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THE USE OF MARITIME ATTACHMENT AS A JURISDICTIONAL DEVICE

A federal district court hearing an admiralty claim may assert jurisdiction over a nonresident defendant by attaching any of his property found within the district in which the court sits.\(^1\) Two district courts recently considered the first direct constitutional attacks launched against such quasi in rem admiralty jurisdiction on the basis of the jurisdictional due process standard of *Shaffer v. Heitner.*\(^2\) Although both courts upheld the constitutionality of such jurisdiction, the apparent unanimity of result masked deeply conflicting approaches to the issues raised. In *Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.*\(^3\) the court held that the *Shaffer* standard does not apply to maritime attachment at all because of admiralty's unique history, subject matter, and procedures.\(^4\) In contrast,

\(^1\) Rule B of the Federal Rules of Civil Procedure, Supplemental Rules for Certain Admiralty and Maritime Claims, outlines the procedure for obtaining such jurisdiction. This Note deals with quasi in rem admiralty jurisdiction based on a Rule B attachment. No conclusion is intended as to in rem admiralty jurisdiction, which is governed by Rule C of the Supplemental Rules. See Bohmann, *Applicability of Shaffer to Admiralty In Rem Jurisdiction*, 53 Tul. L. Rev. 135 (1978).


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the court in *Engineering Equipment Co. v. S.S. Selene*\(^5\) held that although the *Shaffer* standard does apply to Rule B attachments, the quasi in rem jurisdiction thus created can meet that standard. These conflicting decisions reveal the current uncertainty as to the status of maritime attachment under today's jurisdictional due process standard.\(^6\)

In particular, these decisions raise two important issues. First, should the constitutional standard of jurisdictional due process enunciated in *Shaffer*, which evolved in a common law context, be applicable to admiralty actions, which are traditionally an entirely separate “head” of federal jurisdiction? If the separations between these branches of federal jurisdiction remain sufficiently strong, as the *Grand Bahama* court concluded, this standard should not be applicable. Such a result would leave the status of maritime attachment as a jurisdictional device unaffected by *Shaffer*. But if, as this Note will urge, the *Shaffer* standard should be applicable to quasi in rem admiralty jurisdiction, a second issue arises: what changes must be made to enable maritime attachment to comply with this standard? This Note will address these issues by focusing on the recent district court decisions in *Grand Bahama* and *Selene*. First, the Note will present relevant background material. Then the inquiry will shift to a consideration of the threshold question of the applicability of the *Shaffer* standard, dealt with in *Grand Bahama*. The Note will then examine how the *Selene* court found the *Shaffer* standard satisfied. Finally, the focus will broaden to a discussion of the ramifications of the application of the *Shaffer* standard to admiralty cases as a class.\(^7\)

I

THE BACKGROUND

A. Rule B

Maritime attachment, as a means of vesting a court with personal jurisdiction over a nonresident defendant, developed in the early days of the general maritime law long before the U.S. Constitution came into being.\(^8\)

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7. Under the “saving to suitors” clause, 28 U.S.C. § 1333(1) (1976), certain in personam maritime claims may also be brought in state courts. As this Note focuses on federal admiralty jurisdiction, those cases are beyond its scope.

The great distances between the mobile parties involved in an admiralty action necessitated a procedure that would permit the speedy and effective resolution of disputes. The writ of foreign attachment, the ancestor of the procedure now codified in Rule B, served two important interests of these parties.

First, a need existed to minimize delay in the resolution of such disputes so as to avoid interrupting the flow of commerce and to prevent the defendant from removing himself and his property from the locale in which the plaintiff sought to bring suit. Attachment served this purpose by freezing the asset attached, thereby preventing its removal and forcing its owner to respond to the plaintiff's claim in order to secure its release. Second, admiralty courts had to assure the claimant of a forum that did not involve such a degree of expense or inconvenience as to effectively deny him redress. Without the mechanism of attachment, the defendant could easily remove himself and his property from the territorial jurisdiction of the court in which the plaintiff had filed a claim and safely assume that the aggrieved party would not travel to the defendant's residence to institute in rem proceedings.

This procedure remained essentially unchanged by its incorporation into American admiralty practice and its subsequent codifications. Today, this procedure is set out in Rule B, which outlines the steps that a party seeking an attachment must take. The Rule requires that process of attachment

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9. *Id.* at 490; see 7A Moore's, *supra* note 4, ¶ B.02, at B-51.
10. "Courts of admiralty have been found necessary in all commercial countries, . . . for the safety and convenience of commerce, and the speedy decision of controversies, where delay would often be ruin . . . ." The Genesee Chief, 53 U.S. (12 How.) 443, 454 (1851).
11. To compel suitors in admiralty . . . to resort to the home of the defendant, and to prevent them from suing him in any district in which he might be served with a summons or his goods or credits attached, would not only often put them to great delay, inconvenience and expense, but would in many cases amount to a denial of justice. *In re* Louisville Underwriters, 134 U.S. 488, 493 (1890).
12. When appropriate, arrest of the vessel and an in rem action can serve the same purpose as attachment. In rem jurisdiction is beyond the scope of this Note, however, and no conclusion as to maritime arrest is intended here. See Bohmann, *supra* note 1.
13. With minor changes, Rule B is virtually identical to Rule 2 of the Admiralty Rules of 1844 and its successor, Rule 2 of the Admiralty Rules of 1920. For the texts of these rules, see 7A Moore's, *supra* note 4, ¶ .30, at 223-24. As Professor Moore points out, the identity between the three sets of rules means that there have been no major changes in the process of maritime attachment from 1825 to the present. *Id.*, ¶ B.02, at B-54. The changes that have occurred deal with the scope of judicial participation in the attachment proceeding itself and thus are relevant to a discussion of procedural, not jurisdictional, due process. See 450 F. Supp. at 459.
14. The Rule provides, in relevant part:

With respect to any admiralty or maritime claim in rem a verified complaint may contain a prayer for process to attach the defendant's goods and chattels, or credits and effects in the hands of garnishees named in the complaint to the amount sued
Attachment and garnishment will issue only if the defendant "shall not be found within the district" where the plaintiff files his claim. The Advisory Committee in drafting the Rule expressly declined to define this limiting phrase, leaving this task to the courts. Judicial interpretation has produced a universally accepted two-pronged test to define when a defendant may be "found within the district." This test is essentially a negative test in that failure of either prong permits an attachment to issue.

The first prong inquires "whether or not the [defendant] is present within the district by reason of activities on [his] behalf by authorized agents so as to subject [him] to this Court's jurisdiction in personam proceedings." In this appraisal of the defendant's activities, the standard is that of *International Shoe Co. v. Washington*. When the activities are insufficient to meet this standard, the defendant fails the first prong, the inquiry ends, and the attachment will be upheld. If, however, this standard is met, the second prong becomes relevant.

