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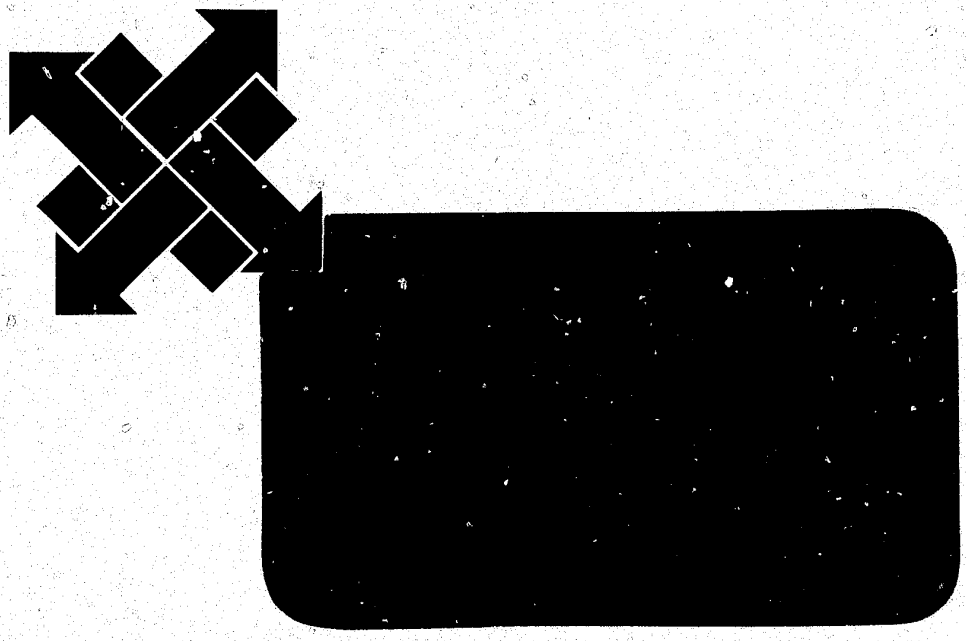

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In Response to:

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A JUSTICE IMPACT STATEMENT ON THE ABOLITION OF DIVERSITY JURISDICTION

Submitted to:

The Office for Improvements in the
Administration of Justice
Department of Justice
Washington, D.C. 20530

By:

Katherine E. Douglass
Jeanna F. Celeste
John M. Dawson
MATHTECH, Inc.
4630 Montgomery Avenue
Bethesda, Maryland 20014
(301) 657-1610

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1. Introduction

a. Subject of the Present Study

At the present time there are legislative proposals in both houses of Congress that would affect major changes in Federal jurisdiction. The most important of these proposals, embodied in bills in both houses, is that to abolish "diversity jurisdiction." This form of jurisdiction creates Federal judicial power in cases involving purely State law questions if the parties are residents of different States, i.e., are of diverse State citizenship. There are other jurisdictional matters related to this abolition proposal, either as part of an existing bill or in the nature of a not unlikely amendment to the legislation. These are as follows:

- Removal jurisdiction: the power of a Federal judge to hear and decide a case that was originally started in State court.
- Ancillary jurisdiction: the power of a Federal judge to decide a State law question included in a case over which there is valid Federal jurisdiction, i.e., a State law question that is secondary to some Federal question.
- Alienage jurisdiction: akin to diversity jurisdiction, but specifically applicable where one of the parties to the lawsuit is a foreign state or foreign national.
- Interpleader: another basis for using Federal courts for State law matters, applicable when there are far-flung rival claimants to money or property held by one party to a

lawsuit, this is relevant in cases where the requirements of diversity jurisdiction are not perfectly met (e.g. when the "stakeholder" and one of the potential claimants are citizens of the same State).

- Venue: meaning which Federal court, if any, may hear and decide a case over which there is Federal jurisdiction.
- Jurisdictional amount: requirement that the monetary damages at issue in a lawsuit be no less than a certain amount, even though there is Federal jurisdiction, in order to have the case tried in Federal court. This is also known as a jurisdictional "bar", in the sense of being barred from the use of Federal court if the stakes are not great enough. Similarly, a monetary "penalty" may be imposed on a plaintiff in certain instances if the damages as ultimately proved are less than the jurisdictional amount.

The legislative proposals that are covered in this study all relate to one or more of the above concepts.

b. Possible Legislative Changes

There is a reasonable likelihood of some legislative change in Federal jurisdiction in the present Congress, involving diversity of citizenship and some of the related concepts outlined above. We know that in the previous Congress, the House of Representatives passed a bill that would abolish diversity jurisdiction. In the present Congress, the likelihood of some legislation passing both houses on this subject is only moderate, and the chances of total abolition would have to be rated as less than those of some lesser form of curtailment. If no law results in this Congress, the issue of diversity jurisdiction may not emerge again for some years to come.

We feel that impact study of the subject of diversity jurisdiction is timely, and the likelihood of some enactment makes such investigation quite desirable. It is less clear, however, precisely what might be legislated; for this reason we make no particular distinction between proposals which are presently imbedded in a House or Senate bill and those which are not but which are candidate amendments.

- Legislative Proposals

Interest in changing or eliminating diversity jurisdiction has a long history, but there have been no changes in it since the adjustment in 1958 of the jurisdictional amount from $3,000 to $10,000. There are now pending in both houses of Congress a number of specific amendments, as well as a number not embodied in any bill that might eventually be incorporated into legislation on the subject. Here we provide a compilation of proposals on the subject which either presently are, or could soon be, included in a bill on diversity jurisdiction.

(1) Total abolition: complete elimination of diversity of citizenship as a basis for Federal jurisdiction.

(2) Allow removal if bias shown: eliminate diversity jurisdiction, but allow removal from State court if the out-of-state party can prove State court jury bias in favor of the in-state party.

(3) No diversity jurisdiction challenge to rulings of State public utility commissions: a subject matter limitation on diversity jurisdiction.

(4) Allow removal if substantial Federal defense: eliminate diversity jurisdiction, but allow removal from State court if the case requires a ruling on a substantial defense based on Federal statutory or Constitutional law.

(5) Retain interpleader when there is diversity of citizenship: eliminate diversity jurisdiction, but preserve interpleader as a basis for using

Federal courts, when there is diversity of citizenship.

(6) Retain diversity jurisdiction for out-of-State plaintiffs: preserve Federal jurisdiction in diversity cases in which the plaintiff is a citizen of another State; eliminate such jurisdiction over cases in which plaintiff resides within the State.

(7) Retain diversity jurisdiction but raise the jurisdictional amount to $25,000: raise the current amount-in-controversy minimum from $10,000 to $25,000, and otherwise retain diversity jurisdiction.

(8) Eliminate amount-in-controversy requirement in Federal question cases: remove present $10,000 bar applicable to some types of Federal question cases.

(9) Expand venue in civil actions: broaden venue provisions in Federal question cases to allow suit to be brought in the judicial district in which all plaintiffs reside, in addition to the current provision for suit in the district in which all defendants reside.

(10) In alienage jurisdiction cases, raise amount-in-controversy requirement to $25,000: current bar in alienage cases is $10,000.

(11) Raise penalty basis in alienage cases to $25,000: as a corollary of (10) above, raise the basis for assessing costs against a plaintiff who overstates amount in controversy.

