

COURT

A sense of empathy

Noted personal injury lawyer is representing Harris County in its case against Volkswagen

Richard Mithoff says he was inspired to become a lawyer by Harper Lee's classic novel "To Kill a Mockingbird."



Melissa Phillip / Houston Chronicle

Richard Mithoff has championed the cause of consumers, workers

By L.M. Sixel

On a credenza in his downtown office, Richard Mithoff displays photos that chronicle the life of a constant striver, generous philanthropist and Democratic rainmaker: Mithoff scaling a mountain in Rockies, Mithoff laughing with President Bill Clinton, Mithoff posing "horns up" in front of the University of Texas field house that bears his name.

Yet sitting front and center among these trophies of power and success is a replica of a metal valve, evidence from a case that

Mithoff, a personal injury lawyer, tried and won 30 years ago. The case, involving a teenager killed in a chemical release while working a summer job, was neither his best known nor most lucrative.

But Mithoff still can't forget the anguish of the boy's father who, when rushing back from a business trip after the accident, saw the family's priest waiting for him at the airport.

"You can't really know about loss unless you have suffered it," Mithoff said.

This sense of empathy has helped Mithoff become one of nation's most successful trial attorneys, championing the cause of consumers, senior citizens and distraught families against leading corporations, major industries and other powerful interests. Over a career that spans nearly half a century, Mithoff has handled some of the highest-profile cases, negotiating a \$2.3 billion settlement with the tobacco industry on behalf of

Harris and other Texas counties; winning \$80 million for the families of nursing home residents killed when their bus caught fire while fleeing Hurricane Rita in 2005; and obtaining the first verdict against Dow Corning for silicone breast implants that harmed the health of thousands of women.

Today, at 70, Mithoff is taking on another high-profile case against a multinational corporation. He is representing Harris County in its air pollution case against Volkswagen, accused of violating the Texas statute that prohibits tampering with emission control devices, and was recently named lead counsel for the 11 other Texas counties suing the German automaker.

Damages could reach \$100 million in Harris County alone.

Mithoff does not fit the image of a big-time trial attorney, lawyers who have worked with him and opposed him in court say.

He is not prone to fiery out-

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Richard Warren Mithoff

Born
1945

Grew up
El Paso

Education

Bachelor's in business from the University of Texas at Austin, 1968; law degree from the University of Texas in 1971

Work history

Clerked for U.S. District Court Judge William Wayne Justice, 1971-1973; worked for lawyer Joe Jamall, 1973-1985; launched his own firm in 1985

Family

Wife, Virginia "Ginni" Mithoff, two children, Michael and Caroline, and five grandchildren

"A jury wants to feel it has a purpose beyond a verdict."

Richard Mithoff, personal injury lawyer

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Lawyer points to impact on public health

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bursts or swashbuckling courtroom theatrics. He wears khaki-colored off-the-rack suits and carries a beat-up leather briefcase ordered through an airline's in-flight magazine. He doesn't berate associates or throw his weight around; most of his employees have been with him for years. His legal colleagues describe his courtroom style as unassuming. He speaks softly and listens intently, connecting with both judges and juries through his mild manner and straightforward approach.

Perhaps, most important, Mithoff knows that cases aren't about him. He prefers to put clients front and center, letting them speak for themselves and allowing juries and judges to hear about pain, injustice and loss through sometimes meek, sometimes emotional and sometimes angry voices of clients.

Grant Dorfman, a civil district judge in Harris County, recalled a case involving an oil worker killed during a pipe explosion. Dorfman said he expected Mithoff, like other big-time trial lawyers, to dominate the proceedings.

Instead, he faded into the background as the oil worker's son testified about cradling his father's head as he lay dying in an oil field in South Texas. Soon after, the oil services company and pipe inspection firm settled the case for an amount kept confidential under the legal agreement.

Mithoff succeeded by not getting in the way, said Dorfman. Joe Ahmad, a Houston lawyer, put it a different way: "He's not a jackass like some lawyers are."

Mithoff says he wins because he believes in his



Melissa Phillip photos / Houston Chronicle

Items in Richard Mithoff's office include a photo of Mithoff and his wife, Ginni, with Barack Obama, and a valve and bus brake parts used as evidence in trials.



clients, which gives him the confidence and credibility to persuade a jury. He also tries to convince jurors that more than an individual case is at stake.

While the outcome is important to the victims, Mithoff emphasizes that it could have a broader effect on product safety and public health, whether it spurs a recall on defective tires, pushes the government to regulate breast implants or forces hospitals to stop ignoring signs of troubled physicians.

"A jury wants to feel it has a purpose beyond a verdict," he said.

Personal connections

Mithoff, a trim man who

stands nearly 6 feet tall, grew up in El Paso, the oldest of three sons in a middle-class family. Inspired by the novel "To Kill a Mockingbird," Harper Lee's classic about a Southern lawyer fighting for a wrongly accused black man, he began to study famous trials and famous lawyers, and found he most admired those, like Atticus Finch, who fought for underdogs.

He earned a business degree from the University of Texas at Austin and then went to the law school there, graduating in 1971. He clerked for U.S. District Judge William Wayne Justice in Tyler, who handled some of the state's best-known civil rights cases,

including one in 1971 that forced school districts in East Texas to integrate their classrooms.

