76 8/7/69

Memorandum 69-102

Subject: Study 76 - Trial Preference

You will recall that one of the studies authorized by the 1969 Legislature is the matter of trial preference. This study was suggested by Ralph Kleps of the Judicial Council.

We have not obtained a research consultant on this topic. The staff felt that it might be one that could be handled by the staff. However, we have made a preliminary survey of this problem and we believe that it is necessary to obtain a research consultant. As Exhibit I (attached) indicates, there are at least 60 provisions that will need separate analysis to determine whether revision is needed. Such analysis may be difficult. Consider, for example, the preference for eminent domain cases. This preference involves the need of the public entity to preserve the date of valuation by bringing the case to trial within a year and the undesirable position of the property owner when a condemnation action is filed and, as a practical matter, he can no longer improve his property or dispose of it. These considerations would not be apparent without some thoughtful study. The other preference provisions would require similar analysis.

Attached are two law review articles and also (Exhibit II) a listing of articles on this subject. We indicate the scope and content of the various articles. None of the articles would be an adequate research study.

We have only a limited amount of money for research in the current fiscal year and it is likely that we will have substantially less during the 1970-71 fiscal year. Nevertheless, if we are to do anything on this topic, we will need a research consultant. The staff would give top priority

to a study on the procedural aspects of eminent domain law if we can find a consultant willing to undertake this study. Such a study would cost at least $5,000. We have $7,000 budgeted for research during the current year. Thus, only $2,000 is available for the trial preference study, an amount we consider inadequate in view of the substantial amount of work this study would involve. Nevertheless, the staff suggests that we attempt to obtain a consultant to prepare the needed study on trial preference at a compensation of $2,000. If the Commission considers this amount inadequate, we could request that we be permitted to transfer $1,500 from temporary help (or salary savings if we have any) to research to provide a compensation of $3,500--an amount that would be more adequate in view of the amount of work involved. Perhaps the Commission may wish to make another attempt to obtain a consultant on the procedural aspects of eminent domain before obtaining a consultant on trial preference.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT I

CALIFORNIA PREFERENCE STATUTES

Codes--Civil

Cal. Code Civ. Proc.

§ 44	probate and election appeals
§ 386	interpleader actions
§ 526a	actions against public officers
§ 527	injunction actions
§ 660	new trial motion, hearing
§ 867	validating proceedings--public agencies
§ 1005	shortening times for hearings
§ 1062a	declaratory relief actions
§ 1179a	unlawful detainer actions
§ 1241.7	declaratory judgments--park lands for highway use
§ 1264	eminent domain actions
§ 1291.2	arbitration award hearings

Cal. Agri. Code

§ 5601	abandoned crop actions

Cal. Bus. & Prof. Code

§ 2174	actions arising from rejection of application for examination to qualify for practice of medicine
§ 11525.1	subdivision plan actions

Cal. Educ. Code

§ 13416	school employee dismissal actions

Cal. Elections Code

§ 6432	primary election disqualification actions
§ 20080	election contests--time
§ 20335	election contests--hearings on affidavits
§ 20339	election contest appeals
§ 20365	presentation of affidavits--election contests

Cal. Fin. Code

§ 9518	reorganization of savings & loan ass'ns--disapproval appeals
§ 9657	reorganization of savings & loan ass'ns--hearings on plans

Cal. Govt. Code

§ 54580	bond validity actions
§ 56008	reorganization validity actions
§ 59671	assessment validity actions
§ 65907	zoning appeals

Cal. Health & Safety Code

§ 11785	actions to abate nuisances--narcotics

Cal. Ins. Code

§ 12629.44	rehabilitation of mortgage insurers--plan approval appeals

Cal. Mil. & Vet. Code

§ 395.06	reemployment, National Guard

Cal. Pub. Res. Code

§ 9149 election contests--soil conservation districts

§ 9150 election contest appeals--soil conservation districts

§ 13116.5 bond validity actions

Cal. Pub. Util. Code

§ 1762 stay order review hearings

§ 1767 preference of actions

§ 4652 for-hire vessels--preference to actions

Cal. Unemp. Ins. Code

§ 1853 actions under code, preference

Cal. Water Code

§ 8833 assessment actions

§ 20935 election contests--irrigation districts

§ 74133 election contests--conservation districts

Cal. Water Code--App.

§ 8-58 bond validity actions

§ 11-56 bond validity actions

§ 34-9 election contest actions

§ 37-11a bond validity actions

§ 40-44 assessment validity actions

§ 65-21 bond validity actions

Cal. Welf. & Inst. Code

§ 753 transfer juvenile proceedings

§ 800 juvenile actions--declaring ward

Uncodified statutes--Civil

1 Cal. Gen. Laws Act 3276(d)

§ 28	bond reassessment validity actions

1 Cal. Gen. Laws Act 877

§ 30	reassessment validity actions

Constitutional-Penal

Cal. Const. Art. I

§ 13, cl. 1	right to speedy trial

Codes-Penal

Cal. Pen. Code

§ 1048	criminal calendar order
§ 1050	priority policy
§ 1382	time limits for trial
§ 11203	unlawful liquor sales--abatement
§ 11228	red-light district abatement

Rules of Court

Rule	
207.1	setting short causes for trial
209(a)	setting pre-trial priorities
220(a)	setting trial priorities
225	motions to advance
510	cases entitled to priority

A motion to advance a case on calendar is generally recognized in appellate procedure, but is not covered by statute or rule in California.* See Moffit v. Ford Motor Co., 115 Cal. App. 499, 1 P.2d 994 (1931).

*Rule 225 may now cover this situation, although its coverage is directed toward trial.

EXHIBIT II

Law Review Articles: Trial Calendar Priorities

Witkin, New Rules on Appeal, 17 So. Cal. L. Rev. 232 (1944), at pp. 240-243.

Notes: Comments: Trial Preferences, 49 Colum. L. Rev. 1137 (1949).

Comments: California Preference Statutes, 40 Cal. L. Rev. 288 (1952).

Comments: Trial Calendar Advancement, 6 Stan. L. Rev. 323 (1954).

Notes: Comments: Legal Leap-Frog: In Pursuit of the Trial Calendar, 42 So. Cal. L. REv. 93 (1968).

Cf. also Case Comment: Preference in docketing denied though party aged, infirm, and destitute, 1 Buff. L. Rev. 172 (1951).

Hartshorne Priorities in Trials--an Effective Plan, 26 J. Am. Jud. Soc. 79 (1942) (Priority for cases ready for trial)

See also Corpus Juris Secundum, Trial §§ 32-34, for comparison of jurisdictional preference practices.

Witkin, New Rules on Appeal, 17 So. Cal. L. Rev. 232 (1944).

--More lengthy article discussing new 1944 Rules of Court, only part of which is relevant (at 239-243).

--Critical of trial calendar advancement by myriad statutes. Lists numerous examples and concludes the system has little to recommend it. Notes statutes drafted without consideration of organization and procedure of courts or of other statutes. Observes that many provisions are inconsistent because not comprehensively planned, and others are unworkable.

Brief discussion of policy underlying rules concerning calendar practices. Concludes statutory preferences should be repealed and entire area covered by court rules.

Notes: Trial Preferences, 49 Colum. L. Rev. 1137 (1949).

--Brief note (7 pages) discussing standards by which trial calendar preferences are granted in New York courts. Attempt to evaluate conflicting policies which shape standards--main emphasis on rules of New York courts.

--Outlines statutory scheme in New York before and after 1940 enactment giving trial courts power to formulate preference rules on case by case standard: "where the interests of parties will be served by an early trial," to avoid automatic category preferences.

--Finds a pattern of factors seemingly determining granting of preferences and gives case examples including (1) condition of parties or witnesses; (2) nature of the action; and (3) residence.

--Sees from cases a judicial propensity to confine preferences closely within precedentially established categories. Concludes preferences system is at best an expedient and sees ultimate solution in eliminating crowded calendars.

--No attention to schemes elsewhere. No discussion of an approach (overview) to problem. Policy discussion not very illuminating.

Comment: Calif. Preference Statutes, 40 Cal. L. Rev. 288 (1952).

--Good, short (12 pages) comment which correlates most of the important statutes regulating calendar priorities and proposes improvements after examining their application by various California courts.

--Analytically classifies statutes (civil, criminal, actions on appeal) and discusses them in order of descending priority, noting (1) those which require trial within a definite period; (2) those requiring an "immediate" or "speedy" trial; and (3) those taking precedence over other actions.

--Briefly discusses application by courts of preference statutes and concludes statutes not so unworkable that they need be abolished. Recommends legislative review and enactment of single statute listing definite order of priority.

--Lists principal preference sections in an Appendix, at 298-299. The list is incomplete and currently inaccurate since many of the statutes listed have been repealed and others have been added.

--No real discussion of policy behind priority statutes. No attention to schemes in other states.

Comment: Trial Calendar Advancement, 6 Stan. L. Rev. 323 (1954).

--Brief (10 pages) textual discussion in a 22 page Comment presenting background statutes and rules of court on calendar advancement. Two appendices (see below).

--Observes advancement no solution but justified as long as crowded dockets cause long waits for trial. Regards advancement as extraordinary remedy with very limited application. Thinks standard should be "extreme necessity" not simply inconvenience.

--Relies heavily on New York opinions, but presents picture for other jurisdictions, too. Finds kaleidoscopic pattern in statutes governing advancement in most jurisdictions. Gives specific examples of particular statutory grounds and cites case authorities.

--Discusses advancement at trial judge's discretion, noting New York standard, and finds most frequently exercised when litigant's financial or physical status would suffer without advancement.

--Thinks blanket advancements result in unfair preferences and believes particular circumstances of case itself should justify advancement, if at all, on case by case approach by trial judge.

--No examination of policy. Two Appendices: I presents1953 calendar congestion by state; II presents advancement statutes by state, although is incomplete--e.g., lists only 5 such provisions for California

Notes: Comments: Legal Leap-Frog: In Pursuit of the Trial Calendar Preference, 42 So. Cal. L. Rev. 93 (1968).

--Short (8 pages), not terribly helpful comment examining scope of present civil trial calendar preferences and suggesting criteria to determine when preferences should be granted.

--Discusses statutory and inherent judicial authority to advance cases--emphasis on New York. Examines conflicting New York cases without analysis unifying discussion.

--Re criteria, adopts view that legal status should not determine priority. Also rejects preferences to indigents (but not on status theory).

--Advocates rule that advancements should be granted where the remedy sought would disappear if the case were heart in its normal order, and gives election contests and abatement by death as examples. Also considers "continuing" injury (injunction) cases appropriate for advancement, but not "completed" injury cases (although admits possible exceptions).

--Argues standard of disappearing remedy preferable because it (1) applies to limited number of cases and (2) is more predictable than standard couched in terms of "justice."

--Attempts to formulate a unifying approach for priorities in trial calendars, but admitted exceptions begin to swallow rule.