This prong examines whether the defendant "can be found within the district with due diligence for service in the . . . proceeding." Satisfaction of this prong will occur only when the court finds that an agent or officer of the defendant corporation, or an individual defendant himself, is subject to service of process within the district. If both prongs can be satisfied, the court will hold that the defendant can be "found within the district" contrary to the requirement of Rule B and will vacate the attachment. But failure to satisfy either prong will permit the attachment to stand.

It should be emphasized that, despite the language in Rule B limiting its scope to claims brought "in personam," the Rule is in fact a classic example of quasi in rem jurisdiction since the defendant is reached solely for, if the defendant shall not be found within the district. Such a complaint shall be accompanied by an affidavit signed by the plaintiff or his attorney that, to the affiant's knowledge, or to the best of his information and belief, the defendant cannot be found within the district. When a verified complaint is supported by such an affidavit the clerk shall forthwith issue a summons and process of attachment and garnishment.

FED. R. CIV. P. SUPP. R. B(1) [hereinafter cited as Rule B].

15. *Id.* This phrase can be construed as emphasizing the jurisdictional aspect of Rule B rather than its security aspect. *See, e.g.*, Note, *supra* note 4, 43 BROOKLYN L. REV. at 429.


18. 178 F. Supp. at 563 (footnote omitted).


20. 178 F. Supp. at 564.

21. *Id.*

22. *See* note 14 supra.
through his property located within the court's territorial jurisdiction.\(^{23}\) It is this creation of quasi in rem jurisdiction that necessitates consideration of the *Shaffer* decision.\(^{24}\)

**B. *SHAFFER* AND QUASI IN REM JURISDICTION**

*Shaffer*\(^{25}\) marked the virtual end of the "territoriality" or "power" theory of jurisdiction advanced in *Pennoyer v. Neff*.\(^{26}\) The Court explained the collapse of the *Pennoyer* doctrine in the area of in personam jurisdiction and its replacement by the minimum contacts/reasonableness standard of *International Shoe*.\(^{27}\) The test under that due process standard is whether

\(^{23}\) Quasi in rem jurisdiction exists when "the jurisdiction of the court is based on power over a thing and the effect of the judgment is to affect interests of particular persons in a thing." *Restatement of Judgments* at 8 (1942). See Fed. R. Civ. P. Supp. R. E (designating an action based on a maritime attachment as quasi in rem); Maryland Tuna Corp. v. MS Benares, 429 F.2d 307 (2d Cir. 1970); East Asiatic Co. v. Indomar, Ltd., 422 F. Supp. 1335 (S.D.N.Y. 1976).

\(^{24}\) One other complication of the jurisdictional situation created by invoking Rule B should be noted. By limiting service of process of attachment and garnishment to the territorial confines of the district, Fed. R. Civ. P. Supp. R. E (3)(a), but allowing for statewide service of process under Rule 4(f), the drafters of Rule B enabled some admiralty plaintiffs to choose between proceeding in personam or quasi in rem. The Advisory Committee noted this overlap of jurisdiction but offered no solution:

The effect is to enlarge the class of cases in which the plaintiff may proceed by attachment or garnishment although jurisdiction of the person of the defendant may be independently obtained. This is possible at the present time where, for example, a corporate defendant has appointed an agent within the district to accept service of process but is not carrying on activities there sufficient to subject it to jurisdiction [i.e. failing the first prong of the two-pronged test] . . . or where, though the foreign corporation's activities in the district are sufficient to subject it personally to the jurisdiction, there is in the district no officer on whom process can be served [i.e. failing the second prong of the two-pronged test] . . . .

Advisory Committee's Notes to Rule B, *reprinted in 7A Moore's, supra* note 4, ¶ B.01(2), at B-12 (citations omitted). Although the utility of such overlapping jurisdiction has been criticized, see, e.g., D/S A/S Flint v. Sabre Shipping Corp., 228 F. Supp. 384 (E.D.N.Y. 1964), *aff'd sub nom.* Det Bergenske Dampskibsselskab v. Sabre Shipping Corp., 341 F.2d 50 (2d Cir. 1965); Note, *supra* note 4, 43 BROOKLYN L. REV. 403, this issue is relevant to the present discussion only insofar as it affects two interests considered in the *Shaffer* due process analysis: the plaintiff's interest in obtaining a forum and the forum's interest in providing one. In the overlap situations, both interests are of less force in sustaining quasi in rem jurisdiction than in the situation in which only quasi in rem jurisdiction is possible.

\(^{25}\) *Shaffer* v. *Heitner*, 433 U.S. 186 (1977). The issue in *Shaffer* was the constitutionality of the exercise by Delaware state courts of quasi in rem jurisdiction over nonresident defendants whose only contacts with that state were their positions as shareholders and officers in a Delaware corporation. *Id.* at 189. Plaintiff contended that the defendants' stock holdings, whose situs under Delaware law was within that state regardless of where the certificates were or where the corporation conducted its business, could serve as the basis of quasi in rem jurisdiction over these defendants by virtue of Delaware's sequestration statute.

\(^{26}\) 95 U.S. 714 (1878).

\(^{27}\) 433 U.S. at 196-205 (discussing *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)).
there are "such contacts of the [defendant] with the . . . forum as to make it reasonable . . . to require the defendant to defend the particular suit which is brought there." 28 This inquiry focuses on "the relationship among the defendant, the forum, and the litigation" 29 and can be broken down into two factors: the level of the defendant's activities within the territorial confines of the forum and the relationship between these activities and the claim being litigated. 30 A "continuous and systematic" course of activity will enable the court to assert jurisdiction over a claim that is comparatively unrelated to that activity, whereas activity within the forum confined to "a single or isolated" act will not. 31 In contrast, when the claim arises from precisely that single or isolated act, in personam jurisdiction can be exercised over the defendant if, on balancing the interests of the plaintiff, defendant, and forum, such jurisdiction would be reasonable. 32

After outlining the evolution of this jurisdictional due process test within the confines of in personam jurisdiction, the Court announced the extension of the test to other types of jurisdiction. Rejecting the traditional idea that in rem and quasi in rem proceedings are aimed at property rather than at the owners of that property, 33 the Court held that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny." 34 This expansion of the breadth of the constitutional standard probably will have little effect on in rem and certain quasi in rem actions 35 since, as the Court noted, "when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction." 36 But the Court also noted that "cases where the property which now serves as the basis for state-court jurisdiction is completely unrelated to the plaintiff's cause of ac-

29. 433 U.S. at 204.
30. 326 U.S. at 318.
31. id. at 317.
33. 433 U.S. at 205.
34. Id. at 212 (footnote omitted).
35. The Shaffer Court distinguished between the two types of quasi in rem jurisdiction:
   In one the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons. In the other the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him. Id. at 199 n.17 (citation omitted).
36. Id. at 207 (footnote omitted). This characterization would include in rem actions and the first type of quasi in rem action defined in note 35 supra.
tion" would be significantly affected by the imposition of the minimum contacts/reasonableness test. The implication is clear: the availability of this type of quasi in rem jurisdiction will be sharply curtailed under the *Shaffer* test.

