeholders will be the basis for selecting the appropriate specialization model. Starting with a pilot test of that model in one location only is usually a helpful approach to avoid costly investments and to adjust the model based on experiences before it is extended to other locations.

6. 3. Implementing the Specialization Model

In order to collect and assess the information, to choose the most suitable model, to develop, implement, and assess a pilot test, and then to develop a roll-out plan and later monitor its implementation, courts that have successfully developed different specialization models, have generally created working groups to manage these tasks. These are usually high-level policy decision-making groups that review study results and recommendations, in combination with several working groups that work with other staff or consultants on the data collection, hold stakeholder consultations, review prior experiences, develop recommendations, and test implementation plans.

The areas that need to be covered to implement a specialization model are:

- Needed changes to the legislation, court rules, policies, and operational guidelines for the specialized court, its relation to other court operations, and the operations of other related agencies, such as prosecutors' offices, different municipalities, and others.
- Availability of appropriate facilities, equipment, and adjusted IT structures, including adjusted case management software.
- A system to monitor the implementation of the new approach.
- A communication strategy to ensure that users and others stakeholders understand the focus of the special court and what to expect, as well as to allow feedback for further improvements.
- Most importantly, the availability of qualified judges, court staff, and other core participants, who, depending on the case type, can be prosecutors, private attorneys, and/or various experts.

A detailed study of judicial specialization efforts in the United States indicates that the three most important elements for successful specialization are all related to selecting and staffing the special court with the right judges and related personnel.⁴³ This includes:

- The selection of judges whose own attitudes show that they are committed to focusing on the special issues that the court will handle and to supporting the underlying goals and policy specifications for the specialization. For example, if one aim of a new bankruptcy court is to provide troubled companies with more time to reorganize and find solutions to satisfy creditors without going out of business, judges will need to understand that a quick bankruptcy is not a preferred outcome. If the aim is that cases move faster through

⁴³ See Lawrence Baum, "Probing the Effects of Judicial Specialization."

the court, judges will have to strictly limit the postponements of hearings and other deadlines.

- The existence of strong incentives for judges to apply the special information sources, processes, rules, and policies that are one of the reasons for specialization.
- The creation of judicial specialization through training, workshops, external conferences, and other means that go beyond acquiring a knowledge of the law, but also of the policies that led to specialization, related fields of expertise, and the implications of judicial decisions and how they support the underlying policy direction.

7. Developing a Cadre of Specialized Judges and Other Court Staff

Keeping the above findings in mind, the creation of a sufficient number of qualified judges and other court staff is at the core of specialization, and as outlined earlier, the availability of judges with special expertise in a general court may address the external demands for court specialization. In most countries around the globe, judges come to the bench trained as generalists; it is usually only in countries where lawyers join the bench at a later stage of their career that they possess special expertise in a particular legal field. Where general jurisdiction courts dominate, judges who have been serving on the bench for many years may have had the opportunity to develop and demonstrate the special skills and expertise needed, but identifying those can be a challenge.

7.1. What Expertise is Needed?

The first step is to assess what experience, expertise, knowledge, skills, and attitudinal attributes are needed beyond what is generally required from judges and other staff working in a particular special field. This would be as part of a full special court, division, or bench, or as an individual judge, prosecutor, or other staff member who may occasionally be assigned to handle a particular case type.

How extensive the special knowledge should be and what type of knowledge or skills are needed (that is, special legal expertise, social context, technical or forensic knowledge) depend on the specialization and how different it is from the general court practice. Some specializations require more focused special legal expertise only; others require more understanding of certain non-legal substance matters (the technical or social context, for example) or different skills (such as the ability to communicate with children, mediate in family matters, and so on).

Categories of Additional Expertise and Attributes for Special Courts

- Legal expertise in the special field
- Non-legal technical understanding
- Understanding of the policy, social, environmental, and other relevant context
- Special communication skills
- Special behavioral attitude

Assessing expertise and skills for selection, evaluation, promotion, and training

Ideally these special requirements are first clearly identified and then translated into special performance indicators for judges and other court staff that can be applied in the selection and evaluation process and also inform training requirements. Depending on how judicial performance is generally measured, indicators for special requirements may not differ significantly; rather, the difference may be in how the requirements are viewed. The performance measures used in Denver, Colorado in the United States shown in Box 6 are an example of these kinds of measures, which apply across all courts but which will be interpreted differently in the context of a judge's specialization.⁴⁴

Box. 6. Online Judicial Performance Measures in Denver, Colorado

1. Case Management

- Promptly issuing a decision on the case after trial
- Maintaining appropriate control over proceedings
- Promptly ruling on pretrial motions
- Setting reasonable schedules for cases

2. Application and Knowledge of Law

- Being able to identify and analyze relevant facts
- Basing decisions on evidence and arguments
- Being willing to reconsider error in fact or law
- Issuing consistent sentences when the circumstances are similar

3. Communications

- Making sure all participants understand the proceedings
- Providing written communications that are clear, thorough, and well reasoned

4. Demeanor

- Giving proceedings a sense of dignity
- Treating parties with respect
- Conducting his/her courtroom in a neutral manner
- Consistently applying laws and rules

5. Diligence

- Using good judgment in application of relevant laws and rules
- Doing the necessary homework and being prepared for his/her cases
- Being willing to handle cases on the docket even when they are complicated and time consuming

Source: "2012 Judicial Performance Reviews – Denver," Office of Judicial Performance Evaluation, State of Colorado.