EXTRACT

42 So. Cal. L. Rev. 93 (1968)

NOTES AND COMMENTS

LEGAL LEAP-FROG: IN PURSUIT OF THE TRIAL CALENDAR PREFERENCE

It is common knowledge that many courts, especially in the larger states, suffer a critical backlog of cases; the interval between the placement of a case on the calendar and its subsequent trial is often several years.[1] With the increasing delay due to crowded court calendars, there is an increasing need to rectify the consequent injustices. One means of rectification, the trial calendar preference, is used throughout the country. But the standards for granting preferences vary widely from jurisdiction to jurisdiction, and even from court to court within a jurisdiction. This comment examines the scope of present civil trial calendar preferences and suggests criteria for determining when they should be granted.

Trial delay has been severely criticized by all segments of the legal community because of the harm to litigants,[2] and because it tends to cause a loss of confidence in the capability of the judicial system.[3] Suggested solutions to this problem include an increase in the number of courts and judges,[4] more efficient use of existing court resources,[5] and the removal to other decision-makers of certain classes of cases now decided by the courts.[6] These pro-

---

[1] Institute of Judicial Administration, Calendar Status Study—1968; State Trial Courts of General Jurisdiction—Personal Injury Jury Cases, Aug. 12, 1968. In California, delays in the larger courts ranged from four and one half months (Santa Clara County) to twenty months (Contra Costa County). JUDICIAL COUNCIL OF CALIFORNIA, ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE CALIFORNIA COURTS 85 (1968). In New York, the delay has reached as much as six years. Johnson v. Danna Oil Co., 28 Misc. 2d 651, 216 N.Y.S.2d 314 (Sup. Ct. 1961).

[2] For example, the forcing of settlements on litigants who cannot afford to wait for their cases to come up, and the increasing difficulties in fact-finding as time goes by. Miller, *A Program for the Elimination of the Hardships of Litigation Delay*, 27 OHIO ST. L.J. 402, 404-05 (1966). Miller also discusses some of the benefits of trial delay. *Id.* at 403-04.

[3] *See generally*, H. ZEISEL, H. KALVIN & B. BUCHHOLZ, DELAY IN COURT (1959); Rosenberg & Soven, *Delay and the Dynamics of Personal Injury Litigation*, 59 COLUM. L. REV. 1115 (1959); Miller, *supra* note 2, at 402-05.

[4] Miller, *supra* note 2, at 406; McNeal, *Court Congestion—Sense or Nonsense?*, 32 INS. COUNSEL J. 100, 103 (1965); Tauro, *Congestion in the Courts*, 49 MASS. L.Q. 171, 174-75 (1964).

[5] Nix, *Civil Court Congestion in the Superior Court of California for the County of Los Angeles*, 55 GEO. L.J. 1019 (1966); Lawson, *Court Efficiency*, 40 CALIF. ST. B.J. 22 (1966).

[6] Sarpy, *Arbitration as a Means of Reducing Court Congestion*, 41 NOTRE DAME LAW. 182 (1965); Keeton & O'Connell, *Basic Protection—A Proposal for Improving*

posed solutions are of little avail to litigants who are now in court or who will be in the foreseeable future. For them the only remedy for hardship caused by delay is the trial calendar preference. By this means, a litigant may have his case adjudicated in advance of its "regular" order.

In most states, a judge is given by statute,[7] or assumes as part of his inherent authority,[8] the right to advance causes "in the interests of justice." Judicial authority to grant preferences is usually justified on the basis of the court's inherent power to control its own calendar.[9] The need for this power follows from the realities of litigation and human conduct. The court must be able to meet unexpected contingencies such as a sudden change in the ability of a witness to testify. The granting or withholding of continuances must be within its control so that the order of trial will be convenient for attorneys, parties and witnesses.

As might be expected, there is considerable uncertainty over what is encompassed by the term "in the interests of justice." The cases[10] provide an ostensive definition using examples such as the following: destitution, probability of death before the case reaches trial in its normal order, permanent disabling injury, and the judge's displeasure with one of the parties.

In New York, while nominally the destitute are granted preferences, it generally takes more than literal "destitution" to qualify. In the earlier cases, the reason for the moving party's destitution was not material. In *Auchello v. Brooklyn Bus Corp.*,[11] for instance, it appeared that the moving party had been on relief prior to the accident which was the subject of the suit. This was sufficient to warrant the granting of a preference.

Automobile Claims Systems, 78 HARV. L. REV. 329 (1964); King, *Arbitration of Automobile Accident Claims*, 14 U. FLA. L. REV. 328 (1961).

[7] GA. CODE ANN. § 24-3324 (1933); HAWAII REV. LAWS § 231-4 (1955) IND. ANN. STAT. § 2-1902 (1968); MASS. GEN. LAWS ANN. ch. 231, § 59A (1956); N.Y. CIV. PRAC. § 3403 (McKinney 1963); OHIO REV. CODE ANN. § 2311.07 (1953); PA. STAT. ANN. tit. 12, Rule 214 (g) (1953); W. VA. CODE ANN. § 56-6-1 (1966).

[8] *See, e.g.*, Landis v. North American Co., 299 U.S. 248, 255 (1936); Kriger v. Holland Furnace Co., 12 App. Div. 2d 44, 46-47, 208 N.Y.S.2d 285, 289 (1960).

[9] It is ancient and undisputed law that courts have an inherent power over the control of their calendars, and the disposition of business before them, including the order in which disposition will be made of that business.

Plachte v. Bancroft, Inc., 3 App. Div. 2d 437, 161 N.Y.S.2d 892, 893 (1957). "[This] proposition is axiomatic . . . ." Cohn v. Borchard Affiliations, — App. Div. 2d —, 289 N.Y.S.2d 773 (1968). This principle has been extended to hold that the legislature may not direct the courts when to try advanced causes, short of a constitutional change. Riglander v. Star Co., 98 App. Div. 101, 90 N.Y.S. 772 (1904).

[10] Almost all of the reported cases are from New York. This is so for two reasons: unlike most states, New York permits appeals as a matter of right from orders on preferences, N.Y. CIV. PRAC. § 5701 (a) (McKinney 1963); and New York cases on the trial-court level are often published.

[11] 257 App. Div. 857, 12 N.Y.S.2d 734 (1939).

However, it now appears that destitution must be caused by the accident which is the subject of the complaint. In *Nazario v. Martha Taxi Co.*,[12] a leading case for the latter proposition, the court explained that the reason for granting preference on the basis of destitution is that those who are on the relief rolls must be removed as soon as possible.[13] Implicitly, the court assumed that those on relief prior to an accident would remain on the rolls in spite of a possible subsequent judgment in their favor.[14] In *Nazario* the moving party was a minor who would not achieve his majority by the time the case came to trial in the normal course of events. Since any recovery for him was required to be held in trust until he came of age, making it unavailable for his support until then, the court held that no preference was merited. The court distinguished *Auchello* (using the facts from the record on appeal) on the basis that the plaintiff, a seventy-year-old widow, although on relief prior to the accident, had been removed from the rolls because she was admitted to a state hospital, where she was expected to remain for the rest of her life. The *Nazario* court reasoned that therefore, she was deprived by the accident of relief, and was completely destitute. The court failed to note that in *Auchello*, the plaintiff would have had no use for relief, since her living expenses were limited to her hospital care, and that therefore an advancement of the trial would have gained her nothing.

No case suggests that in order to claim a preference for destitution one must be on relief,[15] but the decisions conflict when the party is on relief. Some hold that the relief recipient is disqualified from asserting the right to a preference;[16] others hold that being on relief is prima facie evidence that the reasons for preference exist.[17] The cases holding the latter position say that preference must be granted to remove such litigants from the welfare rolls as soon as possible;[18] those taking the former position believe that preference should be used only where the party requesting it cannot support himself until the hearing on the case.[19]

---

[12] 41 Misc. 2d 1010, 247 N.Y.S.2d 6 (Sup. Ct. 1964).

[13] The strongest statement of this position seems to be Morales v. Rosalt Taxi Corp., 208 Misc. 967, 147 N.Y.S.2d 847 (Sup. Ct. 1955), where the party responding to the motion for advancement pointed out that the plaintiff was receiving more from his relief check than he had earned while he had been working. The court said that its duty was to remove the plaintiff from the relief rolls as soon as possible.

[14] This is so for two reasons. First the judgment will not include any sum for loss of earnings. Second, "in most cases, the welfare agency will recoup most of the recovery in payment of aid already rendered . . . ." 4 J. WEINSTEIN, H. KORN, & A. MILLER, NEW YORK CIVIL PRACTICE § 3403.11 (1963) at 34-42.

[15] *Id.* § 3404.12 (1968 Supp.).

[16] Brown v. Upfold, 204 Misc. 416, 123 N.Y.S.2d 342 (Sup. Ct. 1953).

[17] Nazario v. Martha Cab Corp., 41 Misc. 2d 1010, 247 N.Y.S.2d 6 (Sup. Ct. 1964).

[18] *Id.*

[19] Brown v. Upfold, 204 Misc. 416, 123 N.Y.S.2d 342 (Sup. Ct. 1953). It has been suggested that this conflict reflects rural-urban differences. 4 J. WEINSTEIN, H.

The courts also disagree over whether old age alone is a sufficient reason for advancing the trial date.[20] Some courts, in addition to old age, require evidence that the death of a party is likely[21] to occur before the case goes to trial in its regular order.[22] The motivation in either case seems to be judicial concern that the injured party, and not his heirs, receive the compensation. The only rational bases for the old-age preference are that abatement of causes of action due to death of the plaintiff be prevented, and that the party who was injured know that he is vindicated. Certainly the giving of testimony is no great problem, except insofar as it can not be obtained by deposition.

The most unusual reason for granting a preference "in the interests of justice" is that the defendant is uncooperative.[23] A failure to make a reasonable settlement offer on the part of the defendant is occasionally sufficient cause to grant a preference to the palintiff. In *Teller v. Clear Service Co.*,[24] the plaintiff had extensive injuries which she alleged had required an expenditure of $1,400. Defendant, a taxicab company, made settlement offers at pretrial of $2,500 and later, $3,500. Defendant's answer alleged lack of negligence and contributory negligence. The court granted the plaintiff's motion for preference, stating that the settlement offer was not adequate to make pretrial meaningful. The court, however, was more interested in condemning the structure of the New York taxicab industry than in finding reasons to support its decision. The court never considered, for instance, the possibility that the defendant thought its offer adequate, given the plaintiff's chance of winning the suit.

KORN, & A. MILLER, NEW YORK CIVIL PRACTICE § 3403.11 (1968 rev.).

A variation on this theme can be observed in the case where the party opposed to the granting of the preference indicates a willingness to provide sufficient funds to pay for the moving party's expenses and medical care. In such a case, the motion for preference is generally denied, so long as there is no obligation on the part of the moving party to refund the money. Johnson v. Greyhound Lines, 282 App. Div. 709, 122 N.Y.S.2d 44 (1953).

[20] Blank v. Medical Arts Center Hospital, 34 Misc. 2d 168, 230 N.Y.S.2d 792 (Sup. Ct. 1956). The individual requesting the preference was over 80 years old.