Two other aspects of the *Shaffer* decision are relevant to this Note's analysis. First, the Court carefully pointed out that it was not considering "the question whether the presence of a defendant's property in the State is a sufficient basis for jurisdiction when no other forum is available to the plaintiff." This statement implies that such situations, denoted "jurisdiction by necessity," might well be outside the scope of the holding. The concept could be important to admiralty litigation. For example, an American shipper could argue jurisdiction by necessity where quasi in rem jurisdiction is based on a Rule B attachment of property found within the district if the property belongs to an alien shipowner who has no other contacts with the United States.

Second, Justice Stevens's concurrence in the *Shaffer* decision may illuminate the application of the decision. Taking a broad view of the majority opinion, he asserted that certain activities within the forum by a nonresident defendant can still serve as constitutional bases for jurisdiction when contacts are minimal:

If I visit another State, or acquire real estate or open a bank account in it, I knowingly assume some risk that the State will exercise its power over my property or my person while there. My contact with the State, though minimal, gives rise to predictable risks.

The possible effect of this concurring opinion is illustrated by *Feder v. Turkish Airlines*, a post-*Shaffer* case that challenged the constitutionality of nonmaritime quasi in rem jurisdiction over an alien defendant based on the attachment of the defendant's bank account. The court relied on Justice Stevens's concurrence to uphold the constitutionality of this jurisdiction. Finding, in the absence of any evidence to the contrary, that the account

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37. *Id.* at 208-09. This category is composed of the second type of quasi in rem action defined in note 35 *supra*.

38. The "minimum contacts/reasonableness test" will hereinafter be termed the *Shaffer* test.

39. *See* 433 U.S. at 209. In point of fact, the *Shaffer* Court applied this test to the facts before it and, reversing the Delaware Supreme Court, held that no quasi in rem jurisdiction could constitutionally be asserted over defendants who lacked minimum contacts with Delaware. *Id.*

40. *Id.* at 211 n.37.

41. *See Note,* *supra* note 32, at 75 n.45 (commenting that jurisdiction by necessity does not fall outside the scope of *Shaffer* but instead meets the *Shaffer* standard).

42. 433 U.S. at 217-19.

43. *Id.* at 218.

was purposefully opened by the defendant, and concluding that the risk of litigation concerning that account was foreseeable and predictable, the court held that the Shaffer test was satisfied. Since bank accounts are often the subject of maritime attachments, Feder may be analogous to admiralty actions. But this does not answer the question of how Shaffer, concerned exclusively with nonmaritime matters and state court jurisdiction, will affect maritime attachment.

C. Shaffer and Rule B

Ordinarily, a case so far removed from admiralty matters as Shaffer would provoke little reaction from the admiralty bar. But a number of factors associated with that case led many commentators to consider its effect on admiralty law in general and maritime attachment in particular. First, the seemingly broad reasoning of the Shaffer Court, though not specifically addressed to admiralty matters, can easily be read to include them within its constitutional argument. Second, the theoretical and practical similarities between the Delaware sequestration statute and Rule B are clear. Third, the Court clearly stated that its decision would seriously restrict the availability of the second type of quasi in rem jurisdiction, and it is this type of quasi in rem jurisdiction that many Rule B attachments create.

After an examination of these factors, some commentators concluded that the jurisdictional due process standard of Shaffer must be considered in evaluating the constitutionality of jurisdiction based on a maritime at-

45. Specifically, the court held: The voluntary opening by [defendant] of a bank account . . . satisfies the “minimum contacts” of International Shoe, as well as that requirement of foreseeability imparted by Shaffer into quasi in rem actions: the concept, that is to say, that the nonresident owner has undertaken acts with respect to the attached property which placed him on notice of the possibility of his having to defend such property in the foreign forum. Id. at 1278-79 (footnote omitted).


47. See sources cited in notes 4 & 6 supra; 1977 MLA REPORT, supra note 6, at 6774-86.

48. “Sequestration is the equity counterpart of the process of foreign attachment in suits at law . . . Delaware’s sequestration statute was modeled after its attachment statute.” 433 U.S. at 194 n.10. The identity in form between the sequestration statute involved in Shaffer and Rule B is clear. The Shaffer Court accepted the determination by the Delaware Supreme Court that the purpose of the sequestration statute was “to compel the appearance of the defendant.” 433 U.S. at 194. Similarly, the “primary object” of maritime attachment is “to compel appearance.” Manro v. Almeida, 23 U.S. (10 Wheat.) 473, 489 (1825). This similarity has been noted by the commentators. See, e.g., 7A Moore’s, supra note 4, ¶ E.10, at E-456; 4 BENEDICT ON ADMIRALTY, § 3-B.4, at 3-108.8 to .10 (7th ed. rev. 1977).

49. See note 35 supra.

50. See 7A Moore’s, supra note 4, ¶ E.10, at E-459. All of the cases discussed in this Note involve the second type of quasi in rem jurisdiction described by the Shaffer Court. See note 35 supra.
tachment, but they disagreed as to whether quasi in rem admiralty jurisdiction satisfied the \emph{Shaffer} test.\footnote{For citations to these works, see notes 4 & 6 supra.} Although most believed that such jurisdiction could not meet the constitutional requirements, the only court directly to address this issue held otherwise.\footnote{Engineering Equipment Co. v. S.S. Selene, 446 F. Supp. 706 (S.D.N.Y. 1978).}

In contrast, the court in \emph{Grand Bahama Petroleum Co. v. Canadian Transportation Agencies, Ltd.},\footnote{450 F. Supp. 447 (W.D. Wash. 1978).} after analyzing the origins of Rule B attachment and the \emph{Shaffer} jurisdictional due process standard, concluded that this standard should not determine the constitutionality of quasi in rem jurisdiction based on a Rule B attachment. This question of \emph{Shaffer}'s applicability to admiralty attachments is a threshold question because, if it does not apply, satisfaction of the \emph{Shaffer} test would be irrelevant.

