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QUESTION, *Mr. Coombe*: The problem in the United States, as I understand it, is that federal judges are reluctant to require early disclosure versus discovery because they do not want to become involved in the management of a lawsuit—something international arbitrators do as second nature. One wonders how far we can go with this idea. Could you comment on this?

ANSWER, *Professor Smit*: We must create rules that limit the participation of judges, simply because the judges have too much to do. They certainly should not attempt to manage cases which they know little about. The rules that have evolved in international arbitration do just that. For instance, I just drafted an order in a case which requires that all documents and all testimonial information be produced up front. Also the pleadings must be fulsome and reasoned.

In order to get lawyers to follow such requirements, the rule states that evidence may not be introduced later if it was not voluntarily produced at the beginning. Moreover, if the evidence was not produced because it was evidence that would not have helped the client, and the other party establishes that such evidence was available and not produced, then the non producing party must pay for the cost of the production of such evidence.