In Connecticut, any person who is 65 years old, or who will reach that age during the course of the trial in its normal order, is automatically advanced. CONN. GEN. STAT. REV. § 52-192 (1958). In New Haven v. Porter, 22 Conn. Supp. 154, 164 A.2d 236 (Sup. Ct. 1960), this was held inapplicable to New Haven County, which was not a natural person (albeit over 65 years old). The county did receive a preference as a governmental entity.

[21] Brier v. Plaut, 37 Misc. 2d 476, 235 N.Y.S.2d 37 (Sup. Ct. 1962); Kerry v. American Warm Air Heating Co., 32 Misc. 2d 935, 223 N.Y.S.2d 946 (Sup. Ct. 1961); Rinzler v. Manufacturer's Trust Co., 190 Misc. 710, 75 N.Y.S.2d 867 (Sup. Ct. 1947).

[22] See note 33 *infra* and accompanying text.

[23] Montelione v. Econ-O-Wash, Inc., 19 App. Div. 2d 545, 240, N.Y.S.2d 841 (1963); Teller v. Clear Service Co., 9 Misc. 2d 495, 173 N.Y.S.2d 183 (Sup. Ct. 1958).

[24] 9 Misc. 2d 495, 173 N.Y.S.2d 183 (Sup. Ct. 1958). This standard has been severely criticized. Wolfe v. Laverne, Inc., 17 App. Div. 2d 213, 214-15, 233 N.Y.S.2d 555, 556-57 (1962).

In almost all jurisdictions, preferences are automatically granted to certain causes of action or to certain specified parties. These are usually granted by legislation, but occasionally by court rule.[25] The range of subjects is wide; contract, divorce, declaratory judgment, suspension and removal of tax collectors, monopoly proceedings, and medical malpractice suits[26] are examples indicating the varying approaches of different jurisdictions. The parties eligible for such preferences are equally varied.[27]

The state is widely accepted as a party entitled to preference. This is either mandated by statute,[28] or is considered part of the inherent right of the sovereign.[29] The origin of this "inherent right" seems to lie in early common law crown legislation.[30]

---

[25] *See generally* Note, *Trial Calendar Advancement*, 6 STAN. L. REV. 323, 325 (1954).

[26] *Id.* at 340-46. Where a contract action pleads a tort as an alternative ground for relief, no preference will be granted. Bactish v. Levine, 2 App. Div. 2d 985, 157 N.Y.S. 2d 759 (1956). Further, a personal injury action founded on breach of warrant does not merit the contract preference. Hedervary v. Lord & Taylor, 280 App. Div. 898, 115 N.Y.S.2d 681 (1952); Lyon v. Burtis, 157 Misc. 325, 284 N.Y.S. 106 (1933).

[27] For example, receivers of insolvent corporations, cases involving executors and administrators of estates, trustees in bankruptcy, and the state. *See* Note, *supra* note 25, at 340-46.

[28] *See, e.g.*, ARK. STAT. ANN. § 34-209 (1947); PA. STAT. ANN. tit. 12, Rule 214 (1953); W. VA. CODE ANN. § 56-6-1 (1966).

[29] Commissioners of State Ins. Fund v. Dinowitz, 179 Misc. 278, 39 N.Y.S.2d 34 (Sup. Ct. 1942). This case rests upon cases which adopted a common law statute, which made the sovereign a preferred creditor, and granted him a trial calendar preference. *See* note 30, *infra*. In re Carnegie Trust Co., 206 N.Y. 390, 99 N.E. 1096, *aff'g* 151 App. Div. 606, 136 N.Y.S. 466 (1912), which involved the state's right as a preferred creditor, stated that 33 Hen. 8, ch. 39, § 74 was adopted as part of the common law, and held that the state succeeded to the sovereign's right. *Id.* at 396-98, 99 N.E. at 1098-99. *Dinowitz*, however, cited *Carnegie* for the proposition that the state succeeded to the right of the sovereign as to trial calendar preferences. *Id.* at 280, 39 N.Y.S.2d at 37.

[30] Henry had Parliament pass the following statute:

> And be it further enacted by the authority aforesaid, that if any suit be commenced or taken, or any process be hereafter awarded for the King, for the recovery of any of the King's debts, then the same suit and process shall be preferred before the suit of any person or persons: (2) and that our said sovereign lord, his heirs and successors, shall have first execution against any defendant or defendants, of and for his said debts, before any other person or persons, so always that the King's said suit be first taken and commenced or process awarded for the said debt at the suit of our said sovereign lord the King, his heirs or successors, before judgment given for the said other person or persons.

33 Hen. 8, ch. 39, § 74. Henry's financial difficulties suggest that this statute, like the Statute of Uses, 27 Hen. 8, ch. 10, § 10, was passed to help combat a "depletion . . . of feudal revenues." *See* 4 W. HOLDSWORTH, A HISTORY OF ENGLISH LAW 450 (1924). The above quoted statute would improve Henry's financial position in two ways. First, it made the sovereign a preferred creditor. Second, it enabled the sovereign to go to trial not only on the suits which had already been through the court delays, but as well on the suits which were still enmeshed in the calendar.

It seems clear that the legal role of the party should be of no significance, of itself, in establishing the criteria for the granting of trial court preferences. It may be true that in certain instances the state, as a party, may require an advancement. However, the blanket granting of advancements to the state based upon ancient English statute, or other vague considerations of "sovereign prerogative," is impossible to justify in a modern trial context.

Preferences granted to indigents are similarly indefensible. The purported reason behind such advancements is the concern of the courts that, welfare being a burden to the general population, it is in the social interest to remove people from the welfare rolls as soon as possible.[31] But it is questionable whether the interests of the general population in removing people from the welfare rolls should be held in greater esteem than the interests of other litigants who at present must defer to the relief recipients, while those other litigants presumably are taxed to pay for the welfare program. Further, insofar as welfare provides an adequate means of livelihood, a party on relief is not so deprived of necessaries by the delay that he needs an advancement over others awaiting trial. If welfare does not provide an adequate means of livelihood, the remedy lies within the province of the legislatures.

The use of trial calendar preferences suffers a deficiency common to palliatives—it not only fails to cure the disease, it makes the disease harder to cure. It contributes nothing to the broader problem of eliminating court congestion because for each case advanced, the remaining cases are set back in their order of appearance. In addition, it adds a new class of cases to be litigated, those in which the issue is "should preferences be granted," thus actually increasing the amount of congestion.[32] The problems that can arise due to granting of trial calendar preferences indicate that they should be limited to situations where their necessity is clearly dictated by the injury that will be done if they are withheld.[33]

The purpose of bringing a civil suit is to obtain the remedy which the law provides; but taking cases in their normal order on a congested calendar may destroy the remedy sought. This suggests the appropriate rule: advancements should be granted where the remedy sought would disappear if the

---

[31] Nazario v. Martha Cab Corp., 41 Misc. 2d 1010, 247 N.Y.S.2d 6 (Sup. Ct. 1964).

[32] The extent of this litigation is undetermined, but probably varies with the backlog of cases.

[33] It is worth noting that great responsibility falls on the judge. Occasionally, the motion is unopposed, and it is up to the judge to represent all of the litigants whose cases would be displaced. Further, where there is a dispute of fact about whether the moving party deserves a preference, *e.g.*, whether he is really likely to die before the trial in its regular order, or whether his injuries are sufficiently severe, it is generally held that that dispute cannot be determined except on the merits. Therefore the advancement is granted to determine the fact of whether a preference is deserved, along with the rest of the facts in the case.

case were heard in its normal order. In such situations advancement serves a remedial function, not a punitive one, as in the case of an "inadequate" settlement offer. Two examples of situations where the application of this rule would result in advancement are election contests and abatements of causes of action. A suit challenging the validity of an election which is not heard until two years after the term of the contested office has expired would provide no remedy at all. Similarly, where the cause of action abates on the death of the plaintiff,[34] the requested relief would vanish were the plaintiff to die during the wait for a hearing. Where it can be determined in advance that the remedy is unlikely to survive the delay the case should be advanced. But where the remedy continues to exist, but is only delayed, there is no reason for an advancement.

Similar results would obtain in the case of injuries which continue or increase, such as actions for unlawful detainer, or actions to prevent the taking of *profits à prendre*. The remedy for severe cases of this order is the temporary restraining order and the preliminary injunction.[35] Since these remedies are, by definition, required immediately in order to be effective, their disposition would have to be advanced.[36] The eventual solution of the underlying dispute would, however, be taken in its normal order.

In the case where the injury is "completed," such as the usual tort or breach of contract case, advancement would be improper. The additional harm which accrues while the litigants await trial is due to congestion and is common to all litigants who are victims of delay. Since all have the same problem there is little reason to favor one over the other.

There may, however, be rare cases where the injury might be considered "completed," yet in which delay may cause such severe problems that for practical purposes the remedy is destroyed. For example, in *Weinstein v. Levy*,[37] as a result of an accident the injured party suffered an "hysteric anxiety" taking the form of paralysis of a leg. Doctors stated that the hysterical symptoms could not be cured until the conclusion of the lawsuit. They further stated that if the symptoms remained uncured for a period of years, consonant with the delay in the trial calendar, the hysterical paralysis would degenerate into an actual, physical paralysis which would be incurable.

---

[34] Absent statutory provision, purely personal torts still abate on the death of the plaintiff. Birmingham v. Walker, 267 Ala. 150, 101 So. 2d (1958); Morrison v. Perry, 104 Utah 151, 140 P.2d 772 (1943). *Cf.* Williams v. Rhodes, 89 S. Ct. 5 (1968) (ballot listings).

[35] *See generally* 3 W. Barron & A. Holtzoff, Federal Practice and Procedure (Rules ed.) §§ 1432, 1433 (1958); 7 J. Weinstein, H. Korn, & A. Miller, New York Civil Practice §§ 6311, 6313 (1968 rev.); 1 B. Witkin, California Procedure, Provisional Remedies §§ 28-36 (1963).

[36] They are at present. In California, all injunctions are entitled to advancement. Cal. Code Civ. Pro. § 527 (West 1956).

[37] 18 App. Div. 2d, 239 N.Y.S.2d 752 (1963).

The remedy in this case, completion of the suit, would have had as its purpose a cure. But the cure would have become impossible by the time that the remedy, in normal order, became available. The case properly received a preference.

The advantage of using the disappearing remedy as a criterion for granting advancements is that it applies to a fairly limited number of cases, thereby working only small prejudice to litigants with non-preferred cases. Further, it is considerably more predictable than reference to a vague notion of "justice." Whether a remedy would disappear would be easily to determine for both judge and lawyer. Whether an advancement is in the "interests of justice," is not so clear in many cases.

There are two additional areas where advancements are merited. When cases with related problems are filed, an advancement should clearly be given to the case later filed, in order to consolidate them and thereby reduce court calendar congestion. In such a case, no one is injured by the advancement;[38] indeed, all litigants are benefited by the conservation of court time. The other case is the one which is remanded. Here the parties have already spent their time awaiting trial. To make them do this twice can in itself work a grave injustice.[39]

Nevertheless, it should again be emphasized that the major problem areas are due to court congestion. All litigants suffer injury by this delay which will continue, unaffected by advancements. The trial calendar preference, whether applied liberally or narrowly, cannot cure it. But until congestion in the courts is ended, trial calendar advancements will be necessary to prevent gross injustices to some litigants.