\section*{II

THE APPLICABILITY OF THE \emph{SHAFER} TEST TO ADMIRALTY JURISDICTION:

\emph{GRAND BAHAMA}}

It is important to realize that the \emph{Grand Bahama}\footnote{\textit{Id.}} court's consideration of the impact of \emph{Shaffer} on quasi in rem admiralty jurisdiction began and ended with the issue of applicability. As the court viewed it, the question was not \textit{how} the \emph{Shaffer} due process standard affected admiralty jurisdiction, but \textit{whether} there was such an effect at all. Thus, the court framed the issue as whether the \emph{Shaffer} standard should be carried over into admiralty, which the court viewed as an independent and autonomous branch of federal jurisdiction. Transplanting this standard from one branch of jurisdiction to the other could be justified only by a conclusion that the independence of these categories had eroded to the point where the same constitutional standard should apply to both. The court focused its attention on the validity of such a conclusion.

The plaintiff, a Bahamian corporation, claimed that the defendant, a Canadian corporation, failed to make payments for fuel delivered and services rendered to the defendant's vessel at the plaintiff's fueling facility in the Bahamas.\footnote{\textit{Id.} at 449.} To recover this amount, the plaintiff filed a claim in admiralty and, pursuant to Rule B, attached a bank account in the defendant's name within the district.\footnote{\textit{Id.}} The defendant moved to dismiss the complaint on the ground that the court's exercise of the quasi in rem jurisdiction thus created...
violated the fifth amendment due process clause as recently interpreted by Shafer,\textsuperscript{57} since the required minimum contacts among the defendant, forum, and litigation were lacking.\textsuperscript{58}

The court noted that the creation of quasi in rem jurisdiction over an admiralty claim through a Rule B attachment "bears some similarity to Shafer."\textsuperscript{59} But, focusing on the issue of applicability, the court reviewed the history of admiralty law and maritime attachment from practical, constitutional, and statutory perspectives and concluded that admiralty began as, developed as, and remained a component of American jurisprudence independent from the common law within which the Shafer standard arose. Judge Beeks stated that "[t]he recognized autonomy of admiralty jurisprudence, although not absolute, and the long constitutional viability of maritime attachment compel me to conclude that Shafer does not reach Rule B(1) attachment."\textsuperscript{60} On the strength of this conclusion, the court refused to apply the Shafer test to the facts before it and rejected the jurisdictional due process attack on its exercise of quasi in rem jurisdiction.\textsuperscript{61}

The conclusion that common law standards do not apply to admiralty is based on the historical development of maritime law. Maritime law arose as an uncodified form of customary international law among shippers, shipowners, and seamen outside the confines of common law and national legal systems. Early systematization and codification followed a Roman or civil law basis.\textsuperscript{62} Thus, general maritime law and its procedure of attachment, as incorporated into American jurisprudence, were not within the scope of the common law that eventually produced the Shafer decision. Although the Grand Bahama court was justified in adopting this idea as the fountainhead of its analysis, closer examination of the practical, constitutional, and statutory arguments raised by that court undercuts the validity of its conclusion.\textsuperscript{63}

\textsuperscript{57} Shafer construed the fourteenth amendment due process clause. According to most commentators, the fifth amendment imposes identical standards. See 446 F. Supp. at 709 n.10 and cases cited therein. But see 1977 MLA REPORT, supra note 6, at 6780 (suggesting that the fifth amendment standard requires "a somewhat lower level of defendant contacts" than that of the fourteenth amendment).

\textsuperscript{58} 450 F. Supp. at 449. The defendant also based his motion to dismiss on the ground that the procedure by which the attachment was made pursuant to Rule B violated procedural due process and was successful on that ground. That topic, however, is beyond the scope of this Note. See note 4 supra.

\textsuperscript{59} 450 F. Supp. at 452 (footnotes omitted).

\textsuperscript{60} Id. at 455.

\textsuperscript{61} Id. at 456.

\textsuperscript{62} For general accounts of the development of maritime law, see 1 BENEDICT ON ADMIRALTY, supra note 48, chs. I-VI; G. GILMORE & C. BLACK, THE LAW OF ADMIRALTY 3-11 (2d ed. 1975).

\textsuperscript{63} Since this Note is concerned only with quasi in rem admiralty jurisdiction, none of the
A. THE PRACTICAL ARGUMENT

To the Grand Bahama court, the independence of admiralty jurisdiction and by implication the inapplicability of the Shaffer test to matters within that jurisdiction "derived from the maritime context in which admiralty is set. Admiralty deals with circumstances generally different from those of the common law."64 In support of this contention, the court quoted five of these distinctive "circumstances" from an early United States Supreme Court opinion.65 The first two concern the nature of the parties to an admiralty claim, who "may be absent from their homes for long periods of time" and "often have property or credits in other places."66 The next two address the need for a speedy resolution of controversies between such parties, so as to "least hinder or detain men from their employments" and to avoid delay "where delay would often be ruin."67 The fifth, previously alluded to, is the need to assure the claimant of a forum through the use of an attachment or in rem remedy to prevent "great delay, inconvenience and expense, [which] would in many cases amount to a denial of justice."68

When the general maritime law developed, most commercial transactions spanning long distances involved carriage by ship. The distances involved and the mobile nature of the parties and property concerned were unique to admiralty and required unique procedures to aid in the resolution of disputes. In this context of practical necessity, the procedure of maritime attachment evolved in approximately its present form.69 But the persistence of this traditional procedure obscured great changes in commerce. Transactions between distant parties were increasingly conducted by non-maritime means such as road, rail, air, and even electronic transfer. Landsmen invaded the positions formerly occupied solely by shippers and shipowners. Like maritime parties, these landsmen often owned property in other places and their businesses required the speedy resolution of whatever disputes might otherwise interrupt their trade. Conversely, the shipping trade became increasingly dominated by corporations, entities which are never "absent from their homes for long periods of time."70 Finally, the need to assure the claimant of a forum when the defendant is an

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arguments presented in the following subsections should be read in the context of substantive admiralty law or in rem admiralty jurisdiction.

64. 450 F. Supp. at 453.
65. In re Louisville Underwriters, 134 U.S. 488 (1890); see notes 10-11 supra and accompanying text.
67. Id.
68. Id.
69. See notes 8-13 supra and accompanying text.
70. 134 U.S. at 493.
alien became as strongly felt in nonmaritime situations as in traditional admiralty cases.\footnote{71}{See Note, supra note 32.}

Therefore, the nature and functions of the two groups have become so similar in today's economy that it cannot truly be said that they deal with different circumstances.\footnote{72}{But see note 63 supra.} Given these similarities and the analogy between Rule B and attachment statutes,\footnote{73}{See note 48 supra.} subjecting landsmen, but not maritime parties, to the limitations of the \textit{Shaffer} test can no longer be justified on the ground of practical necessity. Rather, the \textit{Shaffer} jurisdictional due process standard should apply to both groups.