(12) Allow removal by alien defendant: expand removal jurisdiction to allow removal even when an alien's co-defendant is an in-State resident.

(13) Establish $10,000 amount-in-controversy requirement in CPSA cases: create $10,000 bar for cases brought under the Consumer Product Safety Act, to conform to Congressional intent of that legislation.

Another possible change which we have found mentioned, but for which we find no legislative sponsorship, is to consider a corporation to be a citizen of the forum state if admitted to do business there, even if incorporated or headquartered out-of-state. Still another possibility is to retain federal jurisdiction over mass tort cases, if each claim is for $10,000 or more, and if there is some minimal diversity of citizenship between the two sides.

For convenience of later discussion, we will divide the above proposals into these categories:

- Abolition: the complete elimination of diversity jurisdiction.
- Curtailment: restriction of diversity jurisdiction to certain categories of cases, such as those with $25,000 or more in controversy, those with an out-of-state plaintiff, those involving mass torts and at least minimal diversity, and those not founding jurisdiction on citizenship of a business entity. All such proposals would retain, in principal, diversity of citizenship as jurisdictional basis, but with a scope of application that is narrower than at present.
- Removal: those contemplating some diminution of diversity jurisdiction coupled with an increase in removal jurisdiction to preserve a Federal forum for particular categories of cases. These include proposals such as allowing removal if bias can be shown by out-of-state party, or if there is a substantial Federal defense.
- Related: those not pertaining to diversity itself, or any of the cases now covered by it, but which are coupled

with diversity proposals. These include those concerning alienage jurisdiction and interpleader. A subcategory of these have no particular bearing on diversity, or citizenship-type proposals, but are of interest here because of their potential for caseload impacts; these include expansion of venue in civil cases, elimination of jurisdictional amount requirement in Federal question cases, the raising of this requirement in alienage cases to $25,000, and the creation of such a requirement in the amount of $10,000 for CPSC cases.

- The major issues

The individuals and organizations that in recent months have taken a stand in public on diversity jurisdication can be divided into two camps: pro-change and status quo. Among those in the former group there is a good deal of variability in the changes they advocate, but all are in favor of some reduction in the use of Federal courts for adjudication of State law disputes. The outstanding fact about the pro-change group is the degree to which it seems to encompass the Federal and State judiciaries, and the Federal Executive Branch, as well as the academics. The status quo side seems to account for a considerable amount of the power and influence of the organized bar, and a substantial number of private litigators. It is not too great a simplification to say that the public and private sectors are now joined in issue over diversity jurisdiction.

There appear to be eight major issues on which public commentary concentrates on diversity jurisdiction. They may be divided into two subsets, which for convenience we will label "hard variables" and "soft variables." The former is distinguishable from the latter in the sense of their greater amenability to quantitative analysis.

Table 1. STATUS-QUO GROUP

IMPACT TABLE

EXPECTED IMPACTS OF PROPOSALS ON DIVERSITY JURISDICTION

PROVISION	ACTOR/INSTITUTION: FEDERAL TRIAL COURTS	FEDERAL APPELLATE COURTS	UNITED STATES ATTORNEYS	DOJ LITIGATING DIVISIONS	PRIVATE BAR	STATE COURTS	LITIGANTS
• TOTAL ABOLITION	-CASE(1)					++CASE(3) ++COST(1)	++DELAY(3)
1. Total							
2. Allow Removal if Bias Shown							
3. No Diversity Jurisdiction Challenge to State PUC							
4. Allow Removal if Substantial Federal Defense							
5. Retain Interpleader if Diversity of Citizenship							
• CURTAILMENT							
6. Retain Diversity Jurisdiction for Out-of State Plaintiff							
7. Retain but Raise Jurisdiction Amount to $25,000							+ COST(1)
• FEDERAL QUESTION JURISDICTION							
8. Eliminate $10,000 Bar							
9. Expand Venue							
• ALIENAGE JURISDICTION							
10. Raise Bar to $25,000	0 CASE(1)						
11. Raise Penalty Basis to $25,000	0 CASE(1)						
12. Allow Removal by Alien Defendant	0 CASE(1)						
• $10,000 BAR IN CPSA CASES							

Legend:

+ = Increase
++ = Major Increase
- = Decrease
-- = Major Decrease
0 = No Impact

Numbers in parentheses are number of individuals predicting specified impact

Table 2. PRO-CHANGE GROUP

IMPACT TABLE

EXPECTED IMPACTS OF PROPOSALS ON DIVERSITY JURISDICTION

ACTOR/INSTITUTION

PROVISION	FEDERAL TRIAL COURTS	FEDERAL APPELLATE COURTS	UNITED STATES ATTORNEYS	DOJ LITIGATING DIVISIONS	PRIVATE BAR	STATE COURTS	LITIGANTS
• TOTAL ABOLITION	--COST(2) --COST(1) --CASE(6) --CASE(5)	--CASE(2) - CASE(1)				+CASE(5)	--DELAY(1)
1. Total							
2. Allow Removal if Bias Shown							
3. No Diversity Jurisdiction Challenge to State PUC							
4. Allow Removal if Substantial Federal Defense							
5. Retain Interpleader if Diversity of Citizenship							
• CURTAILMENT							
6. Retain Diversity Jurisdiction for Out-of State Plaintiff	- CASE(3) --CASE(1)					+CASE(1)	+ COST(1)
7. Retain but Raise Jurisdiction Amount to $25,000	- CASE(2)						
• FEDERAL QUESTION JURISDICTION							
8. Eliminate $10,000 Bar	+ CASE(3) 0 CASE(1)						
9. Expand Venue	0 CASE(1)						
• ALIENAGE JURISDICTION							
10. Raise Bar to $25,000	- CASE(1)					+CASE(1)	
11. Raise Penalty Basis to $25,000	0 CASE(1)						
12. Allow Removal by Alien Defendant							
• $10,000 BAR IN CPSA CASES	- CASE(1)					+CASE(1)	

Legend:

+ = Increase
++ = Major Increase
- = Decrease
-- = Major Decrease
0 = No Impact

Numbers in parentheses are number of individuals predicting specified impact

Hard Variables

- Caseloads: case filing rates and case backlogs, both in the Federal courts where diversity cases are presently tried, and the State courts to which abolition would shift them.
- Costs: cost per case, especially as measured by the propensity of cases to go all the way to trial, and among those tried, the proportion using a jury. Diversity cases tend to be more costly than other types of private cases in Federal courts on both measures. Another cost measure is amount of judge time required to decide legal questions, on which factor the rating of diversity cases is disputable.
- Access: amount of judge time available to a potential litigant. Of special importance is the amount of Federal judge time available to handle Federal disputes, and multi-state cases over which state courts lack jurisdiction (e.g. mass torts).
- Delays: the amount of time required to get a case resolved. This is essentially the caseload issue viewed from the perspective of the litigant.

Soft Variables

- Federalism: Federal deference owed to the States to handle State matters, and to State courts to adjudicate State law disputes.

- Competency: historically, the issue of whether State judges are as professionally competent and fair-minded as Federal judges. Closely related to this is the question of whether State court juries are as fair-minded in their treatment of out-of-state litigants.
- Choice of Forum: benefits claimed to flow from allowing litigant and counsel to choose between State and Federal forum.
- Cross Fertilization: advantages derivable from intermingling State and Federal issues and practitioners in the Federal court system.

