

Session 7.1

Teaching the Art of Listening, Reading and Judging within a Judges Panel
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- 1 Ladies and gentlemen, once upon a time there was a judge. He could live everywhere. He was very profound and meticulous. When he got a file he read it very thoroughly, not only once but two times or three times. Afterwards, he was very slow for he was afraid that he would make a mistake. Then he wrote a judgment. None of his judgments was shorter than 200 or 300 pages. When he got a file he read everything. One day he disappeared in his files. He was never found. Everybody can find such judges in his own system. I do not want to speak about writing a judgment, which is another art. I want to confine myself to the reading of a text by a judge, which is an art in itself. The purpose of my presentation is to provide methodological tools that may assist judges to cope more efficiently with the enormous amount of reading, of written material, that is part of the judge's work.
- 2 The general idea is that a judge must develop a purposive reading [style], to focus only on the main issues and ignore the irrelevant ones. He must develop a technique by which a sort of a screen will be put on the written materials before him, and his eyes will read only what is necessary for determination of the case before him and ignore the other parts of the text. The reading of a legal text is not similar to the reading of a piece of poetry or prose. The same text can be read in a different way by a literary critic, a politician, a teacher or a philologist. Even a lawyer is supposed to read the legal text in a different way to a judge, for a lawyer will seek to find in the text what will help him, what will help his client, while the main concern of the judge when reading that text is to find a solution to the problems involved.
- 3 I would like to exemplify this by pre-trial proceedings in a civil case. A pre-trial, in many countries as in my county, is a sort of preparatory proceeding. A judge prepares the case either for himself or for another judge. When one gets such a thing, usually one has to answer four questions, whether the parties put them before you or on your own motion. The first question is, why me? The second one is, why at all? The third question is, what are the questions involved? The fourth question is, is there a way to settle the case?
- 4 When I speak about 'why me' I speak about jurisdiction. If one does not have a jurisdiction to deal with a case there is no need to hear evidence and one can, on one's own motion, ask the parties if you have jurisdiction, if you have doubts. Either they will tell you something that will convince you that you have jurisdiction or if you do not have a jurisdiction you will dismiss the case, *éliminer*.
- 5 'Why at all?' This is a question of the cause of action. According to law, is there a basis for the claim, or for the defence? If one looks from the beginning at the case and one is not convinced that there is a case you can dismiss the case *éliminer* or give a judgment for the plaintive. If there is something missing the parties can be given the opportunity to amend their claims or defences.

- 6 The third question is to see what it is about. When I read, or when a judge is reading, a whole bunch of materials he must think about the questions which are involved in the case irrespective of what the parties say. Sometimes one may be mistaken so you put to the parties your conclusion and ask them if they have to add something. At the end, you can define the questions to be tried in the trial and then the case will go according to your decision.
- 7 The fourth question is, is there a possibility of reconciliation, a settlement? Many cases can be settled without a judgment. One of the purposes of reading the material is to get to this question, and in many cases the case can be concluded by settlement.
- 8 Nowadays at the Institute for the Training of Judges in Israel we give a course or presentation about the reading of materials. I can exemplify what we are doing by three exercises that can be undertaken by any one of you in your institute or school. The first one: during training, the judges are given a lengthy and complicated judgment, maybe two hundred or three hundred pages, and they are allotted a limited amount of time to read it, for example thirty minutes. Then they are asked to identify the main questions and to explain the answers that were given to those questions in the judgment. The question would be presented in one sentence, starting with 'what', 'how' or 'whether'. The judges are then asked to produce a one-page summary of the judgment. Two hundred pages, one page. Before you can ask them if it is possible or not possible. Half will say it is possible, half will say it is not possible. Then they will begin to write. Sometimes you get very strange results. People who think that it is impossible find out that it is possible, some others find the opposite.
- 9 Another exercise requires the judges to read an actual case as if they are preparing for a trial hearing or pre-trial hearing. The judges are asked to summarise the facts of the case using the four questions mentioned earlier: why me; why at all; what are the disputed questions; what is the solution to the problems?
- 10 In the third exercise the judges are presented with an extensive record of testimonies heard during trial. The judges are requested to identify, in a limited amount of time, a specific question appearing in the text. This exercise is designed to teach judges to focus only on the crucial issue, ignoring irrelevant information. Some of the judges know this for themselves. It comes to them naturally. I believe that every judge can learn such techniques. One can adapt it to the special requirements of your system, to what you know about the judges who participate in the course.