\section*{B. The Constitutional Argument}

A second argument advanced by the \textit{Grand Bahama} court in favor of the inapplicability of the \textit{Shaffer} standard to admiralty matters rested on the phraseology of the Constitution.\footnote{74}{450 F. Supp. at 453 (citing U.S. Const. art. III, § 2).} On its face, article III of the Constitution contains two separate grants of jurisdiction to the federal judiciary: one over "all Cases, in Law and Equity" and the other over "all Cases of admiralty and maritime Jurisdiction."\footnote{75}{U.S. Const. art III, § 2.} Because of this separation within the Constitution, the \textit{Grand Bahama} court refused to relax the barriers between the two spheres of jurisdiction and concluded that these barriers should prevent application of the common law jurisdictional due process standard to admiralty cases. To buttress this stance, the court cited 130 years of constitutional interpretation preserving this constitutional separation\footnote{76}{The Supreme Court held in 1828 that "[t]he Constitution certainly contemplates these as ... distinct classes of cases ... . The discrimination made between them, in the Constitution is, we think, conclusive against their identity." American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 545 (1828). As late as 1959, the Court reaffirmed this position by stating that "'all Cases of admiralty and maritime Jurisdiction' ... are not 'Cases, in Law and Equity, ... ." Romero v. International Terminal Operating Co., 358 U.S. 354, 368 (1959).} in at least some contexts.\footnote{77}{The issue in these cases was the availability of a jury trial in admiralty actions.}

As absolute as the distinction between common law and admiralty may appear on the face of the Constitution, three factors undercut its importance today. First, given the Framers' knowledge of the civil law, rather than common law, origin of maritime law,\footnote{78}{See note 62 supra and accompanying text.} the text of article III can be seen as simply a restatement of the fact of this independent development rather than a directive for the future. Second, recent judicial pronouncements have rejected the contention that this constitutional distinction is so frozen...
in time as to be exempt from change in the modern era. Third, the merger of procedural rules, first of common law and equity in 1938, and then of common law/equity and admiralty in 1966, has further eroded the concept of a rigidly separate admiralty jurisdiction. Taken together, the last two factors indicate that the independence of admiralty jurisdiction from common law has diminished to the point that common law jurisdictional due process standards should be applied in admiralty cases. The third factor, not discussed by the Grand Bahama court, is further analyzed below.

C. THE PROCEDURAL ARGUMENT

As the Grand Bahama court noted, the early Process Acts unequivocally provided that the federal district courts should draw their "forms and modes of proceedings" in admiralty actions from the civil law rather than the common law. This distinction between common law and admiralty procedures reflected the constitutional separation of the two branches of jurisdiction and supported the court's conclusion that standards developed in the context of one branch were inapplicable to actions within the scope of the other. But the passage of time has undermined the autonomous beginnings of admiralty procedure. Although the United States Supreme Court twice adopted procedural rules applicable only to admiralty actions, these were replaced by the unified Federal Rules of Civil Procedure in 1966. The very existence of this unified set of Rules, governing procedure in what were formerly common law, equity, and admiralty actions, indicates the erosion of the independence of these classes of jurisdiction and undercuts the reasoning of the Grand Bahama court. Proponents of that decision may, however, raise two arguments to uphold its reasoning.

First, the existence within the Federal Rules of a set of Supplemental Rules applicable only to admiralty and maritime claims could support the assertion that the two branches of jurisdiction are still separate for procedural

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79. The historic fact is that prior to and since the adoption of the Constitution various principles, rules and procedures have been characteristic of admiralty . . . . But the Constitutional vesting of admiralty jurisdiction in the district courts did not require the perpetuation of all historically characteristic principles, rules and practices of admiralty . . . .
80. 450 F. Supp. at 453-54.
81. An Act to Regulate Processes in the Courts of the United States, ch. XXI, 1 Stat. 93 (1789); An Act for regulating Processes in the Courts of the United States, ch. XXXVI, 1 Stat. 275 (1792). As the titles indicate, these acts were purely procedural in scope.
82. See note 13 supra.
83. 39 F.R.D. 69 (1966). The current version of the Federal Rules may be found following Title 28 of the U.S. Code.
eral purposes. Even the members of the Advisory Committee recognized the continuing need for some procedural separation, viewing their goal in 1966 as "not total a priori uniformity, but a single simplified set of rules to dispose of most of the practical problems of procedure in both civil and admiralty cases."85 Yet the overwhelming degree of uniformity achieved by the Advisory Committee’s replacement of more than fifty Admiralty Rules with only six Supplemental Rules and fifteen amendments to the Civil Rules86 represents a balance heavily weighted against procedural separation. On the face of the 1966 merger, then, the procedural separation between common law and admiralty actions has been substantially lessened, undercutting the distinction drawn between the two in the Process Acts upon which the Grand Bahama court relied.

Second, supporters of the Grand Bahama decision could argue that the post-1966 case law reflects considerable uncertainty about conflicts between traditional admiralty procedure and the mandate of unification. But an examination of three procedural aspects of jurisdictional boundaries—joinder of parties,87 joinder of claims,88 and impleader89—illustrates the basic

86. 7A Moore’s, supra note 4, ¶ .01, at 10.
87. Although under traditional admiralty practice “parties whose claims or liabilities were based on legal or equitable grounds could not be joined with parties whose claims or liabilities were based on maritime grounds,” permissive joinder “is consistent with the broad goals of unification.” 7A Moore’s, supra note 4, ¶ .57[2], at 409. The leading post-unification case allowed such joinder, although the opinion ignored the problems raised by trying the claim against the nonmaritime party to the court rather than to a jury. Leather’s Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800 (2d Cir. 1971). Contra, Howmet Corp. v. Tokyo Shipping Co., 320 F. Supp. 975 (D. Del. 1971).
88. Federal Rule 18(a) was amended in 1966 specifically to expand its scope to include admiralty actions. Professor Moore notes the effect of this change on the traditional admiralty practice:

In admiralty, there could, generally, be no joinder of maritime and non-maritime claims. Nor was it certain that there could be a joinder of completely independent causes not arising out of the same transaction or occurrence . . . . Rule 18(a) now makes clear that joinder of all the claims . . . within the scope of the Civil Rules is proper.