2. Impact Data

Having identified the range of existing legislative proposals, we now turn to the question of whether any of them is likely to become law, and what the estimated impact might be on the resources of the Federal justice system.

a. Likelihood of Passage

The threshold question, prior to gathering data for impact assessment, is whether any of the current proposals can be considered likely to become law. This means likelihood of passage before or without benefit of the information that would be generated in a formal impact study.

In considering the issue of the likelihood of passage, we talked to individuals in the Department of Justice and legislative staffs. Everyone we spoke to regards abolition, the best known of the diversity proposals, as unlikely to come about in the present Congress, and that if it does not pass now, passage is only a remote prospect for the foreseeable future. The reason stated is the staunch opposition of the American Bar Association, as well as other segments of the organized bar (e.g. ATLA).

Our own view is tempered by the fact that abolition was, in fact, legislated by the House during the past Congress, and that it has the support of both the Federal and State judiciaries, the Department of Justice, and a number of distinguished legal scholars.

Our contacts feel that certain of the curtailment options have more likelihood of passage than abolition itself. Certain members of Congress are thought to favor some form of curtailment. Restriction of diversity jurisdiction to bar in-State plaintiff cases is regarded as a "potential compromise" between proponents of jurisdictional change and those who favor the status quo. The curtailment options obviously imply less impact on caseload than abolition and hence warrant less concern on our part.

On balance, it seems at the present that major legislative changes in diversity jurisdiction do not have a high probability of adoption. Options with less potential for caseload impact are more likely to be passed.

Even though the likelihood of passing legislation which would significantly alter diversity jurisdiction is not great, a sponsor may choose to conduct a JRE in order to improve the prospects of passing such legislation. The method would facilitate legislative drafting or revision by providing an objective basis for evaluating the various proposals.

b. Testimony on Impact

Previous studies and the Final Report of this project have explained and illustrated the information organizing technique which we have termed the "table of impacts." The method of gathering the information that is organized therein will vary from one impact study to another. In this study we chose a strategy of searching the record of Congressional hearings for impact-related statements. The hearings were those on diversity of citizenship held by the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of the Committee on

the Judiciary, House of Representatives, in September and October of 1977, and again in February and March of 1979. In those hearings we found impact testimony by twenty-three individuals, which we have tallied in impact tables.

We divided the experts who appear in the record into those basically favoring retention of diversity jurisdiction and those favoring abolition or some form of curtailment; hereafter we refer to these two groups as Status Quo and Pro-Change, respectively. We count six individuals in the Status Quo group, seventeen in Pro-Change. For each individual, we classified each statement about impact according to type (which legislative proposal would affect which actor or institution), and magnitude (whether positive or negative, and whether a moderate or significant impact). All classifications were done by having one individual read and evaluate the entire record; spot-checking done independently by another individual revealed a high degree of agreement, and hence we feel the classifications are accurate. The results are shown in Tables 1 and 2, and will be discussed briefly in the following paragraphs.

- Predictions by opponents of change in diversity jurisdiction

The results for the Status Quo group are in Table 1. They show that these individuals expect a major impact on the State courts in terms of caseload increase if diversity jurisdiction is abolished. The other principal indication is increased delay that would be experienced by litigants in the State courts if diversity jurisdiction were abolished. These two impacts are significant in that they appeared in the statements of more than one of the individuals and they suggest major changes in the system. Other impacts predicted by various of the persons testifying include: major increases in cost per case on State courts associated with abolition; some increase in costs borne by litigants if the jurisdictional amount bar were raised to $25,000 in those cases where the damages are in lesser amounts and plaintiff is forced to sue in another State;

some drop in caseloads on the Federal system; and, with respect to alienage jurisdiction, a prediction of no caseload impact if: (1) the jurisdictional amount is raised to $25,000 along with the penalty basis, and (2) removal is allowed by alien defendants.

- Predictions by proponents of abolition or curtailment

Table 2 concerns the Pro-Change group, consisting of seventeen individuals. The most striking result is that six of them foresee caseload reduction as a major impact of abolition, and five others foresee somewhat of an impact, if not a major one. This means that a majority of those in the record of the House hearings find caseload reduction to be a remarkable prospect of the abolition proposal. Not surprisingly, there are also some who remarked about a possible cost savings.

The next major finding is the number of individuals who state an expectation of increase in State caseloads following abolition, though not as a major impact. Other impact predictions made by several people are of a major drop in Federal appellate caseloads following abolition; some caseload reduction in the Federal trial courts if diversity jurisdiction were limited to out-of-State plaintiffs, or if such jurisdiction were retained but with an elevation of the jurisdictional bar to $25,000; and a possible caseload increase resulting from elimination of the $10,000 bar in Federal question cases.

- Comparing predictions

It is useful to compare the two groups of predictions, first to see if they depict a reasonable scenario of the future when integrated (a form of validation), and second, to see what overall conclusions can be drawn about how the experts see into the post-legislation future.

Tables 1. and 2. show the recognition by both sides of the controversy

over abolition, that there would be some savings to the Federal justice system and some new costs to be borne by the State courts. The Pro-Change advocates see more dramatic savings to the Federal system than do the Status Quo advocates, while the latter group evidences more concern over the burden that would result for the States. Status Quo advocates predict major increases in the delay time that litigants would experience in the State systems, and Pro-Change advocates predict a major advantage to ligitants in the Federal system, in terms of decreases in delay time. These predictions are basically what one would expect from the two groups in terms of their assessments of the probable impacts. If our impact tables showed otherwise, we would have to suspect that there were errors in our own coding process, or that the testimonial data themselves were inaccurate or inappropriate.

- Inferences from testimonial data

There are a number of inferences about impacts that we would draw from Tables 1 and 2:

- There is a clear expectation of a reduction in caseloads and costs to federal trial courts associated with the abolition proposal.
- Some caseload increase on the State courts is predictable, if diversity jurisdiction is abolished.
- Delays experienced by litigants can be expected to undergo change with the elimination of diversity.
- There is little in the way of consistent expression of concern over predicted impacts, or the magnitude of impacts, regarding changes in diversity jurisdiction, other than total abolition.

c. Empirical data on impact

The preceding section dealt with opinion data of a testimonial nature on the subject of impacts of possible changes in diversity jurisdiction. In this

section we look at the available documentary data, and the uses that have been made of it in predicting impacts on the same subject. The major source of such data is the Administrative Office of the U.S. Courts, Statistical Analysis and Reports Division. The major user of these data for the purposes of impact-related calculations has been the Department of Justice, the results of which were reported in "An Analysis of the Resources of the Federal Court System Consumed by Diversity of Citizenship Cases," March 26, 1979. Another important study is that entitled "The Relative Impact of Diversity Cases on State Trial Courts", by Victor E. Flango and Nora F. Blair, published in State Court Journal, Summer 1978, though this pertains to State rather than Federal justice resources.

What we find in the DOJ report is an estimation of the caseload and costs significance of diversity cases, according to a number of measures which the analysts devised. These relate to impact in the sense that they suggest just how much of a vacuum would result if diversity cases vanished from the system.

