

OUTLOOK

SCIENCE & SOCIETY

REVIEWERS WIN A REVERSAL

Judges are paid to make up their minds on tough questions. Once in a while, however, a close call results in a change of heart. The U.S. Court of Appeals in Washington, D.C., made one of those rare reversals last week in a prominent libel case. The issue started in 1989, when a book review by *New York Times* sportswriter Gerald Eskenazi declared that Dan Moldea's *Interference: How Organized Crime Influences Professional Football* was flawed by "too much sloppy journalism." An example: Eskenazi charged that Moldea put a "sinister" cast on a barroom meeting between opposing players before 1969's Super Bowl—an encounter Eskenazi said was innocent. Although opinion articles like book reviews usually are not susceptible to lawsuits, Moldea's attorney, Roger Simmons, convinced two members of a three-judge panel that Moldea should be able to win damages if Eskenazi's statements about him were "verifiably false."

The ruling set off a storm of media

protest in editorials and in court. Typical was a brief prepared by several publishers, including *U.S. News*. "The repercussions of this far-reaching, unsettling ruling threaten to keep from the public much of the insight, perspective and information that can only come from free-ranging criticism," said the group. "Every author, artist or chef out to avenge an ego wounded by a less-than-glowing review is now a potential plaintiff."

Surprisingly, the two judges, Harry Edwards and Patricia Wald, did not wait for judicial reviews of their own decision. Last week, they withdrew their disputed opinion as "misguided" and said they now believed that the newspaper's review did not warrant damages for Moldea. Readers should expect reviews to be "spirited critiques," Edwards said, and the *Times* had included enough true statements or "supportable interpretations" to bar a lawsuit.

Moldea blamed the reversal on an "avalanche" of misleading press coverage. But Rodney Smolla, a libel expert at William and Mary law school, termed outside influence "nonsinister" and speculated that the "marketplace made the judges doubt their premises and reconsider." Reviewers cannot rest easy yet. Moldea will press his case with the full appeals court and the Supreme Court, both of which include judges with skeptical views of the press. □ BY TED GEST



Author Moldea. He challenged the critic.