89. Impleader is the area in which unification has been least successful, largely because Federal Rule 14(c) retained the traditional admiralty practice of allowing the impleading of parties liable directly to the plaintiff (“substitute defendants”). Under the traditional practice, jurisdiction would not be extended over any third-party claim that did not have an independent basis of federal jurisdiction, with some courts requiring this to be admiralty jurisdiction. Aktieselskabet Fido v. Lloyd Braziliero, 283 F. 62 (2d Cir.), cert. denied, 260 U.S. 737 (1922); David Crystal, Inc. v. Cunard Steam-Ship Co., 223 F. Supp. 273 (S.D.N.Y. 1963). The leading post-unification case, citing the binding nature of this traditional approach and jury trial
dominance of the policy of unification, although problems remain in the areas of impleader and the seventh amendment right to a jury trial. 90 On the basis of the success of the 1938 merger of the procedures of law and equity, this uncertainty can best be attributed to the present period of transition. Judging by the movement of the courts to date, the 1966 merger will grow in strength and scope, further lessening the current separation between common law and admiralty procedure.

On the whole, the Grand Bahama court's conclusion that the practical, constitutional, and procedural distinctions between common law and admiralty require a different jurisdictional due process standard in each class of jurisdiction does not appear well founded. By framing the issue as one of transferring such a standard from one type of jurisdiction to the other, the court necessitated a consideration of the extent to which, for the purposes of jurisdictional due process, the two classes are indeed separate. Close analysis reveals that this separation has eroded over time so that it should not bar the applicability of the Shaffer test to quasi in rem admiralty jurisdiction. This conclusion shifts the inquiry to a consideration of how a Rule B attachment might pass that test.


90. Although the seventh amendment guarantees the right to a jury trial in common law actions, no such guarantee has ever existed in admiralty. Thus, post-unification courts are reluctant to try actions combining maritime and common law claims to a jury, but they cannot deny the seventh amendment right of a nonmaritime joined or impleaded party, or one joined on a nonmaritime claim. Two solutions are available, although to date little use has been made of either. First, the United States Supreme Court's conclusion that the nonjury tradition in admiralty cases has no basis in either the Constitution or the federal statutes could be interpreted to allow a nonmaritime party's seventh amendment right to override any admiralty tradition. Fitzgerald v. United States Lines Co., 374 U.S. 16, 20-21 (1962). Second, split trials, with part of a case tried before a judge and the remainder before a jury, could be used more extensively. Fawcett v. Pacific Far East Lines, Inc., 76 F.R.D. 519 (N.D. Cal. 1977); Oroco Marine, Inc. v. National Marine Service, Inc., 71 F.R.D. 220 (S.D. Tex. 1976).
III

THE APPLICATION OF THE SHAFFER TEST TO ADMIRALTY JURISDICTION: SELENE

A. APPLYING THE SHAFFER TEST

In Engineering Equipment Co. v. S.S. Seleine,\(^91\) the court did not even consider the question of the applicability of Shaffer to the facts before it. Thus it implicitly answered the threshold applicability question in the affirmative and applied the Shaffer test. This case is important to the present analysis because it represents the first judicial application of the Shaffer test to the evaluation of the constitutionality of quasi in rem jurisdiction based on a Rule B attachment.

\(\text{Seleine}\) involved American corporations that filed a claim against the defendants, Italian and Monegasque corporations, to recover for damage to and misdelivery of cargo transported from Philadelphia on the defendants' ship.\(^92\) The plaintiff sought to amend its complaint to request Rule B attachment of debts allegedly owed to the defendants by their own local agents who operated within the district in which the court sat.\(^93\) The defendants contended that "their lack of contacts with the forum state [New York] preclude[d] [the] assertion of jurisdiction" over them under the Shaffer test.\(^94\)

The court applied the Shaffer test but made two significant modifications. First, recognizing that Rule B is an act of Congress\(^95\) creating federal jurisdiction, the court found that the relevant due process standard was that of the fifth amendment rather than the fourteenth.\(^96\) Second, on the basis of the federal nature of admiralty jurisdiction and by analogy to federal question jurisdiction, the court concluded that "[t]he relevant constitutional inquiry under the Fifth Amendment is whether the defendants have minimum contacts with the United States as a whole sufficient to make our assertion of jurisdiction fair and reasonable under the circumstances."\(^97\) Using this analysis, the court aggregated the contacts between the defendants and all parts of the United States to arrive at a total to be used in the Shaffer test.

\(^92\) Id. at 708.
\(^93\) Id.
\(^94\) Id. at 709.
\(^95\) The 1966 amendments to the Federal Rules, including the entire set of Supplemental Rules, were approved by Congress on Nov. 6, 1966. Pub. L. No. 89-773, 80 Stat. 1323 (1966).
\(^96\) See note 57 supra.
\(^97\) 446 F. Supp. at 709 (footnote omitted, emphasis added).
B. SATISFYING THE \textit{SHAFFER} TEST

The \textit{Selene} court found that the facts before it satisfied the modified \textit{Shaffer} test in two ways. First, the court focused on the relationship between the level of the defendants' activities within the United States and the claim being litigated.\footnote{This relationship is the core of the \textit{Shaffer} test. \textit{See} notes 28-32 \textit{supra} and accompanying text.} Even after aggregation, the defendants' activities consisted primarily of entering the port of Philadelphia for the purpose of shipping the plaintiff's goods.\footnote{446 F. Supp. at 710. These defendants appear to have engaged in only one other activity within the United States—the filing of a claim in the same district court to recover the debt owed them on this same contract by their agents. \textit{Id}.} Although this activity must be classified under the \textit{Shaffer} analysis as "single or isolated" rather than "continuous and systematic,"\footnote{See notes 31-32 \textit{supra} and accompanying text.} the plaintiff's claim arose from precisely that activity. This relationship sufficed to pass the \textit{Shaffer} test and to allow the \textit{Selene} court to exercise jurisdiction over the defendants in accordance with the \textit{Shaffer} standard.\footnote{Id.}

The \textit{Selene} court also found satisfaction of the \textit{Shaffer} test on the basis of Justice Stevens's concurrence in the latter case.\footnote{446 F. Supp. at 710 n.17; \textit{see} notes 42-43 \textit{supra} and accompanying text.} Relying on the \textit{Feder} court's interpretation of that concurrence,\footnote{\textit{Id}. \textit{See} notes 44-45 \textit{supra} and accompanying text.} the \textit{Selene} court considered the question of whether the defendants could reasonably have foreseen that litigation concerning the property now attached for jurisdictional purposes could take place in the United States.\footnote{446 F. Supp. at 710.} The court reasoned that the presence of this property—the charter hire owed to the defendants by their agents for the shipment of plaintiff's goods—in the United States was "by no means fortuitous."\footnote{Id} This conclusion seems self-evident since the debt arose out of deliberate contract negotiations between the agents and the plaintiff. But the court went on to find that since the contracts required at least partial performance in the United States, the prospect of U.S. litigation concerning the obligations created by these contracts was reasonably foreseeable by the defendants.\footnote{Id. To bolster this conclusion concerning foreseeability, the court needed only to point out that "the defendants themselves invoked this court's jurisdiction as plaintiffs in their attempts to recover the charter hire." \textit{Id}.} Using the United States as the forum, the
foreseeability of litigation concerning property that the defendants had placed within the forum met the *Shaffer* test as interpreted in *Feder*.\(^\text{107}\)

IV

THE FUTURE OF MARITIME ATTACHMENT AS A JURISDICTIONAL DEVICE

*Selene* presents a case in which quasi in rem admiralty jurisdiction based on a Rule B attachment was held to satisfy the *Shaffer* test. This result alone is sufficient to make the decision of considerable interest, but its real importance lies in the questions it raises in applying the *Shaffer* test to admiralty cases. Three issues are of particular concern: the fate of the two-pronged test presently used to determine the validity of a Rule B attachment; the proper forum to be used when applying the *Shaffer* test to admiralty cases; and the means by which the *Shaffer* test may be satisfied in other admiralty cases.