---

[38] There is additional delay for the litigants who stand in order of filing between the earlier case and the later, to the extent that the first trial is made longer by the additional party. But for those filing after the later litigant, there should be an appreciable saving of time.

[39] Authority on this point is scarce. It is probably done everywhere as a matter of course, the rationale being that the additional delay is caused by the court, because it ruled erroneously.

EXTRACT

6 Utah L. Rev. 323 (1958)

Trial Calendar Advancement

Four and a half years is a long time if you are a litigant waiting for a case to come to trial. Yet it may take this long from the date of filing a complaint until a jury case comes to trial in metropolitan New York.[1] Although this is an extreme example, delays are sufficient in other cities to make trial calendar congestion a matter of popular knowledge.[2] Even in nonjury cases the wait may be two years.[3] And the situation seems to get worse with time. For example, in 1950 the jury trial backlog of a New York trial court was thirty-three months; by 1953, the delay had grown to fifty-six months.[4] Obviously, the number and efficiency of courts have not kept pace with the increased litigation produced by growing populations and the greater complexity of modern life.[5] The solution to the problem is not easy. New Jersey is one of the few states to overcome a bad case of congestion, and it took a complete overhauling of the judicial system to do it.[6]

To the litigant anxious to get his case tried, the hope of reforming the court structure is no hope at all. His immediate concern is to get to trial, and there is only one way to beat the delay—advancement of his case to the head of the trial calendar. Advancement is no solution to the problem of congestion. On the contrary, the time trial judges spend considering motions for advancement delays the judicial machinery even further. Advancement is an expediency measure with only one purpose: to mitigate some of the more severe hardships created by the long wait for trial.

There are various reasons why a litigant might have a special interest in advancement other than an ordinary desire to get the case settled. A key witness may move away or die, and his mem-

1. For a report on trial calendar congestion in 1953 made by the Institute of Judicial Administration, see Appendix I, pp. 332–39 *infra*. See also The New York Law Journal, p. 97, cols. 7–8 (July 17, 1953).

2. See *Legal Log Jam in Chicago*, Life, Nov. 10, 1952, pp. 127–33; Neuberger, *Justice Comes Too Late*, Reader's Digest, Sept. 1951, pp. 26–28.

3. See Appendix I.

4. The New York Law Journal, *supra* note 1; see Appendix I.

5. For example, in Denver no new judicial tribunal has been created within the last twenty-five years even though the population has increased by fifty percent. And in Portland, Oregon, there is one judge for every 70,000 people, while in 1920 there was one judge for each 42,000. Neuberger, *supra* note 2, at 26–28.

6. See Warren, *New Jersey and National Judicial Standards—A Comparison*, 4 Rutgers L. Rev. 597 (1950); Hartshorne, *Progress in New Jersey Judicial Administration*, 3 Rutgers L. Rev. 161 (1949).

ory may fade with time. The wait for reimbursement may subject a plaintiff to extreme physical or financial hardship. He may be seriously injured and unable to pay for needed medical care, or physically disabled and unable to work, living off dwindling savings or public relief. A businessman may need the recovery in a contract action to keep himself solvent. Or the case may involve a matter of great public importance, such as the settlement of an election dispute.

As long as crowded dockets cause long waits for trial, there will always be necessitous cases that justify advancement. However, because every advancement pushes back all the other cases on the docket, it should be regarded as an extraordinary remedy with very limited application. There may be a temptation to think that the only effect of a single advancement will be to delay slightly the rest of the calendar. But advancement in one doubtful case makes it difficult to deny a plea in a similar case. Every case of advancement should be based on extreme necessity, not just inconvenience.[7] This attitude has not always prevailed in the minds of trial judges deciding individual cases. And the absence of a critical attitude is especially significant when it is realized that a motion for advancement is not always contested. The trial judge may be the only representative of the adverse interests of other litigants waiting their turn on the trial calendar. Moreover, since rulings on advancement motions are not appealable in most jurisdictions,[8] the trial judge is ordinarily the court of last resort for a litigant who contests his adversary's motion to advance. By the time the question is raised on appeal after judgment, the damage from the wait for trial has been done; reversal of the trial judge for denying advancement will accomplish nothing. This is not necessarily true if the trial judge grants a motion that is contested. Here the advancement may have caught the opposing party unprepared for trial. Of course, it is another question whether such a disadvantage, resulting merely from the elimination of an abnormal wait for trial, would warrant reversal on appeal. No such cases have been found. However, at least one trial judge denied a motion for advancement on the ground that

7. See Brown v. Upfold, 123 N.Y.S.2d 342, 344 (Sup. Ct. 1953); Healy v. Healy, 198 Misc. 688, 689, 99 N.Y.S.2d 874, 877 (Sup. Ct. 1950).

8. This is because advancement rulings are not final judgments. See, *e.g.*, Burdick v. Mann, 59 N.D. 611, 231 N.W. 545 (1930); CAL. CODE CIV. PROC. § 963 (Deering, 1953).

the opposing party was unprepared because of his reliance on a long wait for trial.[9]

New York, with an appellate division of its general trial courts, permits immediate appeals from rulings on advancement motions themselves.[10] Because of this, and since New York trial court opinions are generally reported, most available opinions on advancement are from that state's courts. However, the problems involved in those cases have significance to trial judges and attorneys in all jurisdictions which have congested court calendars.

Advancement at Common Law

In the less crowded courts of the early common law, advancement was a rarely needed remedy. If advancement was sought, the trial judge had the discretion to grant it as part of his recognized power to control his own calendar.[11] The result was an approach to each case on its merits, with no fixed rules adopted. For example, one court advanced a case so a witness, who was a public officer, could return to his work in the country.[12] Another court gave preference to a bill of lading dispute to allow a ship to sail on schedule.[13] There was only one general limitation on the trial judge's discretion: the state was entitled to advancement as a matter of right when it was a party.[14]

Statutes and Rules of Court

Today all but a few jurisdictions have statutes governing advancement on the trial calendar.[15] The diverse provisions from jurisdiction to jurisdiction form a kaleidoscopic pattern. Some statutes specify types of actions to be advanced as a matter of

9. See Kagan v. City of New York, 44 N.Y.S.2d 893 (Sup. Ct. 1943).

10. N.Y. Civ. Prac. Act § 609; Malus v. Alter, 135 Misc. 212, 237 N.Y. Supp. 435 (1st Dept. 1929); William H. Waters, Inc. v. Hatters' Fur Exchange, Inc., 185 App. Div. 803, 174 N.Y. Supp. 90 (1st Dept. 1919); Buell v. Hollins, 16 Misc. 551, 38 N.Y. Supp. 879 (1st Dept. 1896); Seifermann v. Wolfrath, 24 Misc. 406, 53 N.Y. Supp. 263 (N.Y. City Ct. 1898).

11. Landis v. North American Co., 299 U.S. 248 (1936); Burdick v. Mann, 60 N.D. 710, 236 N.W. 340 (1931); Hutchinson v. Stephens, 1 Keen 659, 48 Eng. Rep. 461 (1837), *aff'd*, 2 Myl. & Cr. 452, 40 Eng. Rep. 712 (1837).

12. See Swift v. Grace, 9 Price 146, 147 Eng. Rep. 49 (1821).

13. See Anderson & Co. v. English & American Shipping Co., 1 Com. Cas. 85 (1895).

14. See Commissioners of State Ins. Fund v. Dinowitz, 179 Misc. 278, 280, 39 N.Y.S.2d 34, 37 (Sup. Ct. 1942).

15. Statutory advancement provisions have been found in forty-eight jurisdictions and are collected in Appendix II, pp. 340–44 *infra*.

right;[16] others leave the question to the discretion of the courts;[17] still others set out a few blanket rules in addition to a grant of discretionary authority to the trial judges.[18] One statute provides for advancement of cases arising "ex delicto";[19] another says contract actions shall receive priority.[20] Some of the other preferred actions scattered throughout the statutes are: probate,[21] wages,[22] mental capacity,[23] injunction,[24] declaratory judgment,[25] actions by receivers of insolvent corporations,[26] petitions of life tenants to execute oil and gas leases,[27] actions to recover possession of real

16. Alabama, Alaska, Arkansas, California, Connecticut, Oklahoma, Rhode Island and Virginia. See Appendix II.

17. Delaware, District of Columbia, Hawaii, Illinois, Kentucky, Maine, Maryland, Minnesota, Missouri, Nevada, North Carolina, Oregon, South Carolina, Vermont and Wyoming. See Appendix II.

18. Arizona, Colorado, Federal Rules of Civil Procedure, Georgia, Indiana, Iowa, Louisiana, Massachusetts, Mississippi, Nebraska, New Hampshire, New Mexico, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, West Virginia and Wisconsin. See Appendix II.

Cases involving an exercise of a trial judge's discretion include: Los Angeles Brush Corp. v. James, 272 U.S. 701 (1927) (patent case); Anderson v. District Court, 20 F.2d 132 (9th Cir. 1927) (suit to enjoin a registration scheme for seamen); Knowles v. Blue, 209 Ala. 27, 95 So. 481 (1923) (negligence action); Anderson v. Erberich, 195 Ark. 321, 112 S.W.2d 634 (1938) (personal injury action); Ausley v. Cummings, 145 Ga. 750, 89 S.E. 1071 (1916) (fraud case); Freimann v. Gallmeier, 116 Ind. App. 170, 63 N.E.2d 150 (1945) (change of venue proceeding); Collings v. Gibson, 220 N.W. 338 (Iowa 1928) (wrongful death action); Commercial Nat. Bank v. Bernstein, 159 La. 789, 106 So. 305 (1925) (suit on promissory notes); Taft v. Thomajan, 249 Mass. 299, 144 N.E. 228 (1924) (suit by attorney for compensation for services); Lehman v. Lehman, 216 Minn. 538, 13 N.W.2d 604 (1944) (divorce case); State v. McFadden, 43 Nev. 140, 182 Pac. 745 (1919) (action to recover money); Cherry v. Milam, 66 Okla. 162, 168 Pac. 241 (1917) (action to foreclose and collect on a promissory note); Hughes v. Sanders, 243 S.W.2d 211 (Tex. Civ. App. 1951) (switching order of two interrelated suits).

19. Louisiana. See Appendix II. The case of King v. New Orleans Ry. & Light Co., 140 La. 843, 74 So. 168 (1917), construed "ex delicto" as meaning "a tort or quasi offense," and stated that the statutory meaning was this ordinary, well-defined one. Previously, Morris v. St. Bernard Cypress Co., 140 La. 511, 73 So. 345 (1916), had found the statute constitutional under the equal protection clause.