The DOJ report concludes that "it seems clear that diversity cases consume a disproportionate amount of the time and resources of the federal courts." Here are the numbers set forth in the report that form the basis of that conclusion:

Case filings

Diversity cases in 1978 comprised 23% of the civil filings.

Terminations

Diversity cases in 1978 comprised 24% of the civil terminations.

Trials

In 1978, 12% of diversity cases went to trial; twice the rate of all other civil categories.

Jury Trials

Though making up only 12% of the caseload, diversity cases in 1978 accounted for two-thirds of the jury trials.

Appeals

Though making up only 12% of the 1978 caseload at the District Court level, diversity cases accounted for 16% of the appeals.

Costs

The DOJ analysts estimate that diversity cases cost the Federal system $4,500,000 per year in juror costs, and $4,300,000 annually in personnel costs in the offices of the clerks of the various districts.

Time trends

Data included in the report show that diversity cases have been increasing steadily in numbers since 1960, though they have also been dropping steadily as a percentage of the total cases.

Variability of impact

The DOJ report does not cover the subject of relative impact among the Federal districts. Figures published by the Administrative Office of the U.S. Courts show the number of diversity cases by district, which, incidentally, manifest considerable variation. The report does discuss the findings of the National Center for State Courts study, by Flango and Blair, that the effect of situating the diversity cases entirely within the State courts would mean caseload increases ranging from 0.14% to 3.58%. The high end of the scale is represented by South Carolina, which ranks high on almost all of the impact measures evaluated by Flango and Blair. The impression conveyed by the NCSC study is that the impact on the State courts is, overall, not an ominous threat. It is certain that the impact on the Federal courts would vary, though the extent and significance of the variation is an open question.

Curtailment alternatives

Both of the reports referred to in this section focus on the subject of abolition of diversity jurisdiction, as does most of the testimony summarized in the preceding section. The A. O. has data relevant to two of the main alternatives that constitute curtailment, rather than total abolition, of diversity jurisdiction.

- In-State Plaintiffs: 60% of diversity cases have a plaintiff who is a resident of the forum State; 11% of the cases have a non-resident corporation as a plaintiff; roughly two-thirds of the cases involve one or the other of these two types of plaintiffs. These are types of parties to whom the traditional, theorized bias against out-of-Staters would not apply.
- Raise Jurisdictional Amount: Nearly half of the diversity jurisdiction cases involve an amount-in-controversy under $25,000.

Case Weights

The recently completed district court time study shows, in a memorandum distributed July 26, 1979, by Steve Flanders of the Federal Judicial Center, that diversity jurisdiction cases consume 22% of judge case-related time. It is interesting to note that diversity cases comprised almost the same percentage of the filings in 1978 (31,625 out of 138,770, or 22.8%) as they did of judge case-related time. This implies that they are very nearly what one would call an "average" type of case. FJC figures for 1969 indicated that diversity cases were well above average in relative weight, though it had been of declining weight over the years since the 1940's.

3. Simulation and Feedback

Upon completing the conceptual analysis, it was decided that more detailed information was required. As a result, simulation and feedback rounds

were begun. This process included the development of the computerized model of a Federal district court. After the model was constructed, a panel of three justice system experts was convened to carry out the feedback rounds. This panel participated in several iterations of the feedback process, producing a variety of types of information. This information is provided in this report in the form of tables and figures representing simulation results, behavioral adaptations made by the experts, and the translation of those changes to computer inputs. The first set of simulation results include no human adaptation to the removal of diversity jurisdiction, while subsequent results include adaptations made in each round. The experts provided their suggestions for system actor reactions in the form of behavioral adaptation records. The translation sheets, which were taken from the behavioral adaptation records, were generated in pairs. The first presented the behavioral changes and corresponding model parameter changes, and the second contained simply statements of the behavioral changes. Only the latter were provided to the panelists in the subsequent round.

a. Round-by-round: Results and Summary of Behavioral Adaptations

Outputs produced in each simulation run were of four main types. The first, utilization, provided information on the percentage of time system actors (in this case federal district judges, and assistant U.S. attorneys in criminal and civil divisions) spent on case-related activities.

The second output type was the elapsed time, in working days, that different types of cases took from the time they entered the system until their termination. Statistics were provided for Federal Question cases not involving the U.S. as a party, Diversity Jurisdiction cases, Federal Criminal, and Civil/U.S. cases.

The third type of output was the number of case completions, or case

terminations. These outputs were given for each of the four case types mentioned above. The last type of output was called the average daily backlog. These statistics were broken down into subcategories of courtroom and noncourtroom activities for each actor type. The interpretation for this type of output was that the figures represented the number of cases awaiting service in the courtroom or in the actor's office at the start of each day. The courtroom activities included injunctions, trials, and other hearings (e.g., arraignments, sentencing hearings, motions hearings, etc.). Noncourtroom activities consisted of writing memoranda, holding conferences, conducting legal research, etc.

- Round 1 began with panelists examining the pre-change (baseline) and post-change outputs from the first computer simulations. The percent increases and decreases were calculated for each actor or case type within the four major categories (see Figure 1., page 20). The behavioral adaptation records for all panel members on each round are available on pages 39-50.

To summarize, there were three main behavioral changes offered by the panelists in Round 1. The judge expert noted a significant reduction in courtroom backlog once diversity jurisdiction cases had been eliminated. He therefore became a more aggressive manager by accelerating the scheduling of courtroom appearances and the completion of noncourtroom activities for all case types but most especially for criminal cases. He accelerated the cases on the premise that he wanted to insure compliance with the Speedy Trial Act for criminal cases and to give priority to the oldest civil cases (older than 6 months) in the system.

The judge predicted that the pressure he was applying to accelerate the civil cases would result in an increased tendency on the part of civil attorneys to settle cases out of court.

FIGURE 1: SIMULATION RESULTS AT THE START OF ROUND 1

Output Type	Base Line	Post Change	Post Change vs. Baseline
Utilization (% Time on Case-Related Activities)			
Judge	63.2%	56.4%	11% decrease
Criminal Attorneys	71 %	72.4%	2% increase
Civil Attorneys	65.5%	64.5%	1.5% decrease
Elapsed Time (Days)			
Federal Question	239	238	0.5% decrease
Diversity Jurisdiction	241.5	---	
Criminal	94.8	92.4	2.5% decrease
Civil/U.S.	190.9	187.6	1.7% decrease
No. of Case Completions			
Federal Question	753	760	1.0% decrease
Diversity Jurisdiction	405	---	
Criminal	328	365	11.4% increase
Civil/U.S.	595	573	3.7% decrease
Average Daily Backlog (Cases)			
Courtroom Activities			
Judges	4.15	2.34	44% decrease
Criminal Attorneys	.77	.55	28% decrease
Civil Attorneys	.51	.36	25% decrease
Noncourtroom Activities			
Judges	1.8	.65	64% decrease
Criminal Attorneys	2.9	3.02	4% increase
Civil Attorneys	2.33	1.91	18% decrease
Private Cases			
Judges	2.68	1.03	62% decrease

The panel member representing the U.S. attorneys took special notice of the reduction in the judges' courtroom queue. He took this reduction to indicate that there would be less rescheduling of cases ready for courtroom service. This alleviated the problem for attorneys of having to prepare cases a second time for a courtroom appearance. He expected the principal effect to lie with U.S. attorneys in their noncourtroom time prior to trial for civil/U.S. cases.