A. ADAPTING THE TWO-PRONGED TEST

District courts hearing admiralty claims developed the two-pronged test as a gloss on Rule B's requirement that process of attachment and garnishment can issue only if the defendant "shall not be found within the district" in which the plaintiff files his claim. The test consists of a "jurisdictional" prong asking whether the defendant's activities within the district satisfy the minimum contacts test, and a "service" prong inquiring whether the defendant can be found within the district for service of process. Failure to satisfy either prong permits a valid attachment.\(^\text{108}\) The following discussion will assume that the "service" prong can be satisfied by the defendant.

If the defendant fails to satisfy the "jurisdictional" prong because he lacks sufficient minimum contacts with the district, an attachment will be valid under the present two-pronged test. But the *Shaffer* standard clearly requires the existence of minimum contacts in order for a valid attachment to issue, although the proper locus of these contacts is not clear. Thus, after *Shaffer*, when a defendant fails the "jurisdictional" prong, the inquiry can no longer end in a valid Rule B attachment. Rather, the court must then apply the *Shaffer* test to determine whether sufficient minimum contacts exist between the defendant and the proper forum\(^\text{109}\) to make an attach-
mendment constitutionally permissible. If such contacts do not exist, no attachment may issue under the Shaffer standard even though the old two-pronged test might have permitted such an attachment. Therefore, in situations like the one discussed above, applying the Shaffer test to quasi in rem admiralty jurisdiction will restrict the availability of such jurisdiction.

B. THE PROPER FORUM FOR USE IN THE SHAFFER TEST

The core of the minimum contacts aspect of the Shaffer test is the evaluation of the level of the defendant's activities within the forum and the relationship between those activities and the plaintiff's claim. To apply this test to federal quasi in rem admiralty jurisdiction derived from a Rule B attachment, the court must know whether the state or the entire United States is the territorial limit of the forum. The larger the territory of the forum, the greater the number of contacts between the defendant and the forum. These can then be aggregated before applying the Shaffer test, and consequently the test will be easier to satisfy.

1. The United States as the Proper Forum

To determine the proper forum for applying the minimum contacts test in the admiralty context, the Selene court, because of the lack of precedent in the field, was forced to look for guidance to other branches of federal jurisdiction. Relying on a line of cases involving federal question jurisdiction, the court adopted the concept of aggregating the contacts between the defendant and the entire United States to evaluate the sufficiency of contact under the Shaffer test.

There are two problems with this approach. First, even the federal question cases that advocated the use of the entire United States as the proper forum in the minimum contacts test did not allow such aggregation of contacts in the absence of specific statutory authorization. Thus, the application of the Shaffer standard to admiralty jurisdiction would delineate only the constitutional boundaries of jurisdictional due process. The defendant must also be subject to service of process by the

110. See notes 28-30 supra and accompanying text.
111. 446 F. Supp. at 709.
112. Id. at 709 nn.11 & 12.
113. Id. at 709.
115. See, e.g., Note, supra note 4, 56 Tex. L. Rev. at 1117-18.
forum seeking to assert jurisdiction over him.\textsuperscript{116} Rule 4 of the Federal Rules, which governs service of process in admiralty actions, limits such service to the territory of the state in which the district court sits,\textsuperscript{117} absent an applicable state long-arm statute\textsuperscript{118} or federal statute.\textsuperscript{119} Since no federal statute allows nationwide service of process in admiralty actions, such service is restricted to the territory of the state or the territorial scope of a state long-arm statute. Unless service of process in a particular case may be obtained under a nationwide state long-arm statute, which would extend service to its constitutional limit,\textsuperscript{120} the district court hearing the admiralty claim could not assert its jurisdiction to the constitutional boundary embodied in the \textit{Shaffer} standard. Therefore, the use of the entire United States as the proper forum in the minimum contacts test would be constitutionally invalid.\textsuperscript{121}

A second problem with the \textit{Selene} court's aggregation formula is that it exceeds the scope of \textit{Shaffer}. For example, if an alien defendant conducts negligible amounts of business in each of the eastern seaboard states, the aggregation of these contacts under the \textit{Selene} approach could conceivably satisfy the \textit{Shaffer} test. The defendant could then be called upon to defend himself in an area, such as the Western District of Washington, in which he has property subject to attachment but no contacts, thereby suffering the very unfairness the \textit{Shaffer} test seeks to avoid. As the \textit{Selene} court noted,\textsuperscript{122} a transfer of the case to another district under the venue provisions\textsuperscript{123} would alleviate some of this unfairness but, especially when the defendant's U.S. dealings are scattered, some unfairness will remain. Whether this factor alone should produce dismissal for lack of personal jurisdiction under \textit{Shaffer} would depend on the court's evaluation of the reasonableness of its assertion of jurisdiction over the defendant.\textsuperscript{124}

2. \textit{The State as the Proper Forum}

A better approach, at least until Congress authorizes nationwide service of process in admiralty suits, is to use the state in which the district court hearing the plaintiff's claim is located as the proper forum. This would only permit the aggregation of the defendant's contacts with any part of that

\begin{itemize}
\item \textsuperscript{116} \textit{Id.}
\item \textsuperscript{117} \textsc{Fed. R. Civ. P.} 4(f).
\item \textsuperscript{118} \textsc{Fed. R. Civ. P.} 4(d)(7).
\item \textsuperscript{119} \textsc{Fed. R. Civ. P.} 4(e).
\item \textsuperscript{120} \textit{See Note, supra} \textsuperscript{116} \textit{note 4, 56 Tex. L. Rev.} at 1119.
\item \textsuperscript{121} Since the \textit{Selene} court did not mention any such authority for serving process on the defendants, the result of the case may well be invalid.
\item \textsuperscript{122} 446 F. Supp. at 710.
\item \textsuperscript{123} 28 U.S.C. \S 1404(a) (1976).
\item \textsuperscript{124} \textit{See note 32 supra} and accompanying text.
\end{itemize}
state before applying the *Shaffer* test. Because the forum's territory would be smaller than under the *Selene* court's approach, there would be situations in which the two approaches would yield different results.