20. Massachusetts. See Appendix II.

21. Colorado and Connecticut. See Appendix II.

22. Ohio, Pennsylvania and Rhode Island. See Appendix II.

23. Louisiana and Pennsylvania. See Appendix II.

24. California, Colorado, Connecticut, Louisiana, Massachusetts and Mississippi. See Appendix II.

Cases requiring fast litigation if any relief is to be effective have been advanced where the validity of plaintiff's claim was too uncertain to grant a temporary injunction. Anderson-Friberg, Inc. v. Justin R. Clary & Son, Inc., 98 F. Supp. 75 (S.D.N.Y. 1951); Steinfur Patents Corp. v. Philip Singer & Bro., 44 F.2d 226 (S.D.N.Y. 1930); Cosmopolitan Tourist Co. v. Eisler, 73 N.Y.S.2d 168 (Sup. Ct. 1947).

25. Arizona, California, Federal Rules of Civil Procedure, New Mexico and Utah. See Appendix II. *Compare* Klement v. Superior Court, 21 Cal. App.2d 456, 69 P.2d 869 (3d Dist. 1937) (advancement sustained), *with* Kessloff v. Pearson, 37 Cal.2d 609, 233 P.2d 899 (1951) (advancement denied).

26. Connecticut. See Appendix II.

27. Arkansas. See Appendix II.

property,[28] monopoly and restraint of trade proceedings,[29] and cases of "public importance."[30]

Cases involving governmental interests are the most common type given preference by the statutes. Eleven states have codified the broad common-law rule that a state as a party is always entitled to advancement.[31] There are also specific provisions compelling advancement of important public matters such as election contests,[32] and matters of lesser urgency, such as the validity of a local "improvement district" formation.[33] Appeals from administrative decisions, especially workman's compensation awards, have also been given priority ratings.[34]

In addition to the statutory provisions, there are many blanket rules made by the courts to limit the discretion of the trial judge.[35] Some of the many actions that may be automatically advanced under various rules of court are: divorce,[36] support and maintenance,[37] mental competency,[38] wrongful death,[39] contract,[40] and cases involving executors and administrators of estates[41] and trustees in bankruptcy.[42]

28. California. See Appendix II.

29. Louisiana and Nebraska. See Appendix II.

30. Nebraska. See Appendix II.

31. Arkansas, Connecticut, Georgia, Louisiana, Nebraska, New York, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia. See Appendix II. For cases applying the statutory provision, see Commissioners of State Ins. Fund v. Statland, 181 Misc. 117, 45 N.Y.S.2d 517 (Sup. Ct. 1943); Commissioners of State Ins. Fund v. Dinowitz, 179 Misc. 278, 39 N.Y.S.2d 34 (Sup. Ct. 1942). New Jersey, without a statutory provision, has also advanced a case in which the state had a substantial interest. *In re* Hague, 103 N.J. Eq. 505, 143 Atl. 836 (Ch. 1928).

32. Connecticut, Louisiana, Massachusetts, Mississippi, New Hampshire, Ohio and Oklahoma. Texas allows advancement of actions to contest party nominations. See Appendix II. For a case on the Texas statute, see McBeth v. Streib, 96 S.W.2d 992 (Tex. Civ. App. 1936).

33. Arkansas. See Appendix II.

34. Connecticut, Iowa, Louisiana, Massachusetts, New Hampshire, Ohio and Rhode Island. See Appendix II.

35. The following states have statutes expressly giving trial and/or appellate courts authority to make such rules: Arizona, Colorado, Delaware, District of Columbia, Federal Rules of Civil Procedure, Illinois, Iowa, Kentucky, Louisiana, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, South Carolina, Tennessee, Texas, Utah and Vermont. See Appendix II.

36. Letter of Aug. 5, 1953, from Thomas F. McDermott, Assistant Clerk of the Superior Court, New Haven, Connecticut, on file with the *Stanford Law Review*.

37. *Ibid.*

38. Letter of Sept. 15, 1953, from A. Carson Simpson, Special Master, Philadelphia, Pennsylvania, on file with the *Stanford Law Review*.

39. Letter of Aug. 3, 1953, from Maxwell M. Flamm, Counsel to Kings County Clerk, Brooklyn, New York, on file with the *Stanford Law Review*.

40. *Ibid.*

41. See note 36 *supra*.

42. *Ibid.*; letter of Aug. 10, 1953, from William V. Connell, Clerk of the United States District Court for Southern District of New York, on file with the *Stanford Law Review*.

Advancement at the Trial Judge's Discretion

In addition to specifying particular grounds for advancement, many of the statutes and rules of court give the trial judge broad discretion to advance other cases.[43] For example, the New York statute says he may advance where "the interests of justice will be served by an early trial."[44] This flexible standard permits the trial judge to consider each individual case on its merits. The discretion has been exercised most frequently when the litigant's financial or physical status would cause great hardship if advancement were not granted.

There is some problem as to when financial hardship should justify advancement.[45] In New York, where most of the reported cases arise, the motion has usually been denied if the party seeking advancement is not completely destitute.[46] In most of the cases, the test for destitution has been whether the plaintiff was a public charge.[47] In the past, advancement has been almost auto-

43. Georgia, Hawaii, Indiana, Kentucky, Massachusetts, Minnesota, Nebraska, New York, Ohio, Pennsylvania, West Virginia and Wyoming. See Appendix II.

44. See Appendix II. Cases applying this rule include: Bernstein v. Strammiello, 202 Misc. 823, 120 N.Y.S.2d 490 (Sup. Ct. 1952); Kempler v. Kempler, 198 Misc. 200, 97 N.Y.S.2d 637 (Sup. Ct. 1950); City Bank Farmers Trust Co. v. Aldine Paper Co., 192 Misc. 1042, 83 N.Y.S.2d 362 (Sup. Ct. 1948); Conroy v. Erie R.R., 188 Misc. 59, 66 N.Y.S.2d 433 (Sup. Ct. 1946).

45. On this problem, see Rogers v. Derris, 281 App. Div. 697, 117 N.Y.S.2d 594 (2d Dept. 1952); Malek v. City of New York, 279 App. Div. 929, 110 N.Y.S.2d 818 (2d Dept. 1952); Svei v. Minck Bros. & Co., 279 App. Div. 597, 107 N.Y.S.2d 327 (2d Dept. 1951); Roberts v. Ellis, 279 App. Div. 597, 107 N.Y.S.2d 272 (2d Dept. 1951); Bitterman v. 2007 Davidson Ave., Inc., 278 App. Div. 759, 104 N.Y.S.2d 81 (1st Dept. 1951); Ploof v. Somers, 277 App. Div. 1076, 100 N.Y.S.2d 583 (3d Dept. 1950); Thomas v. Green Bus Lines, Inc., 276 App. Div. 922, 94 N.Y.S.2d 489 (2d Dept. 1950); O'Callaghan v. Brawley, 276 App. Div. 908, 94 N.Y.S.2d 16 (2d Dept. 1950); Withers v. News Syndicate Co., 265 App. Div. 868, 37 N.Y.S.2d 780 (2d Dept. 1942); Stevens v. Bridge Auto Renting Corp., 262 App. Div. 872, 28 N.Y.S.2d 326 (2d Dept. 1941); Auchello v. Brooklyn Bus Corp., 257 App. Div. 857, 12 N.Y.S.2d 734 (2d Dept. 1939); Brennan v. Powell, 253 App. Div. 814, 1 N.Y.S.2d 243 (2d Dept. 1938); Hardison v. Byrd, 252 App. Div. 758, 298 N.Y. Supp. 859 (2d Dept. 1937); Brown v. Upfold, 123 N.Y.S.2d 342 (Sup. Ct. 1953); Bernstein v. Strammiello, 202 Misc. 823, 120 N.Y.S.2d 490 (Sup. Ct. 1952); Healy v. Healy, 198 Misc. 688, 99 N.Y.S.2d 874 (Sup. Ct. 1950); Knollwood Cocktail Lounge, Inc. v. Esdo Bldg. Corp., 15 N.Y.S.2d 951 (Sup. Ct. 1939); Foley v. Union Free School Dist., 171 Misc. 294, 11 N.Y.S.2d 712 (Sup. Ct. 1939).

46. Malek v. City of New York, 279 App. Div. 929, 110 N.Y.S.2d 818 (2d Dept. 1952); Svei v. Minck Bros. & Co., 279 App. Div. 597, 107 N.Y.S.2d 327 (2d Dept. 1951); Roberts v. Ellis, 279 App. Div. 597, 107 N.Y.S.2d 272 (2d Dept. 1951); Bitterman v. 2007 Davidson Ave., Inc., 278 App. Div. 759, 104 N.Y.S.2d 81 (1st Dept. 1951); Ploof v. Somers, 277 App. Div. 1076, 100 N.Y.S.2d 583 (3d Dept. 1950); Thomas v. Green Bus Lines, Inc., 276 App. Div. 922, 94 N.Y.S.2d 489 (2d Dept. 1950); O'Callaghan v. Brawley, 276 App. Div. 908, 94 N.Y.S.2d 16 (2d Dept. 1950); Brown v. Upfold, 123 N.Y.S.2d 342 (Sup. Ct. 1953); Healy v. Healy, 198 Misc. 688, 99 N.Y.S.2d 874 (Sup. Ct. 1950). *Contra*: Bernstein v. Strammiello, 202 Misc. 823, 120 N.Y.S.2d 490 (Sup. Ct. 1952).

47. Auchello v. Brooklyn Bus Corp., 257 App. Div. 857, 12 N.Y.S.2d 734 (2d Dept. 1939); Brennan v. Powell, 253 App. Div. 814 1 N.Y.S.2d 243 (2d Dept. 1938); Hardison v. Byrd, 252 App. Div. 758, 298 N.Y. Supp. 859 (2d Dept. 1937); Silverberg v. Manzo, 193 Misc. 62, 83 N.Y.S.2d 381 (Sup. Ct. 1948). Thus a corporation cannot get advance-

matic upon such a showing.[48] Recently, however, advancement has been refused to plaintiffs who were on public relief.[49] In one case,[50] the plaintiff was receiving income of $161 a month from the county welfare department. The court held that such an income, regardless of the source, precluded preference based on financial hardship.

Still a different approach to the question of financial hardship was taken in the recent case of *Bernstein v. Strammiello*.[51] The plaintiff had been earning $172 per week prior to the injury that rendered him totally and permanently disabled. Although he had debts amounting to $4,000, including $2,000 he had to borrow for living expenses since the injury, he still owned a $1,000 equity in an automobile and a $6,000 equity in an apartment. Obviously he was far from destitute. Nevertheless, the court granted advancement because of the sharp reduction in the plaintiff's financial status and the threat to the capital assets that represented his savings. There is considerable justification for the court's approach in the *Bernstein* case. Hardship is a relative matter. It may be even more desirable to spare one individual a sharp drop in financial status, which is combined with a threat of destitution, than it is to mitigate the complete destitution of another.

In one interesting recent case,[52] the defendant, in opposition to a motion for advancement, offered to pay the plaintiff $10,000 immediately as a "down payment" on any settlement or judgment, without obligation to repay. Since acceptance of this offer would ease the plaintiff's acute financial problems, and since time would bring about a more certain estimation of damages, advancement was denied.

While a plaintiff's financial hardship may be aggravated or caused by his physical condition—such as serious injuries,[53] bad

ment on grounds of destitution even though it is no longer doing business, owes debts, and has no assets except the lawsuit. Knollwood Cocktail Lounge, Inc. v. Esdo Bldg. Corp., 15 N.Y.S.2d 951 (Sup. Ct. 1939).

