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## Response to "One Year after Dondi: Time to Get Back to Litigating?"

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## Response to "One Year After *Dondi*: Time to Get Back to Litigating?"

Thomas M. Reavley\*

The preceding article was submitted as a response to my article in a recent issue of the *Pepperdine Law Review*.<sup>1</sup> It is my turn for a very brief rejoinder.

We all agree that there is nothing new about obstreperous, tricky conduct on the part of trial lawyers. That this is a problem for the profession and judiciary is established by the personal experience which has led to the articles and court orders which have been cited. Whether or not the problem conduct is increasing, it should be resisted and condemned.

Why speak out? Why the *Dondi* order? Because lawyers, young and old, need to be told and reminded what this profession expects of its practitioners, and because the message puts practitioners on notice that, in a proper case, improper conduct will be penalized by the courts.

Why is the misconduct objectionable? Mr. Rambo files a written motion and seeks a court hearing on a minor matter which could have been easily resolved by a telephone call. Or he agrees orally to extend you an extra two days in which to file your answer to his complaint, but then he shows up in court and takes a default judgment. Two extra days are consumed in the process of taking the deposition of one of his witnesses because of his absurd objections and arguments. As the two of you walk toward the bench for a ruling during the trial, Mr. Rambo whispers a threat in obscene terms. Need we debate whether to commend or condemn? It cannot be de-

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1. Reavley, *Rambo Litigators: Pitting Aggressive Tactics Against Legal Ethics*, 17 PEPPERDINE L. REV. 637 (1990).

nied that the costs of the parties are increased and the work of the opposing lawyer is made needlessly unpleasant.

But my chief concern is with the notion that courtesy and cooperation are somehow incompatible with the role of the adversary. I advance three points:

1. The client's best interest is served by amicable settlement on terms agreeable to him at the earliest possible time. That saves him time and money and may avoid lasting enmities. Unreasonable demands and arrogant posturing by the lawyer help neither party. All too often the parties get locked into the litigation mode and attitude, losing sight of the likely consequences, before they have given careful thought to the alternatives and consequences or decided what each actually wants.

2. Everyone is disserved by dishonesty, and the judicial process itself is violated.

3. Be very sure that this is not a call for capitulation of a worthy cause or surrender of the client's entitlements without his consent. I do not say to trust the untrustworthy or to retreat before Rambos. I say we should best the bullies and make the wrongdoers pay. Fortunately, we are blessed with a system of justice where this is possible.

But, again, it is my witness and plea that courtesy and honesty are both wise and rewarding, for the adversary as well as all others.