For example, an alien shipper might conduct a small amount of business in each of the states on the eastern seaboard. Aggregation under the *Selene* approach, adding together all of these contacts, might suffice to meet the *Shaffer* test, and subject the defendant to suit in any district in which venue lies. The state-forum approach, however, would preclude aggregation among the several states involved and, without aggregation, the individual defendant-state contacts might be insufficient to satisfy the *Shaffer* test. Thus, at first glance, a Rule B attachment could not constitutionally provide jurisdiction over this defendant despite his several contacts with the United States as a whole. Would this approach be so restrictive as to immunize an alien defendant from suit, even for serious transgressions?\(^{125}\)

The answer is a qualified no.

First, if such suits arise from the defendant's activities within the state, e.g., breaching a contract negotiated and partly performed within the state, this close relationship between the in-state activity and the origin of the plaintiff's claim may well satisfy the minimum contacts test and allow the assertion of jurisdiction.\(^ {126}\) Second, if such suits arise other than through the defendant's activities within the state, the plaintiff can raise a "jurisdiction by necessity" argument to bring this assertion of jurisdiction within constitutional boundaries.\(^ {127}\) Third, use of the state as the proper forum in the *Shaffer* test is in accordance with the statewide scope of service of process under the Federal Rules.\(^ {128}\) Fourth, the *Shaffer* Court intended the minimum contacts test to impose restrictions on the availability of quasi in rem jurisdiction when necessary to prevent unfairness to the defendant.\(^ {129}\) Thus, denial of such jurisdiction in some cases is a predictable, intended result of the *Shaffer* test\(^ {130}\) and cannot also provide an argument against the narrowing of quasi in rem admiralty jurisdiction.

Although some difference of opinion exists as to the proper forum for the *Shaffer* test, use of the state rather than the entire United States appears to be the best choice at this time. Critics will stress the restrictive nature of this approach while its adherents can point to the impropriety of the *Selene* court's solution. Clearly, the issue remains open, and no doubt further judi-

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\(^{125}\) See Note, *supra* note 4, 56 Tex. L. Rev. at 1117.

\(^{126}\) See note 32 *supra* and accompanying text.

\(^{127}\) See notes 40-41 *supra* and accompanying text.

\(^{128}\) See notes 117-19 *supra* and accompanying text.

\(^{129}\) 433 U.S. at 209.

\(^{130}\) Id.
cial elucidation can be expected. It is far easier, however, to determine what type of contacts might satisfy the \textit{Shaffer} test in the admiralty context.

\section{C. Satisfying the \textit{Shaffer} Test in the Admiralty Context}

The \textit{Shaffer} test requires the existence of sufficient minimum contacts among the defendant, forum, and litigation to make the forum's assertion of jurisdiction over the defendant fair and reasonable under the circumstances.\footnote{433 U.S. at 203-04.} Assertions of in rem and some types of quasi in rem\footnote{See notes 35-36 supra.} admiralty jurisdiction will almost always satisfy this test because of the close relationship between the property involved and the claim being litigated.\footnote{433 U.S. at 207-08.} Situations that give rise to a "jurisdiction by necessity" argument will also, for the most part, allow the constitutional exercise of jurisdiction over an alien defendant.\footnote{See notes 40-41 supra and accompanying text.} The majority of quasi in rem admiralty cases, however, will require close analysis of the facts to determine whether the \textit{Shaffer} test is satisfied.

The analysis under the \textit{Shaffer} test of the reasonableness of the court's assertion of jurisdiction involves the evaluation of four principal factors. First, the court must decide whether the defendant's activities within the forum are "continuous and systematic" or "single or isolated."\footnote{International Shoe Co. v. Washington, 326 U.S. 310, 317-18 (1945).} Second, the court should examine whether the plaintiff's claim is related to the defendant's activities within the forum.\footnote{Id at 319.} Third, the court will evaluate the inconvenience that the defendant would suffer in defending a suit brought in the particular forum.\footnote{Id at 317-19.} Fourth, the court must determine whether the defendant's activities in the forum enabled it to enjoy the "benefits and protection" of the forum's laws.\footnote{Id at 319.} By themselves, these factors add little substance to the \textit{Shaffer} analysis, but their interpretation by the courts should establish some guidelines for the type of contacts that will satisfy the \textit{Shaffer} test in the admiralty context.

The mere fact that the defendant corporation is chartered by the state in which the district court hearing the claim sits will be of great signifi-
The existence within the forum of an office of the defendant shipowner or stevedoring company could also suffice. In the absence of such an office, conduct of regular loading, unloading, or transport operations within the forum might meet the constitutional requirement. If the defendant is too small a shipowner to conduct regular business within the forum on a large scale, employment of what assets he does possess within the forum in a purposeful way or with a business motive could satisfy Shaffer. And even if the defendant has no office or agent within the forum and his vessels only rarely enter its waters, the court may constitutionally exercise its jurisdiction over him if the claim being litigated arose directly from activities of the defendant while in the forum. No doubt courts faced with post-Shaffer challenges to quasi in rem jurisdiction based on maritime attachment will elucidate further useful guidelines.

CONCLUSION

The constitutionality of quasi in rem admiralty jurisdiction based on a Rule B attachment should be evaluated under the Shaffer test. The argument that the autonomy of admiralty, fixed on the face of the Constitution and in the early procedural statutes, is still of sufficient force to escape the jurisdictional due process standard of Shaffer must fail in the light of later developments, reflected in the 1966 merger of common law/equity and admiralty procedure.

The applicability of Shaffer does not spell the end of the use of maritime attachment as a jurisdictional device. When, for example, the plaintiff has a preexisting interest in the attached property, Shaffer’s effect will be minimal. If the plaintiff can show the lack of any other forum, this also might allow jurisdiction on the basis of the attachment of property. More importantly, the position taken in Feder and Selene, distinguishing between

the property of a nonresident defendant that warns its owner by its very nature of its potential involvement in litigation and that which does not, may open a large hole in the *Shaffer* test through which many maritime attachments may pass.

Important questions await answers from the courts as they apply the *Shaffer* test to quasi in rem admiralty jurisdiction. The most important of these is the choice of the proper forum to be used in the *Shaffer* test. Ultimately, this question may be answered by Congress if the legislators provide for nationwide service of process in admiralty actions. Until that time, the courts should use a statewide forum as they explore the ramifications of applying the *Shaffer* test to quasi in rem admiralty jurisdiction.

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