

## Early to Rise

Petty squabbles land lawyers in a federal judge's woodshed--at 6:30 a.m.

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At 6:15 on a recent Thursday morning, the only happy face in the second-floor hallway of the Byron Rogers Federal Building belongs to a bomb-sniffing dog, who is trotting around in advance of the Terry Nichols trial.

The thirty or so lawyers milling about are the ones with the sad faces: They're the ones in the doghouse.

They're members of what they call the "Breakfast Club," a weekly adventure that lawyer Michael Dommermuth approvingly describes as "grand theater."

Many laypeople would think so. "From the public's perception," Dommermuth says, "there's nothing better than seeing a bunch of lawyers get their butts chewed out."

The chewer is U.S. District Judge Edward Nottingham, who runs his courtroom as only a man with a lifetime appointment can.

Not only does Nottingham eviscerate lawyers in public, but he forces them to come into court two and a half hours before the lights come on in most other courtrooms. According to several authorities, he is the only judge in the state--and possibly the only federal judge in the country--who sets hearings for 6:30 a.m.

The reason for the hearings is clear from his statements on the bench: He is punishing lawyers for having disagreements--such as disputes over what documents have to be produced at trial--that he thinks they should be able to resolve out of court.

Many of the tired lawyers have no stomach for the Breakfast Club, though few will speak on the record, for fear of retribution.

The judge won't comment for this story, but there are some lawyers who jump to his defense. "Requiring people to get up for a 6:30 a.m. hearing probably solves a lot of solvable disputes," says Cindy Delaney, who had to show up for her first Breakfast Club earlier this month.

"That argument doesn't hold up," says one other lawyer who asks not to be named, "because often the only reason we have to show up is to get a ruling. There's nothing to be worked out. He's just punishing us."

Bill Short has been to so many Thursday morning sessions that he's practically punch-drunk--but he's not too woozy to predict what's going to happen this particular Thursday. "The cases he really dislikes, he'll call first, and then he really hammers them," Short says. "It sets the tone for the rest of the day."

Short is right. The first case heard concerns a lawsuit brought by the Energy & Resource Consulting Group, a local company, against the City of Toledo, Ohio, for not paying a bill. At issue is whether the company, represented by Michael Dommermuth, will have to produce documents requested by Toledo's lawyers.

Dommermuth, of course, is fighting the request. Nottingham, of course, is having none of the lawyer's lip. Dommermuth barely has time to formally introduce himself in court before Nottingham lays into him.

"I do not think there is any reason to make them jump through any hoops here," Nottingham tells Dommermuth. When Dommermuth tries to lay out his rationale, Nottingham interrupts.

"Produce the documents!" the judge orders. "I can't even fathom the kind of hoops you are trying to put them through."

Afterward, Dommermuth admits, "I got hammered. I think the judge was wrong, but I'm going to do what he says. I still think [the 6:30 a.m. hearings] are a good idea, but as should be apparent from my lack of success this morning, it doesn't help me that I like them."

Lawyer Curtis Kennedy certainly doesn't like them. Currently representing a man suing US West for age discrimination and breach of contract, Kennedy describes Nottingham's hearings as "punitive" and a "real inconvenience for people who have small children at home."

He concedes that the point of the hearings is that they are inconvenient, but he says it's futile for a judge to schedule early hearings so that lawyers won't argue.

"If lawyers could work everything out, there wouldn't be lawsuits," Kennedy says. "That's exactly why there are courts."

Besides, he adds, any worthy lawyer is not going to "roll over on a client with any dispute just because the judge calls you in at 6:30 a.m."

Perhaps Kennedy is a little grumpy. He and opposing counsel seem a little leery of approaching the bar, perhaps because in a previous hearing Nottingham was so angered by their lack of cooperation that he fined each side \$750.

Nottingham starts by saying he's ready to rule on a motion at hand but asks if there are additional oral arguments. "Although," the judge adds, "I say that with some trepidation, because inevitably in this case, you have something further to say."

Kennedy does in fact have something to say, but he doesn't get far with it before Nottingham tells him, "Mr. Kennedy, I'm not going to engage in nitpicking." The judge goes on to say that both Kennedy's argument and his behavior in the case "have been characterized by misleading and by innuendo."

Not that opposing counsel can start crowing. Kennedy tells the judge that the US West lawyers did not respond to a request because it had been sent via fax, not hand-delivered.

Nottingham calmly asks Ray Martin, one of the lawyers representing US West, if this is true. When Martin begins explaining the legal basis for the US West position, Nottingham screams at him, "Just answer the question, yes or no! You are saying that because he faxed it, you are not going to respond?"

Martin finally concedes that he believes the fax was insufficient. The judge soaks it up for a minute and then quietly says, "You people are unbelievable." His voice growing in volume, he adds, "What I'm dealing with here is a couple of children, and I'll tell you that right to your face."

Some observers say Nottingham never hesitates to get in people's faces. During a 1994 civil case in which singer Michael Jackson was sued, the Gloved One gave an answer the judge deemed insufficient, according to press accounts at the time. He told Jackson tersely, "Just answer the question."

"I am," Jackson said.

"You're not," the judge replied.

"I'm trying."

"You're failing."

That impatience is a trait the 49-year-old Nottingham, appointed to the federal bench in 1989 by President George Bush, showed early, says University of Colorado Law School classmate Gary Blum.

"He has always been very prepared," says Blum, "and I think he may not have a high level of patience with lawyers who are not as prepared as he feels they should be. I think he expects a lot of himself and he expects a lot from others."

And that's not such a bad thing, says Blum, who notes that many lawyers complain that federal cases languish for years before going to trial. Some federal judges work at a slow pace, take long lunches and vacations, and generally slow down the process, says Blum, but Nottingham schedules hearings at the early hour in part to keep cases moving while he has to preside over ongoing trials during regular hours.

"It's not like he is paid by the hour to show up that early," Blum says.

Whether they like it or not, Nottingham makes it clear to lawyers that he is indeed willing to show up early. As he tells Dommermuth after making a ruling, "If there's any controversy, I'll hear it next Thursday morning." He doesn't have to say what time.