48. Stevens v. Bridge Auto Renting Corp., 262 App. Div. 872, 28 N.Y.S.2d 326 (2d Dept. 1941); Auchello v. Brooklyn Bus Corp., 257 App. Div. 857, 12 N.Y.S.2d 734 (2d Dept. 1939); Hardison v. Byrd, 252 App. Div. 758, 298 N.Y. Supp. 859 (2d Dept. 1937).

49. Ploof v. Somers, 277 App. Div. 1076, 100 N.Y.S.2d 583 (3d Dept. 1950); Brown v. Upfold, 123 N.Y.S.2d 342 (Sup. Ct. 1953).

50. Brown v. Upfold, *supra* note 49.

51. 202 Misc. 823, 120 N.Y.S.2d 490 (Sup. Ct. 1952).

52. Johnson v. Pennsylvania Greyhound Lines, 282 App. Div. 709, 122 N.Y.S.2d 44 (2d Dept. 1953).

53. See Bitterman v. 2007 Davidson Ave., Inc., 278 App. Div. 759, 104 N.Y.S.2d 81 (1st Dept. 1951); Valenti v. United Hoisting Co., 265 App. Div. 963, 38 N.Y.S.2d 767 (2d Dept. 1942); Bernstein v. Strammiello, 202 Misc. 823, 120 N.Y.S.2d 490 (Sup. Ct.

health,[54] and old age[55]—advancement has been denied when the plaintiff's physical condition, unaccompanied by financial distress, is asserted as the reason for the motion.[56] An exception may arise when the condition is so bad that death will probably occur before the regular time for trial. Advancement has been granted in this situation if the plaintiff's valuable testimony would be lost if he died before trial.[57] Of course, this reason loses its validity to the extent that depositions would be a satisfactory substitute for a personal court appearance. It has been suggested that advancement in this situation may be motivated by the courts' desire to give a man his "day in court" before he dies.[58]

Loss of testimony and inconvenience have prompted advancements when one of the litigants or key witnesses lives in another part of the country or intends to move away before the normal time for trial is reached.[59] However, since counsel do not supply testimony and since each party is free to choose a local attorney, courts have denied a motion for advancement based on counsel's proposed absence.[60]

Blanket Advancements

Contract Actions. When a statute or rule of court provides for the automatic advancement of a whole category of actions, it

1952); Coopersmith v. City of New York, 92 N.Y.S.2d 684 (Sup. Ct. 1949); Conroy v. Erie R.R., 188 Misc. 59, 66 N.Y.S.2d 433 (Sup. Ct. 1946); Badgerow v. Jackson, 171 Misc. 668, 12 N.Y.S.2d 602 (Sup. Ct. 1939).

54. See Bitterman v. 2007 Davidson Ave., Inc., 278 App. Div. 759, 104 N.Y.S.2d 81 (1st Dept. 1951); Hyman v. National Transp. Co., 260 App. Div. 869, 22 N.Y.S.2d 683 (2d Dept. 1940); Woodcock v. Brooklyn & Queens Transit Corp., 258 App. Div. 738, 14 N.Y.S.2d 899 (2d Dept. 1939); Silverberg v. Manzo, 193 Misc. 62, 83 N.Y.S.2d 381 (Sup. Ct. 1948); Conroy v. Erie R.R., 188 Misc. 59, 66 N.Y.S.2d 433 (Sup. Ct. 1946); Badgerow v. Jackson, 171 Misc. 668, 12 N.Y.S.2d 602 (Sup. Ct. 1939).

55. Cases cited note 54 *supra*; Wicks v. Wolcott, 200 Misc. 621, 107 N.Y.S.2d 931 (Sup. Ct. 1951); Rinzler v. Manufacturers Trust Co., 190 Misc. 710, 75 N.Y.S.2d 867 (Sup. Ct. 1947).

56. Kavanagh v. McNeill, 246 App. Div. 847, 285 N.Y. Supp. 30 (2d Dept. 1936); Wicks v. Wolcott, 200 Misc. 621, 107 N.Y.S.2d 931 (Sup. Ct. 1951); Rinzler v. Manufacturers Trust Co., 190 Misc. 710, 75 N.Y.S.2d 867 (Sup. Ct. 1947). *Contra*: Hyman v. National Transp. Co., 260 App. Div. 869, 22 N.Y.S.2d 683 (2d Dept. 1940); Woodcock v. Brooklyn & Queens Transit Corp., 258 App. Div. 738, 14 N.Y.S.2d 899 (2d Dept. 1939).

57. See Valenti v. United Hoisting Co., 265 App. Div. 963, 38 N.Y.S.2d 767 (2d Dept. 1942); *dicta*, Bitterman v. 2007 Davidson Ave., Inc., 278 App. Div. 759, 760, 104 N.Y.S.2d 81, 82 (1st Dept. 1951) (dissenting opinion); O'Callaghan v. Brawley, 276 App. Div. 908, 94 N.Y.S.2d 16, 17 (2d Dept. 1950); Rinzler v. Manufacturers Trust Co., 190 Misc. 710, 711, 75 N.Y.S.2d 867 (Sup. Ct. 1947).

58. See Note, 49 Col. L. Rev. 1137, 1140 (1949).

59. See Kagan v. City of New York, 44 N.Y.S.2d 893 (Sup. Ct. 1943); Relman v. Wiener, 33 N.Y.S.2d 117 (Sup. Ct. 1942); Burdick v. Mann, 60 N.D. 710, 236 N.W. 340 (1931).

60. See Kessler v. Checcuti, 37 N.Y.S.2d 375 (Sup. Ct. 1942).

frequently results in unfair preference. For example, all contract cases have trial priority in some jurisdictions.[61] The rationale has been stated by a New York court:

> If the courts are to be kept abreast and effectually serve the needs of economic development and commercial expansion they must offer ready tribunals for the settlement, with dispatch, of disputes arising out of business transactions.[62]

If, as this court says, the "facilitation of the free flow of commercial transactions"[63] is the justification for advancing all commercial contract actions, it bears examination. The underlying premise would seem to be that plaintiffs will be so tied up in time and money that their business activities will suffer. But it is not realistic to suppose that pending litigation will interfere with the operations of a large corporation. Of course, if a party in a contract action demonstrates that delay will seriously jeopardize his business position—for example, if he faces bankruptcy—advancement would be justified as in any other hardship case. But the objection to a broad rule of advancement for all contract actions is that it covers many cases that do not merit special attention.

A second objection to any such broad advancement rule is the danger of its extension beyond the original reason for the rule. For example, although the purported justification for advancement of contract actions is the free flow of commerce, one New York court advanced a case involving a noncommercial contract for the reimbursement of medical expenses.[64] This court even went so far as to criticize an earlier decision[65] for adhering to the free flow of commerce rationale in denying advancement of an action for breach of a noncommercial contract. Fortunately, the courts have not granted advancement merely because the plaintiff "waived the tort and sued in assumpsit."[66] Thus an

61. Letter of Aug. 3, 1953, from Maxwell M. Flamm, Counsel to Kings County Clerk, Brooklyn, New York, on file with the *Stanford Law Review*. Massachusetts also has such a provision. See Appendix II.

62. Lyons v. Burtis, 157 Misc. 325, 326–27, 284 N.Y. Supp. 106, 108 (Sup. Ct. 1933).

63. *Ibid.*

64. Gottlieb v. Nelson, 248 App. Div. 757, 288 N.Y. Supp. 772 (2d Dept. 1936).

65. Lyons v. Burtis, 157 Misc. 325, 284 N.Y. Supp. 106 (Sup. Ct. 1933).

66. See Hedervary v. Lord & Taylor, 280 App. Div. 898, 115 N.Y.S.2d 681 (2d Dept. 1952); Quigg v. L. Neugass & Co., 247 App. Div. 899, 286 N.Y. Supp. 927 (2d Dept. 1936); Kerins v. Title Guarantee & Trust Co., 246 App. Div. 847, 285 N.Y. Supp. 176 (2d Dept. 1936); Robine v. The Carleton Co., 239 App. Div. 833, 264 N.Y. Supp. 953 (2d Dept. 1933); Rothandler v. Chase, 106 N.Y.S.2d 490 (Sup. Ct.), *aff'd*, 279 App. Div. 610, 107 N.Y.S.2d 581 (2d Dept. 1951).

action for fraud arising out of a contract has not been considered a contract case for purposes of advancement.[67]

Governmental Interests. The objection that blanket advancement rules may cover many unworthy cases is also illustrated by the rule granting preference to all cases in which the state is a party.[68] This rule seems to be an anachronistic corollary of sovereign immunity: the sovereign has priority in his own courts. There seems to be no reason to advance suits by or against the government unless warranted by the particular circumstances of the case. It is inconceivable that the government would suffer financial hardship by waiting its regular turn for trial. Of course, some governmental interests may demand immediate attention—election contests,[69] for instance, or eminent domain proceedings[70] that may be delaying the construction of a badly needed school or highway. If the trial judge were permitted to take a case by case approach, he would be free to advance only these and other actions that on their merits warrant preference over all the other cases delayed by trial calendar congestion.

APPENDIX I

Trial Calendar Congestion in 1953[71]

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
Alabama	Birmingham (326,037)	Circuit Court, Jefferson County (558,928)	4.8	6	3.5
Arizona	Phoenix (106,818)	Superior Court, Maricopa County (331,770)	8	—	—
Arkansas	Little Rock (102,213)	Circuit Court, Pulaski County (196,685)	5	5.5	3

67. Quigg v. L. Neugass & Co., 247 App. Div. 899, 286 N.Y. Supp. 927 (2d Dept. 1936). Similarly, California courts have refused preference on declaratory judgment grounds where the action was labeled "declaratory judgment" but in fact was for breach of contract. Kessloff v. Pearson, 37 Cal.2d 609, 233 P.2d 899 (1951).

68. See note 31 *supra*.

69. See note 32 *supra*.

70. Arkansas and California allow advancement in this situation. See Appendix II.

71. The data in Appendix I was compiled by the Institute of Judicial Administration, 40 Washington Square South, New York 12, New York.

