

STRAIGHT UP^{and}

Richard Mithoff “just goes down to the courthouse and does it”

UNSHAKEN

by KENNA SIMMONS

PORTRAIT BY LARRY MARCUS

Sitting in his “war room” just off his private office in downtown Houston, Richard Mithoff is surrounded by the trappings of success. Literally surrounded. But rather than expensive furniture and art, he is surrounded by the flotsam of his cases: Letters from clients hang framed on the wall, along with newspaper clippings, courtroom drawings and sketches, and photos of Mithoff indulging in his nonlegal passion, mountain climbing. There’s scarcely a bare inch of wall space to be found — or much floor space, for that matter. Boards and easels are stacked against the wall, and a skeleton hangs by the window (it comes in handy in medical malpractice cases). A working replica of the red telephone from Winston Churchill’s famous war room — a present from a friend — sits nearby. The place looks and feels like a cross between a mini-museum and a stockroom.

This week Mithoff is glad to be back in Houston after trying a complicated and prolonged medical malpractice case in Lubbock. The case involved a young man who was admitted to the hospital with a broken leg, but

doctors failed to detect an injury to a leg artery. The man’s leg had to be amputated because the hospital neglected to find the original injury, and Mithoff sued the hospital and the physician in charge. The real challenge, he says, was the victim’s inability to communicate and understand what was happening.

“He has a condition similar to autism,” Mithoff says. “We had a very good guardian ad litem and a primary counselor. They helped us to understand him and his difficulties in trying to understand what the trial was about, what the outcome might be and what a good outcome for him would be.”

It was, he says, one of the more challenging cases of his career — how could he get a jury to relate to the victim? So he did what he always does: He talked “straight up” to the jury. “I talked to them about the challenge of representing this young man and trying to assess the damages to a person who was already compromised, before he lost his leg,” Mithoff says. “I approached them about the challenges we would both face in trying to be fair to both parties. ... The only way I know to approach a case is straight up, telling the jury what is troubling me. Because



"Something drives me to simply be up there talking to a jury," says Mithoff, who is the Texas Bar Foundation's 2006 Outstanding Trial Lawyer of the Year.

wanted to communicate," he says. He took the Lubbock case primarily because he knew how hard it would be to present the case for damages to a jury, and he uses the word "performance" to describe how he feels — though not, he hastens to say, in the sense of acting. "Something drives me to simply be up there talking to a jury," he says. "There's something that happens the moment a case is called. A panel is seated and it's time to get up there. It reminds me of running track — before you get in the blocks, you're waiting and nervous and sometimes you're even throwing up. But all that goes away as soon as the gun goes off."

Certainly Mithoff's approach strikes a chord. He successfully settled the malpractice case in Lubbock; he won a \$29 million judgment against Sears, for its tire retailing operation, in a 2002 case

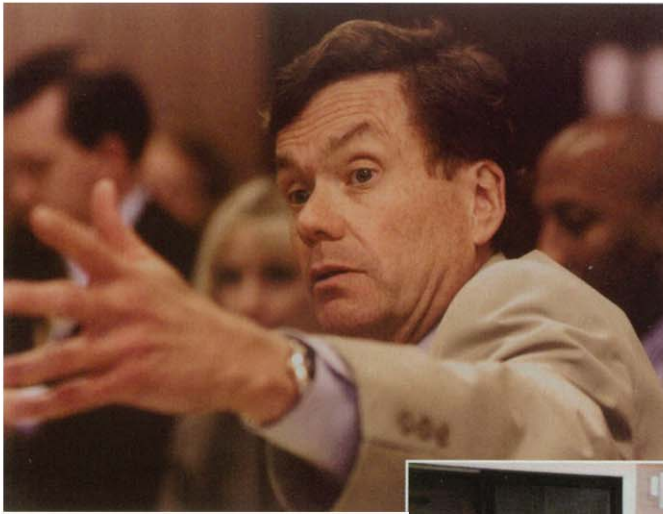
often that may also be troubling the jury."

Mithoff is a master at connecting with a jury. It comes, he says, from following the advice Warren Burnett — a "great lawyer" — once gave him: "Never try to cut through with a knife what the jury may want to untie themselves. Let them figure out a way to get from A to B, even if it's not the way you got there."

It's what he loves about being an attorney — the physical act of being in front of a jury and making his case: "Sitting down and believing that, win or lose, you've communicated everything you

involving a rollover accident; he negotiated a \$10 million settlement in 2003 for the family of a child who burned to death in a collision with a Houston Metro bus and he was one of the attorneys who helped secure a \$2.2 billion judgment for Texas hospital districts in a tobacco litigation case. He has just received the Texas Bar Foundation's Outstanding Trial Lawyer of the Year award for 2006.