The representative for the private bar made several observations though none were implemented as behavioral changes to the computer model. The first observation related to his assumption that, following the abolition of diversity jurisdiction, cases which would have been filed in federal courts would then be filed in the State courts. Thus, the private bar's workload may not be affected.

The second observation the private bar expert made was that the greater availability of judges might logically lead to more case filings. He predicted that any increase in private filings would be quite small since he believed that attorneys now file as many private cases as come to their attention.

The third observation made by the private bar panelist was that many attorneys handle both civil and criminal matters in federal courts. The increase in criminal case completions (from the pre-change to post-change condition) would cause attorneys to neglect their civil casework in favor of criminal cases. Given the existence of a specialized criminal bar, however, this change would be quite small.

- Round 2 began by having the experts study the translation sheet for Round 1 behavioral changes (page 23) and the simulation outputs for Round 1 (page 24). Then they discussed any changes they noticed with their contact persons.

The next step involved having each expert react to the outputs and

Translation - Round 1

Behavioral Change	Corresponding Parameter Change
1. Given significant reduction in courtroom backlog, with Diversity Jurisdiction cases eliminated, judge becomes more aggressive: accelerates scheduling of courtroom appearances and finishing noncourtroom work. This would affect all case types, but most especially criminal cases.	.79 x duration of external delay - criminal cases .86 x duration of external delay - Civil/U.S., and Federal Question 1.21 x probability to external delay branch - Criminal 1.14 x probability of external delay branch - Civil/U.S., Federal Question (puts external delay at the front, and causes case processing activities to occur in more rapid sequence)
2. Judge predicts that the pressure to accelerate #1 would result in an increased tendency to settle.	.79 x probability of trial - Criminal cases .86 x probability of trial - Civil/U.S. and Federal Question (more settlements = fewer trials)
3. Reduction in judge courtroom queue means less rescheduling of cases ready for courtroom service, alleviating the problem of having to prepare again, principally affecting Federal attorneys in Civil/U.S. cases prior to trial.	Number of episodes of noncourtroom service, Civil/U.S., is reduced from 7 to 6 on premise that one of two nontrial courtroom appearances is a rescheduled event.

Translation - Round 1

Behavioral Changes:

1. Given a significant reduction in courtroom backlog with Diversity Jurisdiction cases eliminated, judge becomes a more aggressive manager: accelerates the scheduling of courtroom appearances and the completion of noncourtroom work. This would affect all case types, but most especially criminal cases.

2. Judge predicts that the pressure to accelerate Civil cases in #1 would result in an increased tendency to settle.

3. Reduction in judge courtroom queue means less rescheduling of cases ready for courtroom service, alleviating the problem of having to prepare again, principally affecting Federal attorneys in Civil/U.S. cases prior to trial.

FIGURE 2: SIMULATION RESULTS AT THE START OF ROUND 2

Output Type	Base Line	Post Change	Round 1	Round 1 vs. Post Change
Utilization (% Time on Case-Related Activities)				
Judge	63.2%	56.4%	56%	25% decrease (sig)
Criminal Attorneys	71 %	72.4%	74%	2.2% increase
Civil Attorneys	65.5%	64.5%	61%	5.4% decrease (sig)
Elapsed Time (Days)				
Federal Question	239	238	205	14% decrease (sig)
Diversity Jurisdiction	241.5	----	----	----
Criminal	94.8	92.4	72.5	22% decrease (sig)
Civil/U.S.	190.9	187.6	157.7	16% decrease (sig)
No. of Case Completions				
Federal Question	753	760	773	2% increase
Diversity Jurisdiction	405	----	----	----
Criminal	328	365	362	.7% increase
Civil/U.S.	595	573	590	3% increase
Average Daily Backlog (Cases)				
Courtroom Activities				
Judges	4.15	2.34	1.45	38% decrease (sig)
Criminal Attorneys	.77	.55	.40	27% decrease (sig)
Civil Attorneys	.51	.36	.21	42% decrease (sig)
Noncourtroom Activities				
Judges	1.8	.65	.62	39% decrease (sig)
Criminal Attorneys	2.9	3.02	2.59	14% decrease
Civil Attorneys	2.33	1.91	1.22	36% decrease (sig)
Private Cases				
Judges	2.68	1.03	.62	40% decrease (sig)

suggest any additional behavioral changes.

In summary, the changes introduced in Round 2 included the judge's attempt to achieve a significant reduction in the time to dispose of private civil cases. He effected this change by giving these cases priority over public cases and by putting more pressure on the private bar to accelerate their scheduling of courtroom appearances and the completion of noncourtroom activities. The judge expert was also attempting, through these means, to increase the judge utilization rate to its previous level.

The U.S. Attorney panelist presumed there would be a morale problem among the criminal personnel due to the overwork caused by the substantial reduction in elapsed time for handling criminal cases. He therefore made the policy decision to assign some criminal cases to civil personnel, at least on a temporary basis.

The private bar predicted two opposing tendencies: (1) reduction in "junk" case filings due to the increased probability of having to go to court and the pressure to speed up case handling of the existing cases; and (2) increase in filings due to the reduction in delay time. As the judge becomes a better manager there will be fewer reschedulings; thus, attorneys will spend less time on each case which will leave time to file new cases. He predicted that these two opposing tendencies will cancel each other out so filings will not change.

- Round 3 started with the panel members examining the translation of Round 2 behavioral adaptations (page 27) and the simulation outputs for Round 2 (page 28). Panel members discussed the changes with their contact persons. Two panelists became confused about one of the output statistics and raised questions about its interpretation. For the U.S. Attorney representative, his questions regarding the statistic were serious enough that he felt he could not

Translation - Round 2

Behavioral Change	Corresponding Parameter Change
1. Achieve significant reduction of time to dispose of private cases by placing them ahead of public cases, for judge service, and by placing more pressure on private bar to accelerate scheduling of courtroom appearances and noncourtroom activities.	Change private/public priority branching ratio from .5 to 1.25 x .5 = .625 ...and make significant reduction in external delay time (in judge involved cases) in Federal Question cases by reducing frequency of external delay from 3 to 2.
2. Hopefully increase judge utilization rate by means of the behavioral change #1, above.	
3. Alleviate significant over-work and morale problem for AVSA/criminal personnel implied by the substantial reduction in elapsed time through a moderate (but hopefully temporary) policy of assigning some criminal cases to civil personnel.	Reassign one civil attorney to handle criminal cases.

Translation - Round 2

Behavioral Changes:

1. Achieve significant reduction of time to dispose of private cases by placing them ahead of public cases, for judge service, and by placing more pressure on private bar to accelerate scheduling of courtroom appearances and noncourtroom activities.

2. Increase judge utilization rate by means of the behavioral change in no. 1 above.

3. Alleviate significant overwork and morale problem for AUSA/criminal personnel implied by the substantial reduction in elapsed time in criminal cases through a moderate (but hopefully temporary) policy of assigning some criminal cases to civil personnel.