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
California	Los Angeles (1,970,358)	Superior Court, Los Angeles County (4,151,687)	11	12	9.5
	San Francisco (775,357)	Superior Court, San Francisco County (775,357)	—	8	2
	Oakland (384,575)	Superior Court, Alameda County (740,315)	7	6.5	7.5
	San Diego (334,387)	Superior Court, San Diego County (556,808)	—	10	3
	Sacramento (137,572)	Superior Court, Sacramento County (277,140)	3.5	4	2
Colorado	Denver (415,786)	District Court, Denver County (415,786)	—	6	4
Connecticut	Hartford (177,397)	Superior Court, Hartford County (539,661)	—	30	19
	New Haven (163,344)	Superior Court, New Haven County (545,784)	—	24.3	26.9
	Bridgeport (158,709)	Superior Court, Fairfield County (504,342)	—	29	12
Delaware	Wilmington (110,356)	Superior Court, New Castle County (218,879)	1.8	—	—
Florida	Miami (249,276)	Circuit Court, Dade County (495,084)	—	6	—
	Jacksonville (204,517)	Circuit Court, Duval County (304,029)	2.8	2.9	2.5
	Tampa (124,681)	Circuit Court, Hillsborough County (249,894)	—	2	1

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
Georgia	Atlanta (334,314)	Superior Court, Fulton County (473,572)	—	5	2.5
Idaho	Boise (34,393)	District Court, Ada County (70,649)	3[72]	—	—
Illinois	Chicago (3,620,962)	Circuit Court, Cook County	—	24[73]	—
		Superior Court, Cook County (4,508,792)	—	32.6[73]	—
	Rock Island (133,558)	Circuit Court, Rock Island Co., etc. (246,760)	—	4	2
Indiana	Indianapolis (427,173)	Circuit Court, Marion County (551,777)	4	5	3
	Fort Wayne (133,607)	Circuit Court, Allen County (183,722)	3	3	3
	Gary (133,911)	Circuit Court, Lake County (368,152)	3	3	3
	South Bend (115,911)	Circuit Court, St. Joseph County (205,058)	6	8	5
Iowa	Des Moines (177,965)	District Court, Polk County (226,010)	3	2.5	3.5
Kansas	Wichita (168,278)	District Court, Sedgwick County (220,290)	5	—	—
	Kansas City (129,553)	District Court, Wyandotte County (165,318)	7	—	—
Kentucky	Louisville (369,128)	Circuit Court, Jefferson County (484,615)	7	7	3

72. Time interval is from filing to disposition.

73. Based on sample study; time interval is from filing to trial court disposition.

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
Louisiana	New Orleans (570,445)	Civil District Court, Orleans Parish (570,445)	2	2.5	2
	Shreveport (127,206)	District Court, Caddo Parish (176,547)	—	2.5	.5
Maine	Portland (77,634)	Superior Court, Cumberland County (169,201)	4	4	4
Maryland	Baltimore (949,708)	Supreme Bench, Baltimore City (207,273)	11	10	12
Massachusetts	Boston (801,444)	Superior Court, Suffolk County (546,401)	—	32	3
	Worcester (203,486)	Superior Court, Worcester County (896,615)	—	42	6
	Springfield (162,399)	Superior Court, Hampden County (367,971)	—	24	13
Michigan	Detroit (1,849,568)	Circuit Court, Wayne County (2,435,235)	6.6	—	—
	Grand Rapids (176,515)	Circuit Court, Kent County (288,292)	2.5	3	2
	Flint (163,143)	Circuit Court, Genessee County (270,963)	—	2.8	2.6
Minnesota	Minneapolis (521,718)	District Court, Hennepin County (676,579)	18	18	18
	St. Paul (311,349)	District Court, Ramsey County (355,332)	6	9.5	2
Mississippi	Jackson (98,271)	Circuit Court, Hinds County (142,164)	2	—	—
Missouri	St. Louis (856,796)	Circuit Court, City of St. Louis (856,796)	4.5	4.5	3

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
	Kansas City (456,622)	Circuit Court, Jackson County (541,035)	24	24	6
Montana	Great Falls (39,214)	District Court, Cascade County (53,027)	9	9	—
Nebraska	Omaha (251,117)	District Court, Douglas, etc., Counties (304,067)	5	—	—
Nevada	Reno (32,497)	District Court, Washoe County (50,205)	3	3	3
New Hampshire	Manchester (87,732)	Superior Court, Hillsborough County (156,987)	—	30	6
New Jersey	Newark (905,949)	Super. & County Cts., Essex County (905,949)	—	5-5	4-5
	Jersey City (647,437)	Super. & County Cts., Hudson County (647,437)	—	6	5
	Trenton (128,009)	Super. & County Cts., Mercer County (229,781)	—	5	2
New Mexico	Albuquerque (96,815)	District Court, Bernalillo County (145,673)	—	6	4
New York	(Kings Co.) (2,738,175)	Supreme Court, Kings County (2,738,175)	—	53	—
	(New York Co.) (1,960,101)	Supreme Court, New York County (1,960,101)	—	43	—
	(Queens Co.) (1,550,849)	Supreme Court, Queens County (1,550,849)	—	42	10
	(Bronx Co.) (1,451,277)	Supreme Court, Bronx County (1,451,277)	—	30	—
	Buffalo (577,393)	Supreme Court, Erie County (899,238)	—	7	—

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
	Rochester (331,252)	Supreme Court, Monroe County (487,632)	—	5	—
	Syracuse (220,583)	Supreme Court, Onandaga County (341,719)	—	3	—
North Carolina	Charlotte (134,042)	Superior Court, Mecklenburg County (195,052)	—	12	6
	Greensboro (74,389)	Superior Court, Guilford County (191,057)	10	10	—
North Dakota	Fargo (38,256)	District Court, Cass County (58,877)	5	8	5
Ohio	Cleveland (914,808)	Court of Common Pleas, Cuyahoga County (1,389,532)	—	17	13
	Cincinnati (503,998)	Court of Common Pleas, Hamilton County (723,952)	1.5	2	1
	Columbus (375,901)	Court of Common Pleas, Franklin County (503,410)	18	18	14
	Toledo (303,616)	Court of Common Pleas, Lucas County (395,551)	18	—	—
	Akron (274,605)	Court of Common Pleas, Summit County (410,032)	12	14	8
	Youngstown (168,330)	Court of Common Pleas, Mahoning County (257,629)	6	6	6
Oklahoma	Oklahoma City (243,503)	District Court, Oklahoma, etc., Counties (325,352)	1	1	1
	Tulsa (182,740)	District Court, Tulsa, etc., Counties (251,686)	2	2	2

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
Oregon	Portland (373,628)	Circuit Court, Multnomah County (471,537)	10	10	10
Pennsylvania	Philadelphia (2,071,605)	Court of Common Pleas, Philadelphia County (2,071,605)	—	8	1.5
	Pittsburgh (676,806)	Court of Common Pleas, Allegheny County (1,515,237)	25	25	—
	Scranton (125,536)	Court of Common Pleas, Lackawanna County (257,396)	2.5	2.5	2.5
	Allentown (106,756)	Court of Common Pleas, Lehigh County (198,207)	4	5	3
	Media (5,726)	Court of Common Pleas, Delaware County (414,234)	—	5.5	—
Rhode Island	Providence (284,674)	Superior Court, State Population (791,896)	—	10.5[74]	5[74]
South Carolina	Greenville (56,161)	Circuit Court, Greenville, Pickens Counties (208,210)	—	18	24
South Dakota	Sioux Falls (56,696)	Circuit Court, Minnehaha County (70,910)	1.5	1.5	1.5
Tennessee	Memphis (396,000)	Circuit Court, Shelby County (482,393)	—	3.2	—
	Nashville (174,307)	Circuit Court, Davidson County (321,758)	—	4	4
	Chattanooga (131,041)	Circuit Court, Hamilton County (208,255)	3	3	1.2
	Knoxville (124,769)	Circuit Court, Knox County (223,007)	8	9	7

74. Based on sample study; median time interval from filing to trial.

State	City and Population (1950)	Trial Court of General Jurisdiction (and County Population)	Average Number of Months Elapsing From "At Issue" to Trial: Over-all Average	Jury Cases	Nonjury Cases
Texas	Houston (596,163)	District Court, Harris County (806,701)	—	18	—
	Dallas (434,462)	District Court, Dallas County (614,799)	7.5	9	2
	San Antonio (408,442)	District Court, Bexar County (500,460)	7.5	8	2
	Fort Worth (278,778)	District Court, Tarrant County (361,253)	—	3	1.5
	El Paso (130,485)	District Court, El Paso County (194,968)	16	28	14
Utah	Salt Lake City (182,121)	District Court, Salt Lake County (274,895)	5.5	5.5	5.5
Vermont	Burlington (33,039)	County Court, Chittenden County (62,570)	—	4.5	4.5
Virginia	Richmond (230,310)	Circuit Court, Richmond (230,310)	8	—	—
	Norfolk (213,513)	Circuit Court, Norfolk (213,513)	2.5	2.5	2
Washington	Seattle (467,591)	Superior Court, King County (732,992)	3	3	3
	Spokane (161,721)	Superior Court, Spokane County (221,561)	1.5	1.5	1
West Virginia	Charleston (73,501)	Circuit Court, Kanawha County (239,629)	—	6	5
Wisconsin	Milwaukee (637,392)	Circuit Court, Milwaukee County (871,047)	24	30	17
Wyoming	Cheyenne (31,935)	District Court, Laramie, etc., Counties (71,327)	8	11	6

APPENDIX II

STATUTORY PROVISIONS ON TRIAL CALENDAR ADVANCEMENT

The statutory advancement provisions in each jurisdiction are as follows:

Alabama: ALA. CODE ANN. tit. 13, § 118 (appeals from municipal, county, and inferior courts) (1940).

Alaska: ALASKA COMP. LAWS ANN. § 43-3-22 (workmen's award cases) (1949).

Arizona: ARIZ. CODE ANN. § 21-914 (courts to provide by rule for placing actions upon trial calendar); § 21-1217 (declaratory judgment actions) (1939).

Arkansas: ARK. STAT. ANN. § 27-1715 (trial in order that cases stand on docket); § 34-209 (actions where the state is a party); § 20-915 (suits involving the validity of fire protection district formation, assessments by the district, or foreclosure of assessment liens preferred as matters of public interest); § 20-132 (suits involving validity of improvement districts formation, assessment of benefits, individual assessments, power to make improvements, title to office of any commissioners or assessors, and power to collect taxes on assessed benefits preferred as matters of public interest); § 20-331 (suits involving sale of waterworks); § 20-721 (suits involving validity of suburban improvement districts, assessment of benefits, lien foreclosure, or taxes); § 53-117 (injunction suits by persons aggrieved under rulings of Oil and Gas Commission or under the statutes involved); § 53-304 (petitions by life tenants of property to execute oil and gas leases); § 76-208 (suits involving validity of state highway commission statute); § 76-512 (suits involving validity of eminent domain for state highway system, or of a procurement); § 76-519 (Highway Act cases of any type) (1947).

California: CAL. CODE CIV. PROC. § 527 (suits for injunctions); § 660 (motions for new trial); § 1062a (declaratory judgment actions); § 1179a (actions to recover possession of real property); § 1264 (eminent domain or condemnation proceedings) (Deering, 1953).

Colorado: COLO. STAT. ANN. rule 40 (trial courts to provide by rule for placing actions upon trial calendar); rule 65(b) (actions for temporary restraining orders); c. 46, § 119 (probate appeals from county to district court) (1935).