Mithoff is also well known for the Romero case, in which he won a verdict against a hospital for knowingly hiring a physician who posed a risk to patients. Though the case was later reversed,



Above: Arguing for the Texas Democratic Party in the 2001 redistricting case that later made its way to the Supreme Court. Right: with mentor and famed trial lawyer Joe Jamail (left).



remanded and settled, it has caused hospital boards to more closely monitor physicians for signs of impairment. The victim, Ricardo Romero, went into the hospital for back surgery; mistakes during the operation left him brain-damaged, with little short-term memory. "I became close to the family," says Mithoff. "They meant a lot to me. And it was important that a number of physicians and health professionals told me they agreed that hospital boards should be held more accountable."

Mithoff describes himself as a "throwback to the time when lawyers just went down to the courthouse and did it." Growing up in El Paso, he was "fascinated by the drama of law — the potential of one person as an advocate on behalf of someone else who can literally change the course of that person's life." After graduating from law school at the University of Texas at Austin, he clerked for U.S. District Judge William Wayne Justice in Tyler. It was, he says, an invaluable experience at a time when constitutional law was being argued throughout the South. "Federal judges were still struggling with desegregation, and this was in deep East Texas, where schools were very much segregated," Mithoff says. "For two years I lived through some of the most fascinating constitutional litigation ever."

Mithoff then went to work for famed Texas trial lawyer Joe Jamail (named "Trial Lawyer of the Century" in 1999 by TEXAS MONTHLY), who remains a good friend. The affiliation gave Mithoff a chance to try cases every week — training that he says helped him develop his rapport with juries. "I was picking a jury somewhere every week," he says. "We had an old docket system, and the cases were called every Friday. I was the youngest lawyer in the office, and every Friday I went around looking for a case no one else wanted to try. I'd learn the case over the weekend. They were cases no one could win. But they gave me the opportunity to pick a jury."

Just as valuable was Jamail's knowledge. "I learned a lot from Joe," Mithoff says. "We'd sit around ... at the end of the day, and he'd tell me stories and answer questions." Mithoff was ready, then,

for his first big trial — a product liability case involving breast implants, the first such case against Dow Corning. "Joe was scheduled to try the case, but on the Friday before it went to trial he had a conflict," Mithoff remembers. "So he gave me the file. I tried it and won a verdict of \$170,000, which in the 1970s was quite a bit of money. Things took off from there. I found the best way to get cases was to keep going down to the courthouse and proving to judges and lawyers that I could do it."

That kind of work is missing from today's trial practice, Mithoff says. In many cases, mediation has replaced jury trials, so young attorneys no longer get as many chances to hone their abilities in front of a jury. It's more about case gathering than case trying, Mithoff says. "Now there is considerable emphasis on the business side of the practice of law, rather than the human side and the service side. It's become oriented toward case-gathering rather than taking cases as they come, one by one, as people need lawyers."

Mithoff is proud of his work in the tobacco settlement, in part because the settlement provides funds to each county and hospital district in Texas. Health care, particularly children's health care, is an important issue for Mithoff and his wife, Ginni. So it was only natural that he asked the county to retain \$10 million of his fee from the case to fund child health programs (Mithoff initially worked the case for no fee but was awarded \$20 million).

Mithoff credits Ginni with "straightening him out in a hurry" after they met at the University of Texas.

"I was drinking and playing cards all night, and there was a time when I was asked to take a leave from college and return later," he says with a grin. "She made it pretty clear that I either graduated and started law school, or I could do what I was doing alone." The couple's son, Michael, was born while Mithoff was clerking following law school; a daughter, Caroline, followed. Caroline shares her father's passion for mountain climbing, while Ginni "tolerates it," Mithoff says.

Mithoff finds excitement in places far from a courtroom. He drives a Ferrari and has scaled peaks in the Grand Tetons, the Alps, the Dolomites in Italy, the Pyrenees in Spain, Mt. Kilimanjaro in Tanzania and Patagonia in South America. The family meets each year in the Tetons; this year Mithoff is hoping to climb Mount Moran (he has already made it to the top of the Grand Teton). It is, he says, a kind of athletic performance not dissimilar from work in front of a jury. "I like the fact that it's just you and the mountain," he says. "The only thing that separates you from the summit is the sheer will to push forward."

Much as he loves mountain climbing, Mithoff says it's hard to imagine not being a trial attorney. "Maybe I'd climb mountains; maybe I'd drive a race car," he muses. "But even when I step out of trying lawsuits for a while and take some time off, I find myself always wanting to get back in the courtroom."

It's the lure of the jury, the same thing he has felt his entire career. "My favorite part of what I do is getting that totally unexpected call about a case that may or may not be in the headlines but is fascinating and challenging and maybe even a little scary," Mithoff says. "Then the best part is jury argument. I sometimes tell a jury that I don't know if I have done everything I should have done in a case. And I don't know if I have approached every witness in a way that answers all their questions. All I can tell them is that I've done my best. And then they can untie the knot." ❖