

Lifetime of Excellence in Advocacy Award 2014

Texas Association of Civil Trial and Appellate Specialists

honoring

Richard Mithoff

*Introduced by Justice Tracy Christopher
Fourteenth Court of Civil Appeals*

November 19, 2014

I am pleased to introduce to you Richard Warren Mithoff as we honor him for the Lifetime of Excellence in Advocacy Award. What makes Richard a great advocate? And why is he getting this award?

Winning, of course. And a great reputation

Winning

Its undisputed that Richard has won a lot of cases and made millions for many clients. In fact the *National Law Journal* reported in 1999 that Richard wins 90 percent of his cases to the jury.

So how does a Plaintiff's attorney become a winner? I asked this question to several judges, including Randy Wilson, Elizabeth Ray, Mike Miller, Jeff Brown, Martha Jamison, Jane Bland, Harvey Brown — how does Richard win and how does a plaintiff's attorney in general win.



I won't tell you who said what, but several themes developed.

First characteristic of a winning lawyer -intelligent, disciplined and with a great work ethic. Richard has all of that.

Richard graduated from UT law school in 1971 and was the project editor for the *Law Review*.

He clerked for U.S. District Judge William Wayne Justice. According to Wikipedia (and we know its ok to cite Wikipedia since the Texas Supreme Court does!) William Wayne Justice was known to work throughout his life to protect civil rights, uphold constitutional freedoms and ensure equal justice for all. "His landmark rulings have safeguarded the rights of the minorities, the poor and the politically powerless in many areas." Richard learned a lot from Judge Justice.



First characteristic of a winning lawyer—intelligent, disciplined and with a great work ethic.

Richard went into practice with Joe Jamail in 1974 and the firm later became Jamail, Koliou and Mithoff. He tried to get to trial every week as a young lawyer—taking what we all call the "dog cases" and he started to win them.

He won the first case to establish a defect in the silicone breast implant cases in 1977. Richard learned a lot from Jamail and Koliou. Jamail is a prior winner of this award.

Since 1984 he has either had his own firm or been partners with Tommy Jacks. He worked hard and was disciplined.

Every judge that has ever had Richard in their court and every opponent of Richard's have uniformly described him as hard working and well prepared—always.

Second characteristic of a great lawyer is competitive, confident, a bit of a maverick, a risk taker and enjoys the hunt. Again Richard has it

What makes an attorney think he can win a case that no one thinks that he can? He must be supremely confident but also competitive. He loses a few cases but then picks himself back up and tries again. He doesn't settle for taking only the safe cases, but looks for cases where he thinks a wrong has been done.

Richard has made a name for himself in medical malpractice cases. Even before med mal reform, these cases were never easy. Jurors like doctors and Richard had to overcome that bias.

Nationally, he is recognized for his "pioneering litigation" in cases of babies suffering brain damage during childbirth. One of his first widely publicized cases involved a settlement in a malpractice case against a Pasadena hospital in behalf of a child injured at birth. The case was featured on ABC's *Nightline* and led to changes in the laws relating to hospital reporting requirements for the misconduct of doctors.

In 1997 Mithoff obtained a judgment on behalf of a pregnant woman against a hospital and anesthesiologist with a history of drug abuse required the hospital to make sweeping changes in its by-laws and drug screening procedures--an order described as a "precedent setting decision" by the American Hospital Association.

In 1993 Mithoff represented the family of a young woman who died from hyponatremia--a low sodium condition affecting primarily women and young children following the use of improper IV solutions after surgery. The verdict resulted in changes in hospital procedures concerning the use of such IV fluids.

One of the experts involved in recommending these changes has estimated that such changes will save thousands of lives every year.

We can debate the need for peer review privileges in hospitals but it makes it almost impossible to prove malicious credentialing cases—to hold a hospital liable for allowing an incompetent doctor to operate in the hospital. A hospital is allowed to cloak its hiring decisions, its review of the credentials of a doctor and the report on any prior bad results under the peer review privilege. Richard tried a malicious credentialing case in my court—and the jury found for his client concluding that the hospital acted

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with malice—with actual knowledge of the extreme risks of employing the doctor but

chose to credential him anyway. The case against the hospital was reversed on appeal—no evidence of malice.