Connecticut: CONN. GEN. STAT. § 7945 (actions brought by or on behalf of the state including informations on the relation of a private individual, except actions upon probate bonds); § 7946 (objections to arbitrators' awards and to acceptance of committee or auditor reports, appeals from probate and from doings of probate commissioner, actions by receivers of insolvent corporations, writs of error in cases of summary process); §§ 1105, 1106, 527, 528 (election contests); §§ 1711, 1800, 1890, 1917, 1993, 2017, 2068, 2085, 2106 (various tax assessment appeals); § 7407(f) (actions to enjoin, etc., orders of Fair Employment Practices Commission); § 7450 (appeals from findings and awards by workmen's compensation commissioner); § 7521

(appeals from decisions of unemployment compensation commissioner); § 8211 (motions to dissolve temporary injunctions); § 5750 (appeals from decisions of banking commissioner); § 4596 (appeals as to hairdressing and cosmetology licenses); § 4473 (appeals as to pharmacy licenses); § 4277 (appeals as to liquor licenses); § 3161 (appeals as to milk dealer licenses, and as to orders and regulations of milk commissioner); § 2971 (appeals of decisions by state treasurer as to veterans' bonuses); § 2640 (appeals as to boarding home licenses); § 2548 (appeals from revoking filling station licenses) (1949).

Delaware: DEL. REV. CODE § 4645 (trial judges to have power to determine by rule the order and manner of trying causes) (1935).

District of Columbia: D.C. CODE § 11-756(b) (municipal courts to have power to prescribe practice and procedure by rules; should conform closely to Federal Rules of Civil Procedure) (1951). FED. R. CIV. P. 40 (courts to provide by rule for placing actions upon trial calendar); 57 (declaratory judgment actions); 78 (trial judge may advance at any time).

Florida: No statutory provisions were found.

Georgia: GA. CODE ANN. § 24-3324 (trial in order that cases stand on docket unless trial court exercises discretion to change order to give "facility and expedition to its proceedings, or for furthering the ends of justice"); § 81-1005 (actions where the state is a party); § 93-416 (suits to recover penalties against public service companies) (1933).

Hawaii: HAWAII REV. LAWS § 10104 (cases to be tried in normal order unless advanced for reasons the court deems sufficient) (1945).

Idaho: No statutory provisions were found.

Illinois: ILL. ANN. STAT. c. 110, § 259.23 (causes to be set and apportioned as shall be fixed by local rules of court) (1948).

Indiana: IND. STAT. ANN. § 2-1902 (trial in order that cases stand on docket, unless the court for good cause shown shall direct otherwise) (1946); § 54-434 (actions to vacate or enjoin an order of the Public Service Commission) (1951).

Iowa: IOWA CODE rule 181 (courts to make own rules for preparing trial calendar, giving preference to actions entitled thereto); § 624.7 (actions challenging validity of a proposed constitutional amendment); §§ 82.38, 82.42 (appeals from mines ways' inspector's orders); § 86.28 (appeals in workmen's compensation cases); § 96.6 (appeals in unemployment compensation cases); § 147.63 (appeals from revocation of professional licenses); § 358A.22 (appeals from County Zoning Commission); § 414.19 (appeals from Municipal Zoning Board); § 474.25 (suits challenging orders of state Commerce Commission); § 474.43 (actions by state Commerce Commission); § 484.18 (appeals by interurban railroad companies or their opponents); § 502.24 (appeals as to Securities Act) (1950).

Kansas: KAN. GEN. STAT. ANN. § 60-2931 (trial in order that cases placed on docket) (1949).

Kentucky: KY. REV. STAT. § 451.020 (trial courts to have discretion in assigning cases for trial and in prescribing and changing rules of court) (1953).

Louisiana: LA. REV. STAT. tit. 13, § 1303 (trial judge to prescribe rules for order of preference); tit. 13, § 4065 (actions for preliminary injunctions); tit. 13, §§ 4152, 4154 (trials of suits involving mineral lands); tit. 13, § 4157 (suits for damages arising ex delicto); tit. 13, § 4158 (interdiction suits); tit. 13, § 4724 (injunction actions to abate gambling houses as nuisances); tit. 13, § 5031 (actions by or on behalf of state to collect taxes, excises, license and attorneys' fees, penalties, and interest); tit. 13, § 5061 (where state sued in possessory or petitory action in cases affecting property also claimed by the state); tit. 18, § 1251 (election contests); tit. 18, § 1490 (where corporations sued by state for failing to file political contributions' report); tit. 19, § 66 (highway expropriation proceedings); tit. 48, § 313 (highway expropriation proceedings); tit. 51, § 134 (monopoly proceedings); tit. 51, § 798 (actions of suspension of licenses for violation of petroleum products law) (1950).

Maine: ME. REV. STAT. c. 94, §§ 6, 16 (superior courts to make all necessary rules) (1944).

Maryland: MD. ANN. CODE GEN. LAWS art. 26, § 1 (judges may make rules for governing their respective courts) (1951).

Massachusetts: MASS. ANN. LAWS c. 231, § 59C (medical malpractice cases); c. 231, § 59D (election contests) (Supp. 1952); c. 231, § 59A (advance "for good cause shown"); c. 231, §§ 59, 59B (contract actions); c. 25, § 5 (appeals from rulings of Public Utilities Commission); c. 40, § 30 (appeals from zoning proceedings); c. 41, § 39E (cases involving suspension and removal of tax collectors); c. 139, § 7 (actions to abate places of prostitution as common nuisances); c. 151A, § 15 (actions involving employment security payments); c. 151B, § 6 (appeals from orders of Fair Employment Practices Commission); c. 152, § 11 (appeals from workmen's compensation decisions) (1933).

Michigan: MICH. COMP. LAWS § 618.1 (causes to be placed upon calendar in order in which issue was joined or appeal filed) (1948).

Minnesota: MINN. STAT. § 546.05 (trial court to determine order in which cases to be heard by order or rule) (1949).

Mississippi: MISS. CODE ANN. § 10:1418 (cases to be tried, normally, in order that placed on docket); § 8:1066 (cases for permanent injunctions against nuisances to have precedence over all cases except election contests and temporary and other injunctions); § 10:1342 (suits to enjoin or delay collection of taxes) (1942).

Missouri: MO. REV. STAT. ANN. § 510.070 (cases to be tried according to rules and practice of trial court) (1949).

Montana: MONT. REV. CODES ANN. § 93-4908 (clerk to enter causes upon calendar according to date of issue) (1947).

Nebraska: NEB. REV. STAT. § 25-1149 (cases tried in order docketed unless court otherwise directs); § 24-326 (actions by or against the state); § 32-1805 (suits involving secretary of state placing initiative and referendum measures on the ballot); § 59-823 (unlawful restraint of trade proceedings where attorney general says case is of general public importance) (1943).

Nevada: NEV. COMP. LAWS ANN. § 8756 (cases tried according to date

of issue unless otherwise provided by rule of court); Dist. Ct. rule II(3), p. 2475 (1929).

New Hampshire: N.H. REV. LAWS c. 370, § 8 (court to establish rules of practice); c. 289, § 43 (proceedings involving Public Service Commission orders to railroad companies and public utility companies to be preferred over all cases except election contests) (1942).

New Jersey: No statutory provisions were found.

New Mexico: N.M. STAT. ANN. § 19-101(40) (courts to provide by rule for placing actions upon trial calendar); § 19-101(57) (declaratory judgment actions) (1941).

New York: N.Y. CIV. PRAC. ACT § 139 (actions brought by the state, municipal corporation, board, officer, or subdivision, where a governmental interest involved); § 140 (justices to make rules of court to govern preferences in order of trial); N.Y. RULES CIV. PRAC. rule 151 (cases tried in order in which issue filed except where appellate division provides rules; preference to actions involving the state, etc., cases provided for by statutes or rules, to cases where "interests of justice will be served by an early trial").

North Carolina: N.C. GEN. STAT. § 7-20 (supreme court to establish rules of practice for trial courts) (1953).

North Dakota: N.D. REV. CODE § 28-1208 (cases to be set upon calendar according to date of issue) (1943).

Ohio: OHIO REV. CODE § 2311.07 (cases to be tried, normally, in regular order; cases may be especially assigned for trial "for good cause shown"; actions for wages first in order of trial); § 4121.29 (actions where state or Industrial Commission is a party to be preferred over all causes except election contests and actions involving Public Utility Commission); § 315.06 (actions to remove county engineers from office) (1953).

Oklahoma: OKLA. STAT. tit. 12, § 665 (cases to be tried normally in order that placed on docket); tit. 11, § 395 (petitions for reinstatement as fireman following military service); tit. 11, § 408 (cases involving zoning regulations); tit. 19, § 88 (election contests); tit. 51, § 95 (cases to oust officers from office) (1951).

Oregon: ORE. COMP. LAWS ANN. §§ 13-601, 13-312 (every court to have power to establish rules of court to conduct proceedings) (1940).

Pennsylvania: PA. STAT. ANN. tit. 12, rule 214 (cases where the commonwealth is the real party in interest; suits against defaulting officers of commonwealth, or of political subdivision, or against their sureties; actions of quo warranto or mandamus involving public officers; cases in which a new trial has been granted or a nonsuit removed; suits to recover wages due for manual labor; cases to determine competency of a person allegedly weak-minded, insane, or habitually drunk; other cases as the court upon cause shown may designate) (1951).

Rhode Island: R.I. GEN. LAWS c. 122, § 31 (actions as to public utility rates and regulations); c. 284, § 9 (actions brought under Unemployment Compensation Act); c. 289, § 15 (actions brought under Minimum Wage Law) (1938).

South Carolina: S.C. CODE ANN. § 15-231 (each judge to establish rules for orderly conduct of business) (1952).

South Dakota: S.D. COMP. LAWS § 2494 (cases to be set upon calendar according to date of issue) (1929).

Tennessee: TENN. CODE ANN. § 8796 (cases to be tried in order docketed unless special preference given by statute, parties consent otherwise, or rules of practice provide otherwise); §§ 8797, 8798 (trial judge to set appropriate time for trial when state is a party in interest); § 8799 (questions concerning public revenues, jurisdictional boundaries, and public officers) (Williams 1934).

Texas: TEX. STAT., REV. CIV. art. 3153 (cases contesting party nominations); TEX. RULES CIV. PROC. rule 245 (courts to provide by rule for placing actions upon trial calendar) (1948).

Utah: UTAH CODE ANN. rule 40 (courts to provide by rule for placing actions upon trial calendar); rule 57 (declaratory judgment actions) (1953).

Vermont: VT. STAT. § 1276 (each court to establish general rules of practice) (1947).

Virginia: VA. CODE ANN. § 8-162 (preferences first to actions in which commonwealth is interested, and second to actions of forcible or unlawful entry and detainer) (1950).

Washington: WASH. REV. CODE § 4.44.020 (cases to be set upon calendar according to date of issue) (1951).

West Virginia: W. VA. CODE ANN. § 5635 (cases involving the state; otherwise in order filed, except court may take cases out of turn for good cause shown); § 5636 (cases in chancery to be tried separately) (1949).

Wisconsin: WIS. STAT. § 270.12 (cases to be tried according to date of issue; if large calendar, then according to date of filing complaint if court approves); § 270.14 (motions and demurrers, when trial judge thinks appropriate) (1951).

Wyoming: WYO. COMP. STAT. ANN. § 3-2108 (cases to be tried in order in which they stand on the trial docket unless court otherwise directs or parties consent) (1945).