For the selection of judges (and other staff) either to the general bench or for a special assignment, their overall attitude and willingness to learn and continuously improve their own skills are important criteria to ensure that those serving at the court are a good fit and share its goals. Specialized courts usually are not the place for judges who have just joined the bench, particularly in jurisdictions where judges are generally hired very early in their careers or right after they complete their qualifying exams.

Very recent law school graduates will likely not be good candidates to handle the more complex or highly sensitive cases that require specialization until they have gained some experience and demonstrated their skills. Courts that specialize in the fast processing of simple or non-contested cases, such as traffic violations that do not

involve a major accident or non-contested divorce cases, may be exceptions to this general rule.

⁴⁴ See "2012 Judicial Performance Reviews – Denver," Office of Judicial Performance Evaluation, State of Colorado, <http://www.coloradojudicialperformance.gov/retentionlist.cfm?year=2012&county=Denver>.

7.2. What Specialized Training is Required?

In order to understand the training needed to prepare judges and others for special assignments, the existing training course curriculum needs to be assessed to identify any existing gaps. The actual training needs of the current judges and staff should also be informed by overall case-related data (such as appeals rates, reviews of decisions, user complaints) and assessed through interviews with judges and court users and as part of the judges' (and other staff) evaluations. This kind of approach has been taken, for example, by the court system in the U.S. state of Indiana to assess the training and other needs of the courts to more effectively process family and juvenile matters. There, a statewide survey of judges and attorneys with experience in these issues was conducted, along with focus groups involving a wide range of practitioners. The process also involved an evaluation of how a pilot court was functioning over the first year of its operation, which provided additional information about training needs.⁴⁵

A well-funded system of continuous judicial training to keep expertise and skills up to date and to develop newly evolving areas of law and related fields is as important as a good training program for entry-level judges. This is especially true in countries that are undergoing significant changes within their legal environment or where law school and entry-level education for judges is weak or still developing, as is often the case, for example, in newly evolving democracies. Well-designed continuous education also helps to counter the potential isolation of the specialized judges; if judges are kept abreast of changes and developments in all areas of law that may impinge on their field, they are less likely to develop too narrow a view in their own subject area and can thus avoid making decisions in isolation from other legal areas in their jurisdiction.

Comprehensive continuous education programs for the judiciary have a longer tradition in developed countries and tend to be more prevalent in common law countries. In the United States, for example, there is a special master's degree and Ph.D. in judicial studies that can be taken only by judges who are already appointed.⁴⁶ The need for ongoing learning is also recognized and supported in civil law countries, especially in the European Union (EU). The European Network of Councils for the Judiciary (ENCJ), for example, developed helpful minimum standards for the recruitment, selection, evaluation, appointment, promotion, and training of judges.⁴⁷

The number of judges and other staff to be trained will have to be greater than just the core group that will be serving in specialized positions to ensure that a qualified pool of candidates are available in the long term to take on a special assignment. Just as for other positions, additional judges and staff with at least some of the needed expertise and skills should be available to fill in on an occasional basis, which is also a good learning opportunity and a way to test if the judge or staff member would be a good candidate to fill a specialized position vacancy in the future. Similarly, some contingency planning should be in place if longer term leave, retirement, or

⁴⁵ See American Institutes for Research, "Unified Family Court Evaluation Literature Review" (Washington, DC: American Institutes for Research, 2002), <http://www.courts.ca.gov/documents/ufclitreview.pdf>.

⁴⁶ See the website of National Judicial College at <http://www.judges.org/jsp/index.html>.

⁴⁷ See European Network of Councils for the Judiciary (ENCJ), "Development of Minimum Judicial Standards. Report 2010–2011" (Brussels: ENCJ, n.d.), http://www.encj.eu/images/stories/pdf/workinggroups/encj_report_project_team_minimum_standards.pdf.

resignation can be predicted, which can also provide for further opportunities to prepare additional judges and staff for these assignments.

Providing the opportunity to participate in international educational conferences in special subject matters is another important element in creating a skilled pool of judges with needed special expertise. While some of the legal knowledge may be highly specific to a particular county or jurisdiction that can only be gained there, other kinds of expertise and skills are similar across regions, legal systems, or even the globe. This is certainly true for some of the special forensic or other scientific knowledge that judges may need to acquire, and for relevant issues of international law that may affect their judicial decisions. While attendance at international events may seem costly, it is an investment that can pay off greatly if attendees bring sufficient knowledge back to share at the court and to help in the development of local training. In addition, some relevant training courses are offered online at low cost, some even for free.⁴⁸ When the predominate national language is not English, Spanish, or French (the languages of most of the international journals and other material), developing the language skills that will allow judges and other staff to benefit from such global opportunities is an important and cost-effective investment, especially if the capacity is created to develop and regularly share information gained from the international conferences and courses.

