

PROFILE

# Richard Mithoff: Voice for malpractice victims

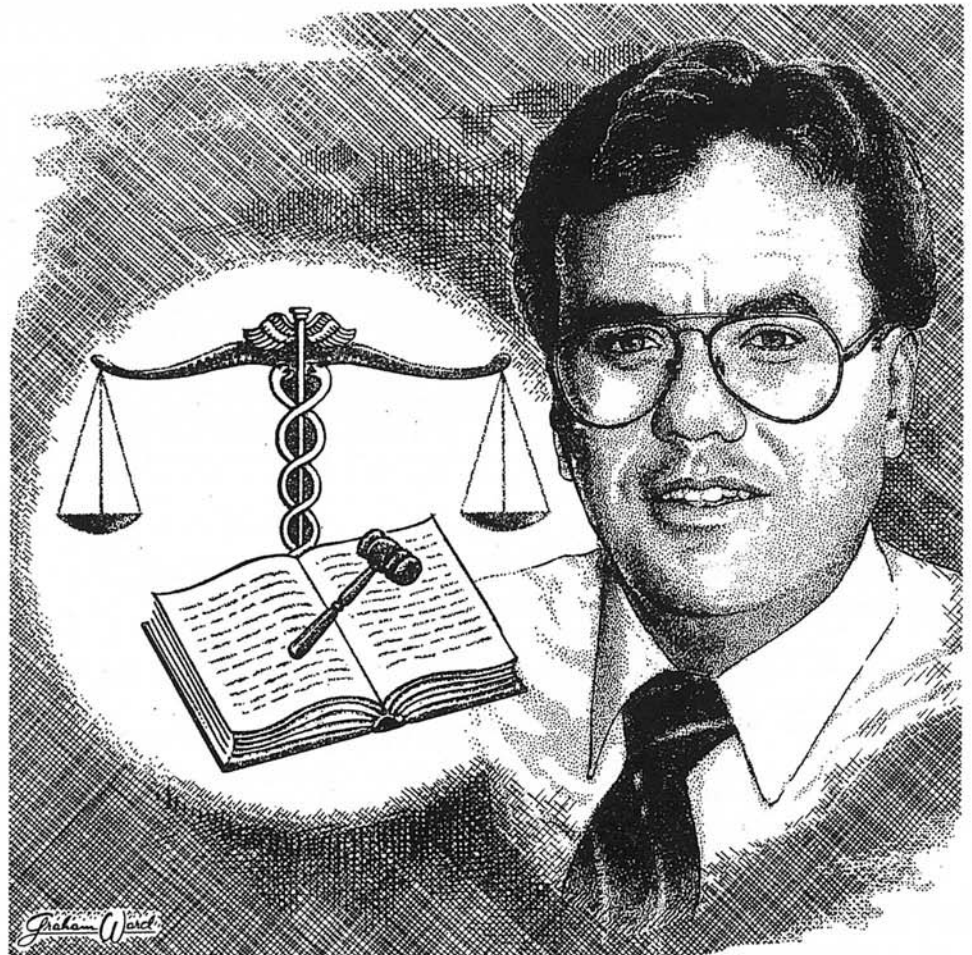
By Gail Rickey

Several years ago lawyer Richard Mithoff settled a birth injury malpractice suit in favor of his clients who were awarded an amount believed to be the largest ever paid in a malpractice case. The suit was filed on behalf of Andrea Ferris, a newborn who suffered severe brain damage due to oxygen deprivation. The child is not expected to ever progress beyond the mental state of a one-year-old, necessitating that she receive constant care throughout her life.

Both the attending physician and the hospital were cited with negligence. Not only had the doctor waited for 12 hours before going to the hospital, even when notified that the unborn baby was in distress, but hospital administrators testified that the physician had previously been under the influence of drugs, resulting in bizarre and unpredictable behavior while on duty. The Ferris family was awarded a potential \$119 million, with the bulk of the settlement to be paid over the lifetime of the child.

Following the settlement, Mithoff was inundated with calls seeking his legal counsel about other birth injury incidents. In the intervening years he has investigated hundreds of potential malpractice cases, taking on only the ones which he believes involve true negligence. In reviewing a multitude of cases, the attorney has concluded that many of the injuries result from a lack of knowledge — not a lack of care — on the part of medical professionals.

Frustrated by the irreversible injuries suffered by newborns, Mithoff recently donated \$100,000 to establish an endowed professorship in neonatal/prenatal medicine at the Medical School in the University of Texas Health Science Center at Houston. "The ultimate goal is to adequately train doctors and nurses to prevent unnecessary injury," says Mithoff. "In most cases (that he reviews) there seems to be a lack of knowledge, a lack of sensitivity to the critical indicators of an unborn baby in distress. Doctors need to be educated about



when it is better to intervene than to wait and let nature take its course."