But Richard went further—filing a complaint against the doctor Merrimon Baker on behalf of his client with the medical board and notifying the doctor's new hospitals of the jury's findings. After the doctor once again injured a patient, the new hospital was sued. It tried to cloak Richard's letter under the peer review privilege. Although the fact of the letter was not privileged, the Beaumont court of appeals held that the hospital did not have to admit that it received the letter.

Ultimately in 2006, the Texas Medical Board suspended Dr. Merrimon Baker but put him on probation for three years. He immediately violated that agreed order and the Board revoked his license to practice in Texas. He sued to overturn the order, but it was upheld by a trial court and the Austin appellate court in 2013. But that is not the end of Dr. Baker, he was found guilty by the board of practicing medicine without a license under the name Dr. Walter Spike in 2013.

Richard also has tried and won products cases—another area where tort reform has made

the hunt more difficult. These verdicts have led to changes in product design or usage, reducing the risk of injury for not just his own client but also to the public.

For example, after initially agreeing to a confidential settlement for his client in a tire blowout rollover case, he later fought to make sure that the corporate documents were not hidden from the public.

Houston Business Journal described Richard as a legal renegade—I think it would be more accurate to call him a trail blazer instead.

What makes an attorney keep working long after money no longer becomes a concern? Many successful attorneys will tell you—they just want to help their clients. While this is surely true—there is a thrill to winning, there is a thrill to convincing a jury that your theory of the case is true, there is a thrill to walking into a mediation and know that the other side fears your abilities. It's good to settle a case for a lot of money but for this award you must be the type of the person that wants that thrill and be willing to risk some (or a lot) of money to do so. Richard knows that thrill.

The third characteristic of a winning lawyer is that they are usually a people person who treats everyone with respect—clients, jurors, witnesses, opposing counsel and the court.

Clients:

Richard is the kind of person that when he talks to you, he really seems interested in what you have to say. I am sure that his clients feel the same way. As one lawyer described his relationships with his clients “their cause is his cause.”

Although Richard did say in an interview that he has to like a client before he takes the case.

Jurors:

Richard treats potential jurors that way dur-

ing voir dire and as a result, people tell him things that help him make his strikes for cause—even the people who don't like his case or his client, seem to like him and will tell him why they cant be fair. Jurors trust him.

Although one lawyer said jurors think Richard is “one of them” I think its different. Richard is too calm and understated for most of us! I think its more a matter that the jurors believe that Richard respects them.

He is good with witnesses:

One judge described how Richard can even elicit tears from a hardened witness such as a police officer. He said “His first witness was a policeman who first came to the scene.

Within 10 minutes he had the policeman in tears and half the jury welling up too.”

I am surprised it was only half. Even other lawyers like him:

David Beck said: “He makes you think you are his best friend.”

And he is funny.

BUT he won't put up with bad lawyers on the other side. In a very polite way, he knows what buttons to push to make them seem unreasonable.

Richard is loved by the trial court judges:

As one judge said: He was always respectful when he spoke to me, even when I was very new to the bench and a very young judge, with what I perceived to be authentic respect. It was a respect that an experienced and well-regarded lawyer felt for the law and for our judicial system. I'd speculate that he has always treated all judges that way, whether or not he actually respected the abilities of the person wearing the robe.

Another judge said: He doesn't BS the judge. He is one of those lawyers that every trial judge loves to see walking in the door.

Third characteristic of a winning lawyer is that they are usually a people person who treats everyone with respect—clients, jurors, witnesses, opposing counsel and the court.

Fourth characteristic of a winning lawyer is, of course, really good in trial.

Every lawyer has a style in court. This is what lawyers and judges think about Richard and why he wins:

Preparation

- Thorough, thinks everything through, works with his team to make sure that the first hearing before the court is on an important issue where he can explain the case and get the judge on his side on the facts.

- He listens to everyone in the courtroom-- especially opposing counsel (and often he is against multiple opposing counsel). He considers the input and viewpoints of his colleagues-- especially those allied against him, and he develops his thoughts about the case with consideration of all of these views. This makes him the most reasonable person in the courtroom.

