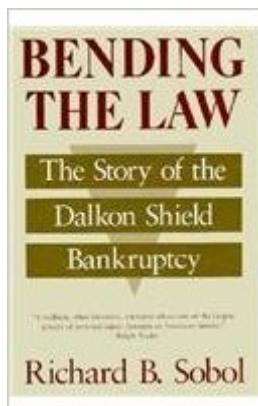


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Bending The Law: The Story Of The Dalkon Shield Bankruptcy



Synopsis

Winner of the American Bar Association's 1992 Silver Gavel Award "in recognition of an outstanding contribution to public understanding of the American system of law and justice." "Mr. Sobol has produced a readable yet fully researched and detailed study of the operation of the bankruptcy and its effects upon all concerned— the women who were injured, the swarms of lawyers who represented parties in the bankruptcy, and the court which oversaw the bankruptcy in Richmond. . . . This book adds greatly to the current debate about how strong a managerial federal judge our system should have." —Paul D. Rheingold, *New York Law Journal* "Bending the Law is polemical and relentless. It is also minutely researched, fluidly written, and persuasive." —Paul Reidinger, *ABA Journal* "Bending the Law is a must read for bankruptcy practitioners, and for anyone else concerned about the use of bankruptcy law to deal with mass torts. Although its author is a civil rights lawyer, he details the subtle art of practicing bankruptcy law with a discerning eye, and is a gifted storyteller as well." —Joryn Jenkins, *Federal Bar News* and *Journal* "This is an accessible history of the case by a veteran civil-rights lawyer." —Washington Post Book World

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Customer Reviews

In this minutely detailed, well-documented, clearly written report on complex litigation, Sobol, a Washington, D.C., attorney specializing in class-action suits, recounts how H. L. Robins Company, makers of the defective Dalkon Shield IUD, responded to legal actions brought because of the product. The limiting of individual and corporate liability was achieved, but at the expense of some

200,000 women who claimed that during the early 1970s use of the defective contraceptive and Robins's delay in recalling it caused sometimes fatal uterine infections and infertility. The mounting number of cases forced Robins to file for bankruptcy in 1985 in a Richmond, Va. federal court, where Judge Robert Merhige transferred all pending claims to his jurisdiction and named himself to adjudicate the reorganization and regulation of a claimants' compensation trust fund. The author faults the judge's handling of the case, which, he argues, set an unfair precedent whereby makers of dangerous products may use bankruptcy to evade penalties and deprive victims of awards determined by jury. Copyright 1991 Cahners Business Information, Inc.

A design defect in the Dalkon Shield, an IUD manufactured by the A. H Robins Company during the early 1970s, resulted in serious injuries to hundreds of thousands of women. In 1985, in response to the claims of injured women, Robins declared bankruptcy.

Author spent much time following the court hearings and public exposed negotiations to write his outsider perception of a successful sophisticated ground breaking resolution through a unique use of the legal process to forge a social/economic plight suffered by thousands caught up in mass tort litigation. A great fast paced reading of court drama. That stated, the writing appears skewed by this author's cynical view of the legal system. We know now two decades later that the court resolution created set aside funds sufficient to make available 100% to the allowed claims through the mediation process developed.

The book is concerned with a number of tortious claims for punitive damages brought against the A H Robins Company for its reckless marketing of a contraceptive device called the Dalkon Shield. As juries across the United states begin to award huge punitive damages against the pharmaceutical company it becomes obvious that the survival of the company depends upon the outcome of the litigation. At this stage enter the figure of federal District Judge Robert Merhige - someone who would be called a strong judge by any standards. Merhige manages the consolidation of outstanding cases before him in his court in Richmond, Virginia and, when the A H Robins Company seeks protection behind Chapter 11 bankruptcy, also manages the bankruptcy. The book is a real eye-opener as to what happens when a strong judge takes a certain view of a case. Merhige is determined to achieve a particular outcome and the combined efforts of the best plaintiffs' tort lawyers in the US are unable to prevent him having his way. Merhige has a hide like that of a rhinoceros - his skill and ingenuity enable his controversial actions, which many thought

outrageous, to survive all attempts to box him into a corner or get his decisions overturned on appeal. His opponents claimed that Merhige should have declined to hear the case on the grounds that he had a clear conflict of interest. The president of AH Robins Company was his near neighbour and the company was the largest employer in Richmond, VA - Merhige's home town. If the Robins Company went out of business there would have been mass unemployment in Richmond. Merhige, however, denied all claims of bias and blandly argued that every action he took was in the interest of the plaintiffs. The book provides a fascinating look at how the workings of corporate interests and the legal system combined to override the rights of victims. It's a book to make a feminist's blood boil!

Unfortunately, I found it more dry than exciting. It helps to have a working knowledge of bankruptcy cases, but with this case so immense, the cast of characters grew so large and confusing I had to take notes to keep them straight. Probably the best resource out there that deals with the fallout of the Dalkon Shield case, but be forewarned, I emitted a cheer when I was finally through this.

I enjoyed Sobol's presentation of the litigation story. He presented a thorough and well documented account of the tragedy that was the Dalkon Shield.

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