Percy Foreman

One day, Justice told Mithoff that Percy Foreman, a famed criminal defense lawyer who kept more than 1,000 accused killers from execution, would be visiting and recommended Mithoff swing by his chambers. When Mithoff arrived, he saw Foreman, 6 feet 5 inches tall, holding his hat and telling Justice that he learned to try cases by watching the judge's father, Will, an East Texas lawyer, in action.

It was a powerful moment that showed Mithoff how emotional connections can be made in an instant. Nothing was ever said, but Mithoff wondered whether Foreman's ability to form a personal bond led Justice to sentence Foreman's client to probation for robbery instead of jail.

As his two-year clerkship was coming to a close, Justice recommended Mithoff to Jamail, the swashbuckling trial lawyer best known

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for winning a \$10.5 billion verdict for Pennzoil in its epic case against Texaco in the 1980s.

Mithoff and Jamail hit it off quickly; Mithoff worked for Jamail for a decade before launching his own firm in 1985, taking an office one floor above his mentor.

From Jamail, Mithoff said, he learned to watch people and their reactions in court, and to listen to the answer after asking a question, before formulating the next one.

Jamail died last year. His photograph hangs in Mithoff's home office, next to one of Justice and another of Mithoff's father, Richard Sr.

Exhaustive research

Mithoff, who has six lawyers working for him, has a reputation for exhaustive pretrial research. In one case involving a botched surgery that resulted in extensive brain damage, Mithoff hired a private investigator who found the surgeon's ex-wife. She not only provided information about the surgeon's drug addiction, but also leads to other witnesses familiar with the surgeon's history. The jury came back with a \$41 million verdict.

But Mithoff didn't always have that luxury of private eyes. Early in his career, Mithoff recalled, he could get a case on Friday, meet the client Saturday and be in front of a jury on Monday.

One such case occurred in 1977. The weekend before

the trial began, Mithoff met the client, a Texas woman whose silicone breast implant leaked and caused an infection. Mithoff had taken no depositions. He had no boxes of documents gained from discovery.

All he had were his questions. When the inventor of the implants took the stand, Mithoff pressed him until he conceded it was possible for the silicone to leak from the implants. The jury awarded the woman \$170,000.

That marked the first verdict against the implant maker, Dow Corning, which, under a deluge of lawsuits, filed for bankruptcy in 1995, three years after the Food and Drug Administration recommended a partial ban on the implants for safety reasons.

It was one of Mithoff's first victories against a big corporation, but not his last. He estimates he has won several billion dollars in verdicts, judgments and settlements against companies that include BP, Bridgestone/Firestone and Sears.

Too much litigation?

Of course, not everyone is happy with those big-dollar verdicts. Doctors, insurance companies, manufacturers and others blame trial attorneys like Mithoff for flooding the courts with litigation, some with little merit, and raising the cost of health care, consumer products and insurance of all kind.

Mithoff dismisses such criticisms. If companies — Volkswagen, for example

— owned up to mistakes and fixed defects quickly, he said, he'd be out of a job.

Help where it's needed

Mithoff's firm occupies the top floor of One Allen Center. The office walls are covered with framed newspaper and magazine clippings, including an article about his first \$1 million verdict. But even as he prepares for Volkswagen, Mithoff is still taking on cases that are smaller, but no less important to him. For example, he is representing a family whose son, a utility lineman, was electrocuted by an overhead power line.

Mithoff is a lifelong Democrat who believes society has an obligation to give everyone a fair shot. He estimates he has raised hundreds of millions of dollars for Democratic candidates, opening his 12,000-square-foot home in River Oaks for political fundraisers, recently hosting one for Hillary Clinton.

Many of the events are commemorated with photos, like the one of then-candidate Barack Obama in Mithoff's living room in 2008. A plaque outside a guest bedroom commemorates that Bill Clinton stayed there during a 1998 fundraising trip.

Despite all this success, Harry Reasoner, a Houston lawyer, said he most admires Mithoff for his philanthropic work. Many donors give money to well-endowed institutions, such as symphonies, art muse-

ing hospitals, Reasoner said. But Mithoff gave half of his \$20 million fee from the tobacco litigation to the Harris County Hospital District, the public health care system.

Mithoff and his wife, Ginni, earmarked the money for children's health.

"There are not a hell of a lot of people who give to public hospitals," said Reasoner, who has known Mithoff for decades.

Reasoner also pointed to Mithoff's commitment to legal aid, which helps people who can't afford lawyers. In 2009, Mithoff gave \$1 million to the University of Texas School of Law to start a legal aid program and contributed another \$1 million in 2014.

Eden Harrington, an associate dean, said the donations transformed the legal aid program into a fundamental part of the law school experience. Each January, three dozen UT law students travel to the Rio Grande Valley, one of the poorest parts of Texas, to help residents with wills, homestead exemptions, immigration, bankruptcy and expunging criminal records.

Ninety-seven percent of the latest incoming class pledged to donate at least 50 hours of providing free legal help.

"It's all about helping others," she said. "It sounds trite, but it's not."

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