Technique

- Individualized style that fits the case-not just what has worked before.
- Methodical yet with a very conversational way of examining the witnesses
- A natural storyteller-in opening laying out in an easy to manage way, what the case is about and telling the jury what they need to know-no more no less.
- Distilling complicated issues into easy to understand concepts without seeming condescending.
- Low key, no bluster or theatrics, but relentless, pushing and pushing until he gets what he needs.

- Unflappable

Intangibles

- Credible, sincere
- Doesn't oversell the law or the facts
- The most reasonable person in the courtroom.

- He also is kind, and sincere kindness is underrated in the legal business.

Genuine concern

The second reason that a lawyer deserves the Lifetime in Advocacy Award is that he has a great reputation-Richard certainly has that.

After practicing only 15 years he was already well known for his advocacy. He became a member of ABOTA in 1986 and was the president of the Houston Trial Lawyers Association from 86-87. Also became a member of the International Society of Barristers in 1988.

Fourth characteristic of a good lawyer is, of course, really good in trial.

In 1988, *Texas Lawyer* praised Mithoff for his "Medical Malpractice Magic." It appears that in his earlier days, Mithoff was considered "aggressive and combative." Mithoff said he gets into scraps and tries to control his temper. He claimed to operate on instinct—although all of his opponents praised his preparation.

Part of his preparation was in carefully screening his cases taking about 1 out of 75 cases. (I wonder what the numbers are today.)

Texas Lawyer detailed his wins and an early decision in 1984 to fund a scholarship at UT Health Science Center to improve training in neonatal and perinatal care.

Richard said "I enjoy what I am doing. I get restless when I'm not in trial or involved in something big... I just enjoy trying suits."

As early as 1989, he was named one of the "Top 10 Trial Lawyers in the United States" by *Forbes Magazine* and in 1995 he told *Forbes* "I'm not Mother Teresa." I'm in this to make money."

Yet by this time Richard had funded three scholarships at UT

In 1996 *Lawyers Weekly* interviewed Mithoff in connection with an article about the richest small firm lawyers in America. When asked why he kept taking cases when it appeared he no longer needed the money, Mithoff replied: "I really enjoy what I am doing. I love taking on

a case that looks hopeless but where I think some injustice has been done. I enjoy the people I meet and when I can help someone out, I feel good about it.”

In 1998, Mr. Mithoff represented Harris County in the tobacco litigation. After the settlement he told the county he did not want a fee.

They gave his \$20 million anyway. He gave them back \$10 million to fund children’s health programs. *The Houston Chronicle* described Mithoff as a

“powerhouse attorney” whose “charitable gesture is deserving of the highest accolades.”

Mithoff told the *Detroit Free Press* in 2000 that he has had success “taking on the bully. I like to feel like I’m defending the little guy that’s getting picked on.”

In naming Mr. Mithoff the “Best Civil Lawyer” in Houston in 1998 and again in 2004, the *Houston Press* described his courtroom style as “dazzling his opposition with pretrial maneuvers and connecting emotionally with any juror he needs,” while noting that he has “earned a reputation for honesty and forthrightness with clients, judges, and the media.”

Richard and his wife Ginni have continued their philanthropy contributing millions to the UT law school to expand pro bono program. Richard “Ginni and I are honored to be a part of this program, which not only provides outstanding training to our law students and future lawyers, but also provides very valuable legal assistance to those most in need.”

Richard and Ginni were awarded the first Ben Taub Humanitarian Award by Harris County Hospital District Foundation in 2000 in recognition of their “generosity, interest and advocacy for health care”. The hospital district named its world-class trauma center the Ginni and Richard Mithoff Trauma Center at Ben Taub Hospital in 2007.

They also support many Democrats and democratic causes—but I won’t hold that against them!

Mithoff likes “big challenges.” At 54 years old he decided to take up mountain climbing. He summited Kilimanjaro in 2000. Since then he has quite a bit of climbing, including a lot of

technical climbing with ropes. Richard said: “A lot of people say it is crazy. I like the challenge.”

But finally as one judge noted Mithoff just doesn’t seem to have any enemies—even doctors like him. I did find one mention that “critics may grumble that he overdoes the soft spoken mumbling humility shtick” but in the grand scheme of things—that is not much of a complaint.

Please join me in congratulating Richard Warren Mithoff as he receives this Lifetime of Excellence in Advocacy Award.

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