

# Super Lawyers®

2021

*'Where You Are and Where You've Been'*

Texas attorneys share their stories of coming to America

Former Judge **MARILEA LEWIS** believes in strength through civility

**WARREN HARRIS** is on a mission to teach kids about Texas' legal system

Legal legend **RICHARD MITHOFF** has been to the mountaintop



## Gentleman of the Court

Persistence and composure serve Richard Mithoff well, in court and on the mountainside BY HARRIS MEYER

It's still a thrill for Richard Mithoff: stepping into a case on short notice, coming up to speed quickly on a complex area of law, and explaining as clearly as possible to judge and jury why his client should prevail.

He's taken on cases others thought were losers, notching hundreds of \$1 million-plus personal injury and commercial verdicts and settlements. He's also handled litigation for the Democratic Party, persuading a federal judge after the 2020 presidential election to preserve 127,000 votes cast at drive-through voting sites in the Houston area. He initially tried to beg off, saying he wasn't an expert in election law, but Harris County officials hired him anyway.

"Clients say they want somebody who knows his way around the courtroom and knows how to communicate with the judge and jury and put the case in simple terms," he says, taking a break from prepping for a products liability case involving a fatal helicopter crash. "It's an advantage to learn an area that's new to me, because the questions I'm asking are the same questions the jury will ask."

Colleagues say he has an uncanny ability to grasp the heart of a case and craft persuasive arguments to sway judges and juries. Houston litigator Sean Gorman observed this while watching Mithoff at trial and, along with co-counsel, at the Texas Supreme Court in 2017. His argument was that Gorman's client,

Noble Energy, was liable for indemnifying ConocoPhillips in connection with \$63 million in environmental cleanup costs.

"Richard's insight was that, setting aside all the arcane bankruptcy arguments, the bottom line was Noble's alleged conduct showed they acknowledged that this agreement was enforceable against them," says Gorman, a partner at Bracewell. "His argument was concise and powerful."

Mithoff is representing the family of a 4-year-old girl who was hit in the head by a foul ball during a Houston Astros game two years ago, suffering a brain injury. The team agreed in August to a confidential settlement, Mithoff says. One challenge, he says, was the longstanding rule that baseball fans assume risk when sitting in the stands. He adds that he helped persuade Astros owner Jim Crane to extend netting all the way down the foul lines to prevent such injuries.

Mithoff is also serving as court-appointed lead counsel for all Texas counties in a lawsuit against Volkswagen alleging that the automaker fraudulently manipulated emission controls in its vehicles in violation of the Texas Clean Air Act. Harris County alone is seeking more than \$100 million in damages.

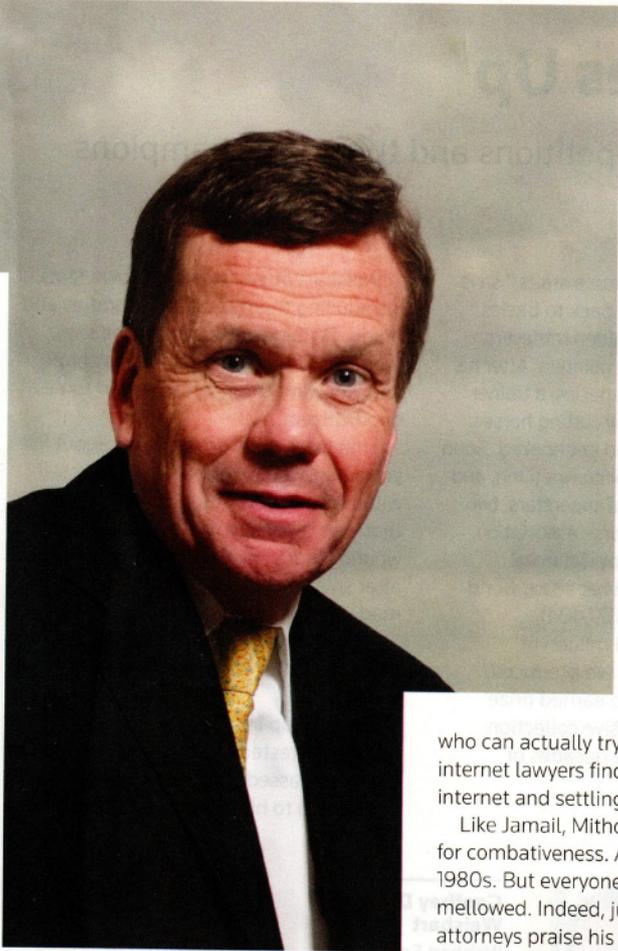
That appointment grew out of his success in winning a \$2.2 billion settlement for all Texas counties and hospital districts in a lawsuit against tobacco companies in 1998. He donated half of the \$20 million fee he earned from the case to the public



Mithoff scales a peak in the Tetons.