FIGURE 3: SIMULATION RESULTS AT THE START OF ROUND 3

Output Type	Base Line	Post Change	Round 1	Round 2	Round 2 vs. Round 1
Utilization (% Time on Case-Related Activities)					
Judge	63.2%	56.4%	56%	54.9%	2 % decrease
Criminal Attorneys	71 %	72.4%	74%	59.4%	25 % decrease
Civil Attorneys	65.5%	64.5%	61%	75.7%	19.4% increase
Elapsed Time (Days)					
Federal Question	239	238	205	146.4	40 % decrease
Diversity Jurisdiction	241.5	----	----	----	----
Criminal	94.8	92.4	72.5	63.1	14.9% decrease
Civil/U.S.	190.9	187.6	157.7	165.9	5 % increase
No. of Case Completions					
Federal Question	753	760	773	789	2.1% increase
Diversity Jurisdiction	405	----	----	----	----
Criminal	328	365	362	308	17.5% decrease
Civil/U.S.	595	573	590	642	8.1% increase
Average Daily Backlog (Cases)					
Courtroom Activities					
Judges	4.15	2.34	1.45	1.21	19.8% decrease
Criminal Attorneys	.77	.55	.40	.23	73.9% decrease
Civil Attorneys	.51	.36	.21	.31	32.3% increase
Noncourtroom Activities					
Judges	1.8	.65	.62	.57	8.8% decrease
Criminal Attorneys	2.9	3.02	2.59	.99	161.6% decrease
Civil Attorneys	2.33	1.91	1.22	3.87	68.5% increase
Private Cases					
Judges	2.68	1.03	.62	.59	5 % decrease

participate in Round 3. The private bar expert also raised questions about the statistic's interpretation but felt sufficient confidence in the outputs as a whole that he was able to complete Round 3. When his contact person asked whether a meeting of the other panel members might be helpful to him in considering how to interpret the confusing statistic, he replied that it would be. The U.S. Attorney expert also wanted to meet with the other panel members to discuss the results.

Of the three panel members, the judge expert was least concerned about the significance of the statistic. When asked if he felt a meeting of the panelists was necessary, he replied that it was not but that he would be willing to meet if the other members found it important to do so.

Expert Adaptations for Round 3

Given the drop in the judge utilization rate, the judge expert predicted that judges would become more deliberative: (1) spending more time on noncourtroom work for all case types, and (2) increasing the courtroom activity in private cases.

The expert on the private bar suggested that, given the pressure implied by the fast pace at which criminal cases were being processed, defense counsel would be willing to negotiate more pleas. He stated that the dramatic increase in civil case completions show an unrealistic degree of cooperation by the private bar to the pressure being applied by the judge to speed up cases. The behavioral adaptations which he foresaw as being related to this situation were that private counsel would increase the time spent on federal question and civil/U.S. cases and that they would request more delays for civil/U.S. cases. The final prediction the private bar expert made was that the pressure to accelerate scheduling for civil cases would cause a greater willingness on the part of private counsel to settle civil cases out of court.

Panel Conference was the next round in the feedback experiment. All the panel members and the contact persons met to discuss the problems encountered during Round 3 and to examine the Round 3 outputs (page 36). The research team had prepared a document that summarized the behavioral changes for Rounds 1-3 (page 36).

The statistic which caused confusion in Round 3 was discussed at the panel conference as follows. In Round 2 the U. S. Attorney panel member reassigned one civil assistant U. S. attorney to handle some of the criminal caseload. A simulation was performed with this new input. At the start of Round 3, the criminal case completion rate had decreased and the civil/U.S. case completion rate had increased. This result ran counter to the expectations of some of the panel members.

Several explanations were offered to account for this statistic. They included:

(1) The statistic may have been the result of the interaction of several behavioral changes. The combined effects of the many behavioral changes made could have produced a counter-intuitive result.

(2) The statistic may have been the result of the assignment of the same number of civil/U.S. cases to fewer civil/U.S. attorneys, thereby increasing the probability that a civil/U.S. case will be awaiting service at any given time. This would tend to increase the civil/U.S. completions, and increase the civil/U.S. attorney litigation, that is, their "idle" time would be greatly reduced. The opposite effect may have been seen in criminal cases, which kept the same caseload

but had more manpower assigned to it. This would decrease the probability that a criminal case will be awaiting service at a given time. Criminal completions and criminal attorney utilization would be expected to decrease under these circumstances.

(3) Other explanations may be possible, including the fact that the simulation has not been fully developed as yet. It is possible that some error in the program produced that statistic.

During the course of the panel conference, the participants also made a number of suggestions as to how the feedback methodology might be improved. The issues discussed at the panel conference (and during individual feedback rounds) are listed below.

1. Panel members felt that in order to be able to suggest behavioral adaptations they needed more detailed output information. The types of outputs that the panelists suggested would be helpful include:
   a) the disaggregation of non-courtroom and courtroom activities by case type and by particular activity OR the frequency of particular activities as they occur in different types of cases;
   b) case tracking information on criminal cases so that panel members can easily determine when cases are nearing deadlines imposed by the Speedy Trial Act (STA); cases in the model should be granted STA exemptions in the same proportions as they occur in the actual system;

c) information on the length of time individual cases have been in the system so that cases can be prioritized by age;

d) the disaggregation of cases listed under "completions" by type of termination (e.g., pleas, dismissals, etc.);

e) the panelist representing the U.S. Attorneys suggested that the model needed to be able to simulate the "matter" workload. A good deal of time is expended by assistant U.S. attorneys working on matters that never become cases; they are disposed of before entering the courts. This work time should be counted separately from the case workload and statistics produced to reflect this effort.

2. Panel members felt that the role of the private bar was not well enough defined for that panelist to be able to make decisions. Suggestions for improving this role included:

a) split the private bar role into plaintiff and defense roles;

b) provide a profile of cases in the State court systems, since a large portion of the caseload of the private bar consists of State level cases.

3. There appeared to be some confusion among certain panel members as to what their areas of jurisdiction included. Some problems also arose in the translation of behavioral adaptations into parameter changes for the model. This was due to the research team's failure to obtain agreement on the part of multiple panel members when changes were suggested which affected more than one actor's jurisdiction.

It would be helpful, in future feedback panels, to develop lists defining the variables which each panelist has jurisdiction over and those which require agreement by two or more members.

The panel agreed that the conference was a good end to the feedback experiment so no further rounds were undertaken. The results of the simulation and feedback rounds are recorded on page 38.

b. Conclusions

If the simulation and feedback rounds in conjunction with the conceptual analysis can be taken to be a definitive impact statement, then several conclusions can be stated:

- A 22% reduction in federal court caseloads was achieved and this was evidenced in the workload of system actors in the decreases in their utilization rates.
- There was a trend toward a decrease in the amount of time that cases spent in the system. This was shown in the simulation results by reduced elapsed times: Federal Question cases 71% reduction, criminal cases 68% reduction.
- There was a tendency for judges to make up for the loss of diversity jurisdiction cases by creating more work for themselves (spending more time deliberating on cases, etc.)
- An increase in the caseloads in State courts was predicted.

