

# Suit Over Book Review Reinstated

## D.C. Writer Says Criticism Libeled Him

By David Streitfeld *2/19/94*  
Washington Post Staff Writer

Ruling that a book review can be libelous, the U.S. Court of Appeals here reinstated writer Dan Moldea's lawsuit against the New York Times yesterday.

"I've been waiting five years for my day in court, and it looks like I'm finally going to get it," said an exultant Moldea, who lives in the District. His suit, which had been dismissed by a lower court, immediately assumes the significance of a major First Amendment test case.

In 1989, Moldea's book "Interference: How Organized Crime Influences Professional Football" was called "sloppy" and basically untrustworthy in the Times Book Review. His lawsuit, charging this is a false portrayal that ruined his career, asks for \$10 million damages.

In a 2-1 decision, the case was sent back to the lower court for trial. "To permit a defendant to escape liability for libel merely because defamatory remarks are published in a book review would be as simplistic as permitting an author to insulate himself or herself by merely prefacing assertions with the words 'I think . . .,'" wrote Judges Harry Edwards and Patricia Wald in their majority opinion.

Times lawyer George Freeman declined to comment. A Times spokeswoman said the paper was considering asking the entire appeals court to review the decision.

Dissenting judge Abner Mikva, saying his colleagues were performing "some troublesome surgery on the First Amendment," argued that "sloppiness" in this context is not verifiable. "I do not know how courts

See LIBEL, G2, Col. 1

# Book Review Libel Ruling

**LIBEL, From G1**

could ever check the slide down the slope that the majority opinion creates today," Mikva wrote.

Authors get bad reviews every day; as these things go, Moldea's was not overwhelmingly harsh. But the independent investigative journalist said it had a drastic effect on his career.

Requests for lectures dried up; he had a hard time selling another book.

After filing suit in August 1980, his woes only compounded. "I turned in 20 proposals on 11 different subjects. . . . No one wants to work with me because I took on the Times." Moldea is, however, now under contract with the publisher W.W. Norton.

"I'm expecting to get powdered here," the

43-year-old Moldea said. "People see this as creating tremendous damage to the First Amendment. But I just see it as putting opinion writers' feet to the fire. Journalists have to fact-check. Opinion writers can write at will."

The two majority judges seemed to agree. "Although 'sloppy' in a vacuum may be difficult to quantify, the term has obvious, measurable aspects when applied to the field of investigative journalism," they wrote, just as the term "clumsy hands" would with a brain surgeon.

The judges also agreed on the paramount importance of a Times review. "For an author,"

they said, "a harsh review in The New York Times Book Review is at least as damaging as accusations of incompetence made against an attorney or surgeon in a legal or medical journal."

Written by Times sportswriter Gerald Eskenazi, the review gave a number of examples of Moldea's alleged sloppiness, five of which he is challenging in his suit. The judges said four of the five could be meaningfully determined by a jury to be true or false.

"This is a surprising if not startling result, and perhaps unprecedented," said Henry R.

Kaufman, chief counsel of the Libel Defense Resource Center. The information clearinghouse is supported by media that include the New York Times and The Washington Post.

"This is the footprint of Milkovich," Kaufman said, referring to a 1990 Supreme Court decision that held statements of opinion can be libelous if they contain "false and defamatory" facts.

Before Moldea can win his case, it will have to be determined if he is a public figure. If he is, he will have to prove the review was written with malice—an eventuality he said he was prepared for.