Harris County Hospital District to fund children's health programs.

The 75-year-old attorney's passion for the law is similar, in some ways, to his zest for mountain climbing, a sport he took up in his 50s, which requires intense focus on selecting a route, executing each step, and being ready to improvise in the face of unexpected developments. A few close calls—including having to abort a climb when his rope started to tear apart 400 feet up—have failed to dampen his enthusiasm. He had a 10,000- to 12,000-foot climb in the Tetons on the books for July.



### Richard Warren Mithoff

Mithoff Law Firm: Personal Injury - General: Plaintiff; Houston

**MITHOFF GREW UP** in El Paso and graduated from University of Texas School of Law in 1971. He clerked for U.S. District Judge William Wayne Justice, who was presiding over some of the state's biggest civil rights cases. Soon after, he was hired by Joe Jamail, Houston's famed "king of torts," with whom he worked for a decade before going out on his own in 1984.

"Joe's philosophy was: Get a file on a Friday, often an auto-collision case, meet the client on Saturday, find witnesses on Sunday and pick a jury on Monday," Mithoff recalls. "The only way to become a good trial attorney is to take every opportunity to be in front of a judge or jury. But there are very few real trial attorneys any more

who can actually try cases. Today we have internet lawyers finding cases on the internet and settling them."

Like Jamail, Mithoff developed a rep for combativeness. At least he did in the 1980s. But everyone says he's long since mellowed. Indeed, judges and other attorneys praise his low-key style.

"Richard is the ultimate in being a gentleman, both in the court and outside," says Texas Court of Appeals Justice Randy Wilson, who presided over a 2004 trial in which Mithoff won a \$24.7 million verdict for the family of a woman burned to death in a car accident involving a drunken driver. Wilson remembers how Mithoff brought jurors and a police witness to tears with his understated but persistent questioning. "He doesn't shout or wave his arms, he comes across as very truthful, and juries love him."

"He's straightforward and honest and would never mislead you or try to manipulate discovery," says Darrell Barger, a partner at Hartline Barger in Houston who has faced off against Mithoff in several tort cases. One involved a bus fire that killed 23 nursing home residents. Mithoff won an \$88 million settlement for the families of the victims in 2009.

"My longstanding instruction to my wife," says Wilson, "is that, if I ever get run

down by an Exxon truck, she is to hire Richard."

It doesn't hurt that Mithoff is quite the raconteur. He recalls representing Willie Nelson before the Gonzales County Commissioners Court in 1976 to secure a permit for the singer's famously rowdy Fourth of July picnic and music festival.

"The courthouse was packed, like a scene out of *To Kill a Mockingbird*," Mithoff recalls. "They talked about law and order and dope and nudity, and crowds overrunning chickens and crops." Nelson eventually got the permit—one of the commissioners had the lucrative concession contract, Mithoff says. "Willie invited me to the picnic," he adds. "It was just about as bad as everyone said it was."

Mithoff says he still gets the most satisfaction from representing "regular people" who have suffered injuries or losses, and through those cases forcing changes in business practices that better protect the public.

Since he started practicing in 1974, his cases have helped produce reforms in hospital credentialing of physicians and reporting of physician misconduct; prompted medical manufacturers to pull defective products off the market; led hospitals to improve their use of post-surgical intravenous solutions; and triggered a manufacturer's recall of defective tires.

He and his wife, Ginni, are widely known for their philanthropic efforts. They contributed \$2 million to create a noted pro bono training program, now named after them, at University of Texas School of Law; and raised \$1 million for the Texas Access to Justice Foundation's endowment to fund free legal help for returning military veterans. Mithoff has also raised substantial funds for Democratic candidates including Bill and Hillary Clinton, Barack Obama and Joe Biden, all of whom have come to his River Oaks home for fundraising events.

And their contributions to the Harris Health System led the district in 2007 to name its trauma center at Ben Taub Hospital the Ginni and Richard Mithoff Trauma Center.

"You can't not like him," Gorman says, "even if you are the opposing counsel." **SL**