Texas Chief Judge Walter S. Smith Jr., whose service has brought him face-to-face with the individuals who have made both areas noteworthy. Whether one sees Judge Smith welcoming the President back to town at the airport or in the aisles of a local grocery store, the judge exudes a lack of pretension; he is ready with dry wit when least expected. His serene manner belies his position as chief judge for a district that covers some 93,000 square miles — more than 650 miles of which share a border with Mexico — and runs from Waco in central Texas down and across to several of the state’s largest cities: Austin, San Antonio, and El Paso.

“Are you going to the hanging?” he asked at the conclusion of our interview, referring to what is more officially known as the “Presentation of the Official Portrait,” an event that marked his 20th year on the bench. Speaking at the ceremony, he commented that an excellent job was done on the painting, other than how closely it resembles him.

Magistrate Judge Jeffery C. Manske related a story told by a law clerk about the sentencing of a young drug dealer whose arrogance suggested that he did not understand the gravity of the situation. “Do you think I’m an old man?” Judge Smith looked down from the bench to ask the defendant. “Yeah, I do,” the defendant answered without hesitation. “Well,” Judge Smith continued, “by the time you get out of federal prison, you are going to be older than I am now.”

This sense of humor seems to be genetic. At the portrait ceremony, Judge Smith’s brother Jack related how spending their childhood cleaning up after hogs had prepared them well for their respective professions — one as a federal judge, the other as owner of an advertising agency.

The gentle firmness that Judge Smith shows in the courtroom is no accident — an approach learned as much from watching how the stance can be done wrong as done right. When asked his advice for a new federal judge, Smith cautions that he or she should avoid tyranny. His words of advice: Don’t let the idea of having a lifetime appointment go to your head; treat young lawyers as you would have wanted to be treated at their age by a judge. On the other hand, he speaks disparagingly of high-profile trials where judges lose control and the courtroom becomes a three-ring circus.

Judge Smith considers the Branch Davidian criminal trial — not the civil one — as his most difficult trial, not because of the flood of international media coverage or the painfulness of the events being explored, but because of the animosity of some of the attorneys involved. Judge Smith believes in allowing lawyers to present their cases, but he also holds that no one should doubt who is in charge. When stories began circulating that the government was withholding items related to the Branch Davidian matter, the
judge had a simple solution: He ordered every related
document and other piece of evidence possessed by
the government to be delivered and held at his Waco
courthouse.

Jurors can expect a jurist who takes an interest in
their well-being and will not have them sit around while
the lawyers haggle over the finer points of the law; he
says that morning hearings before the jury arrives are
for that. And Judge Smith offers recommendations for
attorneys appearing before him: Be concise and don’t
waste time on issues that don’t control the outcome.
Although he does not encourage invective in briefs,
he admits it doesn’t really bother him — given that his
staff does a good job of weeding out such language be-
fore it reaches his desk.

Judge Smith estimates that just under half of his
time is spent in the courtroom; another 25 percent is
devoted to his duties as chief judge; and the remainder
is used for reviewing briefs, drafting opinions, signing
orders, and doing other tasks. As chief judge, he must
make difficult budget decisions, like those faced by
other chief judges around the country. Already there
have been layoffs in the Western District as part of
1,350 such cuts nationwide according to the Admin-
istrative Office of the U.S Courts. The 2005 federal
budget includes a 4.3 percent increase for the courts,
versus the 5.6 percent estimated by the Administrative
Office that is necessary to continue basic services
that were provided in the previous year.

Frustrations over tight budgets, though, seem to
pale in comparison to the ever-present challenge of
appropriately applying the Federal Sentencing Guide-
lines. Lately Judge Smith has been issuing sentences
designed to withstand scrutiny — whether or not the
Supreme Court upholds the guidelines. Smith recount-
ed a story from a judicial conference about a genie in
a bottle who refused to grant a judge’s first wish — to
build a bridge from the United States to Europe. When
the judge then asked for the wisdom and intellect
needed to apply the guidelines with justice, the genie
reconsidered: “Did you want that bridge two lanes or
four?”

The most pleasurable part of the job for Chief Judge
Smith is watching good lawyers at work. “I don’t know
if we get them because Baylor [University] spends so
much time on trial techniques, or perhaps the best just
end up practicing in federal court, but we are blessed
with an abundance of good lawyers here,” he offered.
One of the secrets to liking his job, he has found, is
considering not only a prospective law clerk’s academic
record but also whether the judge will enjoy being
around the law clerk. The 16 years of service of his
career law clerk, Tammy Hooks, is testament to the
loyalty of those who have made the cut.

As easygoing as Judge Smith can be, there are some
lines one does not cross. Ask the assistant U.S. attor-
ney whose perceived lack of ability, credibility — or
both — led to an invitation not to appear again in the
judge’s courtroom. Another rare glimpse of the judge’s
sterner side was shown to the reporter who contacted
a juror at home during a criminal trial and whose supe-
riors at the paper did not seem to grasp the depth of
the judge’s dismay over what had happened.

Western District of Texas U.S. Attorney Johnny
Sutton summarizes the sentiments of many, calling
Judge Smith a “tough, no-nonsense judge who expects
excellence from the lawyers who work in his court.”
Sutton describes the judge as a person who holds all
parties to the same high standard and is famous for
moving cases through the court system quickly. Good
lawyers love being in Judge Smith’s courtroom, Sutton
says, “because he knows the law and lets them try
their cases.”

When Wacoan magazine recently asked Judge
Smith where he expects to be in 10 years, he respond-
ed “underground.” Whether there or still on the bench,
he is certain to be remembered for his unflappable
control of the courtroom and strong sense of fair play
— as a man who managed to maintain his sensitivi-
ty even while wielding the power of a federal district
court chief judge. TFL

David R. Schleicher is president of the Waco Chapter of the Federal
Bar Association.