1990

The Limits of Litigation: The Dalkon Shield Controversy

Ronald J. Bacigal

University of Richmond, rbacigal@richmond.edu

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CAROLINA ACADEMIC PRESS
Durham, North Carolina
Preface

I began researching a biography of Federal District Judge Robert R. Merhige, Jr. in August 1985. Three weeks later the A. H. Robins Company filed for bankruptcy in Judge Merhige’s court. As the bankruptcy proceeding unfolded, it became apparent that the case was far too complex to be captured in a chapter or two of a traditional biography. Hence this separate account of the Dalkon Shield litigation.

The greater part of the last four years have been devoted to researching the literature addressing the Dalkon Shield, and to following the twists and turns of the bankruptcy proceedings. As Yogi Berra advised, “you can observe a lot by just watching.” I have also spent considerable time listening—to Judge Merhige. A large portion of this book is based on lengthy interviews with Judge Merhige, and unless otherwise noted all quotations are from the judge. If there is anything unique about this publication, beyond its subject matter, it is the candidness with which a presiding judge explained and enlarged upon the public aspects of an ongoing proceeding. (The judge invoked a keen sense of discretion when pressed on the non-public facets of the case.)

This book presents an overview of the Dalkon Shield litigation while focusing upon the judicial role played by Judge Merhige and Federal District Judge Miles W. Lord of Minnesota. There are sections of the text where my own opinions may intrude upon the story, but I have endeavored to present an account of the Dalkon Shield controversy which is more journalistic than analytical in nature. The reader is invited to draw his or her own conclusions regarding the controversy. Readers who desire more detailed accounts of the early history of the Dalkon Shield may consult Mintz, *At Any Cost: Corporate Greed, Women and the Dalkon Shield* (Pantheon Books 1985) and Perry & Dawson, *Nightmare, Women and the Dalkon Shield* (Macmillan 1985). Those who wish to compare Judge Merhige’s handling of the bankruptcy case with Judge Lord’s approach to the earlier stages of litigation may wish to examine Engelmayer & Wagman, *Lord’s Justice: One Judge’s Battle to Expose the Deadly Dalkon Shield I.U.D.* (Anchor Press/Doubleday 1985). Those who would like to read more about Judge Merhige and his other landmark cases can examine his forthcoming biography, *May It Please the Court*. A bibliography of articles and cases dealing with the Dalkon Shield is contained in the Appendix.