7.3. How Many Judges and Staff are Needed in Specialized Positions?

The number of judges and other staff with the required expertise who need to be available will depend on the specialization model chosen and on the existing organizational options to streamline specialized procedures and provide for cost-effective support staff assignments. Specialization to address processing inefficiencies may require more support staff for all administrative functions, and possibly even for decisions in simple cases or related to preparatory or pretrial steps. Specialization focused on more complex legal issues may benefit especially from adding law clerks to conduct legal research and provide drafting support. Any specialization is an opportunity to review operations for greater efficiency, including automation and access to electronic legal information sources. Only after process optimization options are considered should the needed staffing level be determined. Estimating judicial and other staffing needs for special positions generally does not differ from approaches to determining staff positions in general. Such requirements should follow general good practice rules: process streamlining and responsibility optimization first, followed by a workload and future needs assessment.⁴⁹

⁴⁸ See, for example, the free courses for traffic court judges offered by the U.S.-based National Judicial College at <http://www.judges.org/traffic/index.html>.

⁴⁹ For a summary of, and introduction to, estimating staffing needs in the judicial sector, see Heike Gramckow, “Estimating Staffing Needs in the Justice Sector,” Justice and Development Working Paper 19 (Washington, DC: World Bank, 2012).

8. Conclusions

Specialized judges and courts are an increasing trend across the globe, driven in large part by the growing complexity of the law and rising demands for faster and better court services. Well-designed court processes that reflect the needs of particular case types and the parties involved and that are handled by well-qualified and knowledgeable judges and staff require special approaches and expertise. Yet specialization is not always the answer. Demand for better and less cumbersome court processes from strong interest groups, such as the business community, may be well justified but may also indicate that a court system needs a more general overhaul. Some international indicators, such as the World Bank's *Doing Business Report*, recognize that special commercial courts tend to be beneficial to addressing the needs of the business community and give extra points to countries with such courts. This creates an incentive for countries that want to do well in the *Doing Business* ranking to create a special commercial court, even though the need for it may not be justified after considering the case volume and cost involved.

There are other instances in which countries created specialized administrative courts⁵⁰ or special intellectual property (IP) courts not just in one larger jurisdiction where the caseload justified it but across the entire country, resulting in a long-term allocation of resources to a field of law that did not require them, thereby siphoning critical resources from other needy areas. Clearly, having a good understanding of the type and model that would actually be needed in different locations is essential to developing the kind of specialization that would be helpful to the entire system and all users.

This article has attempted to outline practical steps to collecting the needed information that can then be used to not only design helpful models but also to argue for or against specialization. To summarize:

Information—facts and opinions—from within the court and from external stakeholders must be gathered with regard to:

- Current practical demands for more specialization;
- Case types that are affected by particular delay, high appeals rates, or community expectations that those cases should be given special priority or treatment;
- Case types that may be significantly numerous and would benefit from faster processing or greater quality decisions or other services;
- Case types that attract the most public interest and where concerns have been raised;
- Current skills within the judiciary and gaps in those skills;
- The ways in which new skills are attracted using judicial recruitment processes;

⁵⁰ See Heike Gramckow and Frances Allen, "Justice Reform in Mongolia: Looking Back, Looking Forward," Justice and Development Working Paper 16 (Washington, DC: World Bank, 2011), 9. See also Rohazar Wati Zuallcoble and others, "Study on Specialized Intellectual Property Courts."

- The valuable lessons that can be drawn from the experiences of jurisdictions that have already created specialized courts.

All of the above information can be combined with more detailed assessments of internal needs and external demands and experiences from other countries.

The data identified above can then be used to address six core questions:

- Based on the measured rates of cases currently registered and processed in the court and the collective views of judges on the processing of those cases, what types of cases are likely to require special attention?
- Based on the data and views of the court's leadership, the government, judges, and others, what areas of specialization are considered desirable for the development of specialized courts or special attention within existing courts as matters of public interest?
- Based on the data and views of the various court actors, is there an expectation that the needs can be met by (i) establishing independently administered specialist courts; (ii) establishing special chambers, benches, or circuits within existing courts; (iii) developing special dockets or lists within existing courts; or (iv) a combination of all of these? What is the likely best option to pilot test specialization?
- Based on training needs analyses of judges, what areas of judicial specialization have been identified as requiring special training and other educational development programs or activities? If special courses and learning options are still to be designed or delivered, how long would it take to develop the requisite number of specialized judges?
- Based on the data collected, what other resources need to be made available and what are the likely costs? Do court rules or laws need to be changed?
- What would be a good approach to plan a pilot test, monitor its implementation, and develop information for future expansion? Can working groups be established and if so, who should be assigned to them and how should they operate?

Only if all or most of these questions lead to the conclusion that judicial specialization of one form or another is needed and feasible to address the underlying problems and demands for improved services should specialization be the focus of reforms. At the same time, there should also be a commitment to track whether the specialization achieves the desired results, and the lessons learned should be used to not only further adjust any special court operations but to improve court operations overall.

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