Translation - Round 3

	Behavioral Changes:	Corresponding Parameter Changes:
1.	Given the drop in the judge utilization rate, judges will become more deliberative: (a) spending more time on noncourtroom work for all case types, and also (b) increasing the courtroom activity in private cases.	1. (a) Increase the duration of noncourtroom activities by 16%. (b) Increase the duration and frequency "other courtroom" appearances by 16% (change frequency from 2 to 3, and duration from 1.5 to 1.16).
2.	Given the pressure implied by the fast pace at which criminal cases are being processed, defense counsel will negotiate more pleas.	2. Reduce the probability of going to trial for criminal cases by 10%.
3.	The dramatic increase in civil case completions show an unrealistic degree of cooperation by the private bar to the pressure being applied by the judge to speed up cases: private counsel will increase the time spent on federal question and civil/U.S. cases and will ask for more delays on civil/U.S. cases.	3. Increase by 16% the duration of external delay for federal question and civil/U.S. cases, and increase by 16% the frequency of external delay episodes for civil/U.S. cases.
4.	The pressure to accelerate the scheduling for civil cases will cause a greater willingness on the part of private counsel to settle cases.	4. Decrease the probability of going to trial for civil/U.S. cases by 14%.

Translation - Round 3
Behavioral Changes

1. Given the drop in the judge utilization rate, judges will become more deliberative: (a) spending more time on noncourtroom work for all case types, and also (b) increasing the courtroom activity in private cases.

2. Given the pressure implied by the fast pace at which criminal cases are being processed, defense counsel will negotiate more pleas.

3. The dramatic increase in civil case completions show an unrealistic degree of cooperation by the private bar to the pressure being applied by tne judge to speed up cases: private counsel will increase the time spent on federal question and civil/U.S. cases and will ask for more delays on civil/U.S. cases.

4. The pressure to accelerate the scheduling for civil cases will cause a greater willingness on the part of private counsel to settle cases.

FIGURE 4: SIMULATION RESULTS AT THE STATE OF [redacted]

Output Type	Base Line	Post Change	Round 1	Round 2	Round 3	Round 3 vs. Round 2
Utilization (% Time on Case-Related Activities)						
Judge	63.2%	56.4%	56%	54.9%	63.5	13.5% increase
Criminal Attorneys	71 %	72.4%	74%	59.4%	60.1	1.2% increase
Civil Attorneys	65.5%	64.5%	61%	75.7%	71.1	6.5% decrease
Elapsed Time (Days)						
Federal Question	239	238	205	146.4	170.3	14.0% increase
Diversity Jurisdiction	241.5	----	----	----	----	----
Criminal	94.8	92.4	72.5	63.1	64.6	2.0% increase
Civil/U.S.	190.9	187.6	157.7	165.9	228.5	27.4% increase
No. of Case Completions						
Federal Question	753	760	773	789	776	1.7% decrease
Diversity Jurisdiction	405	----	----	----	----	----
Criminal	328	365	362	308	301	2.3% decrease
Civil/U.S.	595	573	590	642	644	0.3% increase
Average Daily Backlog (Cases)						
Courtroom Activities						
Judges	4.15	2.34	1.45	1.21	2.04	40.7% increase
Criminal Attorneys	.77	.55	.40	.23	.25	8.0% increase
Civil Attorneys	.51	.36	.21	.31	.42	26.2% increase
Noncourtroom Activities						
Judges	1.8	.65	.62	.57	.96	40.6% increase
Criminal Attorneys	2.9	3.02	2.59	.99	1.02	2.7% increase
Civil Attorneys	2.33	1.91	1.22	3.87	4.75	18.5% increase
Private Cases						
Judges	2.68	1.03	.62	.59	1.47	59.9% increase

SUMMARY OF BEHAVIORAL CHANGES

ROUNDS 1-3

1. Judge accelerates case scheduling
2. Increase in civil case settlements
3. Reduction in AUSA preparation time, civil/U.S. cases

1. Judge places priority on private cases
2. Assign some routine criminal cases to AUSA/civil

1. More judge service time on cases
2. Private defense counsel negotiate more pleas
3. Private counsel demand more time for civil cases
4. Private counsel more willing to settle

FIGURE 5: RECORD OF FEEDBACK EXPERIMENT RESULTS

Output Type	Base Line	Post Change	FEEDBACK RESULTS Round 1	Round 2	Round 3
Utilization (% Time on Case-Related Activities)					
Judge	63.2%	56.4%	56%	54.9%	63.5
Criminal Attorneys	71 %	72.4%	74%	59.4%	60.1
Civil Attorneys	65.5%	64.5%	61%	75.7%	71.1
Elapsed Time (Days)					
Federal Question	239	238	205	146.4	170.3
Diversity Jurisdiction	241.5	----	----	----	----
Criminal	94.8	92.4	72.5	63.1	64.6
Civil/U.S.	190.9	187.6	157.7	165.9	228.5
No. of Case Completions					
Federal Question	753	760	773	789	776
Diversity Jurisdiction	405	----	----	----	----
Criminal	328	365	362	308	301
Civil/U.S.	595	573	590	642	644
Average Daily Backlog (Cases)					
Courtroom Activities					
Judges	4.15	2.34	1.45	1.21	2.04
Criminal Attorneys	.77	.55	.40	.23	.25
Civil Attorneys	.51	.36	.21	.31	.42
Noncourtroom Activities					
Judges	1.8	.65	.62	.57	.96
Criminal Attorneys	2.9	3.02	2.59	.99	1.02
Civil Attorneys	2.33	1.91	1.22	3.87	4.75
Private Cases					
Judges	2.68	1.03	.62	.59	1.47

ADAPTATION RECORD

Round # 1

Actor Type Judge

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
1. Spend 2/3 of additional time on courtroom activities, 1/3 on non-courtroom activities.	1. Backlog for courtroom activities needs to be reduced much more than does backlog for non-courtroom activities.
2. Give first courtroom priority to injunctions.	2. Need immediate attention.
3. Give courtroom priority to criminal cases that would otherwise be in danger of failure to comply with Speedy Trial Act requirements.	3. Failure to comply with STA will require dismissal of criminal cases.
4. Give next courtroom priority to oldest civil cases (older than 6 months).	4. Reduce civil case backlog.
5. Give next courtroom priority to other civil cases involving U.S. (public civil cases).	5. Public civil cases probably more important than private civil cases. Put pressure on civil cases older than 6 months - many will settle -- may increase my noncourtroom activities.
6. Give next courtroom priority to other civil cases not involving U.S. (private civil cases).	6. Less important than public civil cases.
7. Give next courtroom priority to other criminal cases.	7. No hurry, so long as disposition complies with STA.
8. Non-courtroom activity priorities: a) preparation for 2-7 above, in that order b) other activity relating to 2-7 above, in that order c) other activity	8. Non-courtroom activity should be in preparation for or related to courtroom activity before one engages in other types of non-courtroom activity.

ADAPTATION RECORD

Round # 1

Actor Type Private Bar

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
1. Impact on the private bar cannot be measured by looking only at the federal system.	1. Diversity cases will be taken out of the federal system, but presumably most of these cases will be filed in the state courts. Without data on the impact on the state systems of this influx of diversity cases, the impact on the private bar cannot be evaluated. Attorneys may simply spend the same time and resources in state courts.
2. The significant reduction in the backlog of judges (courtroom and noncourtroom) might result in more private case filings. Any increase, however, would be mitigated by the slightly smaller reductions in attorney backlogs.	2. The availability of judges would lead logically to more filings. This assumes that there are cases that are not now filed that could be -- perhaps an erroneous assumption given the many reasons attorneys file-- as a settlement tactic, on principle, etc., that are not related to a desire for courtroom treatment. If such an increase occurred, it would be small.
3. The high-moderate increase in the completion of criminal cases may cause a decline in civil filings.	3. Many attorneys handle, in federal courts, both civil and criminal matters. Increased criminal case completions will force these attorneys to neglect their civil matters in favor of criminal cases. Given the existence of a specialized criminal bar, however, this change may be small.