While Mithoff does not pretend to be a medical professional himself, he spends a considerable amount of time consulting with experts about potential cases, turning to a range of doctors for advice. Today one of his staff members is a nurse who works full-time reviewing medical records.

The attorney has high praise for those in the medical profession who demand excellence from their contemporaries. Until a few years ago "it was almost impossible to find a doctor who would testify" against another doctor, he says. But today Mithoff finds that many physicians, especially those

associated with medical schools, "are interested in education and want to help, want justice ... and have enough courage to come forward.

But what of the backlash against medical malpractice suits, with some doctors blaming lawyers for escalating their costs of practicing medicine, and the public wagging their fingers at the law profession, blaming them with creating an overly cautious environment within medical circles? Who is to blame? How can members of the medical profession be held accountable for their actions without feeling shackled by the threat of being sued?

"Lawyers need to more carefully screen

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the cases they file," answers Mithoff. "Most responsible lawyers do, but some do not. Some sue over matters that should never have been brought to court."

**Additionally**, the attorney blames doctors for failing to communicate with their patients and answer their questions. In the majority of cases he reviews, his own questions are usually answered satisfactorily by the doctors involved, leading Mithoff to conclude that they were not negligent. "But those questions could have been answered with less hassle," he believes, if the physicians had been willing to discuss the situation more completely with their patients.

Now specializing in medical malpractice and in product liability cases, 40-year-old Mithoff never set out to concentrate on those areas of law, but he is quick to acknowledge that the study of law itself captured his interest from the onset. Growing up in El Paso, he left home for the University of Texas "headed for a good time." As an undergraduate he "drank too much, played too much poker, and nearly funded out."

After working in a summertime construction job — working hard and earning little — he decided "it was time to get serious" about a career. As soon as he started taking law courses, his academic interest was stimulated. In the meantime he had gotten married, and "that made me get more serious, too."

Interwoven with his law school days, Mithoff worked for a criminal defense lawyer and later for Ralph Nader. But the experience that had the most profound affect on him during those years resulted from a Vietnam war protest movement on the UT campus, intensified by the Kent State incident in which several student protestors were killed.

"A large group of protestors had gathered

on the UT campus — school had practically shut down," Mithoff recalls. But the Austin City Council refused to grant a permit allowing the protestors to march. Judging that the situation was potentially explosive, Mithoff and fellow law students stayed up all night preparing their pleading and a supporting brief, resulting in a federal court injunction against the city which allowed the protestors to march.

"It was a pretty heady moment," recalls the lawyer. "We literally ran from the courthouse to the police barricades and gave the police the report of the order. They were on our side — they were trying to keep 20,000 people off the streets."

Hanging on the wall in his One Allen Center penthouse office is a framed letter from the dean of the law school that Mithoff points to with pride. "All in all, this probably averted violence and trouble and permitted the use of the streets for expressing the magnitude of the opposition to expanding of the war in Cambodia," wrote Dean Page Keeton, adding, "I congratulate you for outstanding service."

After earning his law degree Mithoff worked as a clerk for Judge Wayne Justice in Tyler for several years and then came to Houston in 1974 to work for trial lawyer Joe Jamail. The first case that propelled the young lawyer's name into headlines was a products liability case in which his client was suing a breast implant manufacturer. Despite the fact that the manufacturer, Dow Corning, called forth an array of experts including a microbiologist, Mithoff won the case.

The plaintiff was awarded \$170,000, and the case was hailed as a landmark. "I had no idea I was doing anything significant," says Mithoff. "But I have gotten more mail, more notice from that one case than any other."

In 1983 Mithoff set up his own firm, gradually adding three other lawyers to his office. Today he takes approximately one out of every 20 cases that he reviews, limiting his practice to "the cases I have the most interest in, those with extreme merit." A lawyer who primarily represents plaintiffs, Mithoff's fee is based on whether he wins a case or not — earning no money for those he loses, nor for the ones he reviews and does not take.

While he undeniably enjoys the "drama of the courtroom, the thrill of winning, the heat of the battle," Mithoff's primary satisfaction stems from "being a voice" for people who need representation. Why is he so successful? "I have never consciously tried to fudge the facts. I try a case as I see it, let the facts fall where they will."

Noting that the lessons learned in defeat are usually the most valuable, Mithoff says that "the cases you lose stay with you . . . you re-try them over and over again." He believes in taking the blame for losses, adding that "if you take the credit for winning, you ought to take the blame when you lose."

Within his profession, Mithoff is disturbed by a growing emphasis on making money vs. serving clients. "I believe it is possible to keep the practice of law a profession and still make money," he says, adding that he advocates that lawyers associated with his firm take at least one case a year on a "pro bono" basis.

"Obviously, making money matters to me, and fame has a definite appeal — I don't deny that. But my primary interest is in serving my clients." And yet a lawyer's obligation is more encompassing than serving an individual client, Mithoff says, sometimes requiring that the attorney speak out if he sees a problem that is harming society as a whole. ■