

Judicial Profile

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Walter S. Smith Jr. Chief Judge, Western District of Texas

MENTION WACO TO a stranger, and chances are that a discussion of the Branch Davidian tragedy will ensue. Look at the other end of town on a map, and you see Crawford, home of President George W. Bush. Between the two locations sits the courtroom of Western District of Texas

Texas Chief Judge Walter S. Smith Jr., whose service has brought him face-to-face with the individuals who have made both areas noteworthy.

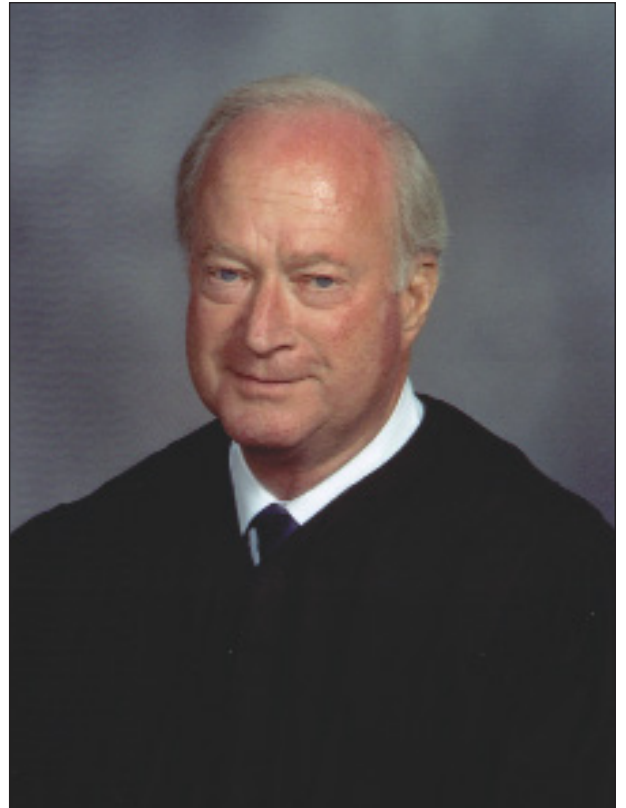
Whether one sees Judge Smith welcoming the President back to town at the airport or in the aisles of a local grocery store, the judge exudes a lack of pretension; he is ready with dry wit when least expected. His serene manner belies his position as chief judge for a district that covers some 93,000 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 before 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 Administrative 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 Guidelines. Lately Judge Smith has been issuing sentences designed to withstand scrutiny — whether or not the Supreme Court upholds the guidelines. Smith recounted 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. attorney whose perceived lack of ability, credibility — or both — led to an invitation *not* to appear again in the



Judge Walter S. Smith Jr. stands with his portrait at the "Presentation of the Official Portrait," which marked his 20th year on the bench.

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 superiors 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 responded "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 sensitivity 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.