ADAPTATION RECORD

Round # 1

Actor Type Federal Attorney

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
1. Some reduction in preparation time for non-trial courtroom appearances in Civil/U.S. cases not subject to statutory priority.	1a. Change in judge non-courtroom queue is the only post-change result that would affect behavior. b. Good judge will over-schedule - i.e. too many cases set down for courtroom attention on a given day - on grounds that counsel will more often overestimate than under-estimate time required for an episode of courtroom service. c. Effect of over-scheduling is that often some case will take longer than expected and some other case will be "kicked over" - i.e. have to be rescheduled. d. "Kicking over" will be a frequent problem when the courtroom queue have four cases waiting (pre-change) but if it goes down to 2.34 (post-change), judge will most often be able to get through all cases scheduled. This means that this amount of reduction would eliminate the "kicking over" phenomenon. e. Consequence of having case kicked over is that counsel will have to prepare again for the courtroom activity that is re-scheduled. f. Implication of queue length reduction is some savings in non-courtroom preparation time - i.e. reduction in non-courtroom processing time.

ADAPTATION RECORD

Round # 1

Actor Type Federal Attorney (cont)

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
	g. As it affects Federal attorneys, this reduction would be in civil cases that presently receive low priority in a judge's courtroom queue - cases other than those with a statutory priority. h. More specifically, the alleviation in the kicking-over problem will be in the preparation time for non-trial episodes that are not usually disposed of quickly - e.g. hearing on motion to suppress evidence. (Sub-point here is tendency of judge, in taking cases from his queue, to favor those which will not take much time). i. How much the kick-over problem affects Federal counsel, versus private counsel, and hence, how much improvement there would be in preparation time depends on at least two factors which may vary among Federal districts: (a) How geographically wide-spread the private bar is - attorney travelling a long way may not have case kicked-over. (b) Whether judges treat Federal litigators the same as private bar, or regard their time as being less important. j. Additional point concerning filing note: Alleviation of kick-over problem would make small monetary claim cases more economically attractive to private bar - would take some that are now passed over. This is a moot point here, since as regards Federal court, those would mainly be diversity jurisdiction cases.

ADAPTATION RECORD

Round # 1

Actor Type Federal Attorney (cont)

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
	k. Point as to private bar: When a case has to be re-scheduled, this will sometimes mean that private counsel is delayed in clearing up some matter that would advance the case - i.e. would shift the case over to Federal counsel for next activity.

ADAPTATION RECORD

Round # 2

Actor Type Judge

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
1. Continue priorities with following changes:	
a) place private civil cases ahead of public civil cases for courtroom and non-courtroom activity.	1a. Shorten disposition time of private civil cases significantly.
b) delete the priority established in #7 in Round 1.	1b. Unnecessary.
2. Increase time spent on case-related activities to 75% by handling 1 more courtroom case per day and .4 non-courtroom case per day.	2. Effect very significant changes (upward) in average daily backlog of courtroom & non-courtroom activity and utilization time.

ADAPTATION RECORD

Round # 2

Actor Type Private Bar

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
1. Reduction in filings of all case types.	1a. "Junk" cases faced with reality of going to court, so fewer would be filed. b. Pressure of having to speed up handling existing cases will mean less time to spend on new cases.
2. Increase in filings of all case types.	2a. Tendency to file more cases given reduction in delay (if attorneys are turning away cases), meaning courts may be more attractive. b. If the judge becomes a better manager, and fewer cases are rescheduled, attorneys will spend less time on each case. This will leave time to file new cases.
3. Conclusion - These tendencies will cancel each other out and filings will not change.	3. (Reduction) change in elapsed time is not sufficient to make the use of courts attractive to potential litigants.

ADAPTATION RECORD

Round # 2

Actor Type Federal Attorney

OPINION AS TO : POTENTIAL ACTOR ADAPTATION	PREMISE
1. USA would assign a moderate amount of routine criminal cases to AUSA's who normally handle civil cases.	1a. Reduction in average elapsed time in criminal cases from 92.4 to 72.5 days is highly important, as it implies major increase in the pressure under which AUSA's assigned to criminal cases must work; particularly significant since, by statute, judge cannot pressure AUSA on criminal case for first 30 of those days; more significant than the reduction (and consequent increase in AUSA pressure) in Civil/U.S. cases. b. Increase in AUSA/criminal pressure enough to create serious morale problem, erode quality of performance, and push prosecutor to breaking point; cannot tolerate any further reduction in elapsed time average for criminal cases. c. Absent some alleviation of pressure, can expect "cheaper pleas" to be accepted, and somewhat more plea bargaining generally, resulting in further degradation in morale and quality of performance. d. One specific effect of pressure at the level implied by such a reduction in elapsed time would be that AUSA's could not work on cases as a series of complete, meaningful tasks; would have to be doing something on all cases every day, juggling them.

ADAPTATION RECORD

Round # 2

Actor Type Federal Attorney (cont)

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
	e. One rationale alternative to "cheap pleas" is to assign some of the routine criminal work to civil/U.S. AUSA's. This would hopefully be temporary. Given 12 AUSA/criminal and 5 AUSA/civil personnel - and it is assumed no additional personnel can be added to the litigation itself - the ease of doing this would depend on whether some of those 5 are already familiar with criminal case processing; otherwise, might have to draw on the civil AUSA's who are experienced litigators. f. If processing time has been reduced in criminal cases in response to growing pressure to move cases along, we would expect to find, after this reassignment of criminal work, quality of performance improve with a concommitant increase in preparation and some decrease in courtroom time in tried cases (owing to improved preparation). (Note: in Round 1, the changes in Resource Model parameters did not have AUSA/criminal personnel cutting corners, hence no need to restore any time on cases) g. Critical assumption relative to (c) above: We are assuming that a policy already exists referring to as many cases as possible to the States, and diversion is used to maximum extent - hence, there is no fat that could be trimmed through reduction in overall criminal caseload.

ADAPTATION RECORD

Round # 3

Actor Type Judge

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
1. Increase non-courtroom time spent on each case moderately. 2. Increase courtroom activity in private cases moderately.	1, 2. Increase judge utilization time.

ADAPTATION RECORD

Round # 3

Actor Type Private Bar

OPINION AS TO POTENTIAL ACTOR ADAPTATION	PREMISE
1. More plea bargaining in criminal cases.	1. Extra criminal U.S. Attorney, and decline in criminal elapsed time indicate extra pressure.
2. More time spent on civil/U.S. and federal question cases.	2. Increased civil and federal question completions and increased federal question elapsed time indicate less attention being paid to these cases.
3. More delays requested on civil/U.S. cases.	3. Increased pressure to complete civil cases.
4. More out of court settlements for civil/U.S. cases.	4. Increased pressure to complete civil cases.

Round 3 - U.S. Attorney unable to respond to outputs; wants to schedule a panel conference before proceeding.

END