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**CONCENTRATION IN THE BOOK-PUBLISHING
AND BOOKSELLING INDUSTRY**

HEARING
BEFORE THE
SUBCOMMITTEE ON
ANTITRUST, MONOPOLY AND BUSINESS RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
SECOND SESSION
ON
MONOPOLIZATION OF THE PUBLISHING INDUSTRY

—————
MARCH 13, 1980
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Serial No. 96-56

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Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

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STATEMENT OF DAN E. MOLDEA, WASHINGTON, D.C.

Mr. MOLDEA. My name is Dan E. Moldea. I am the author of, "The Hoffa Wars: Teamsters, Rebels, Politicians and the Mob," which was published in hardback in September 1978. My book—which is currently in paperback after three hardcover printings—chronicles the rise and fall of former Teamster leader James R. Hoffa. It was a Book-of-the-Month Club alternate selection and excerpted as the lead article in the November 1978 issue of Playboy. Further, "The Hoffa Wars" was syndicated in the United States by the New York Times Syndication Service and world-wide by the London Observer. It also has been translated into Italian and Japanese.

I recite this background information so that those hearing my testimony might fully appreciate what I went through to get my book published and what I nearly lost, because I was an unknown freelance writer.

Briefly, I investigated Jimmy Hoffa, the Teamsters Union, and organized crime for 5 years, beginning in October 1974, 10 months before Hoffa disappeared. I have worked with NBC News, the Detroit Free Press, and syndicated columnist Jack Anderson, among others. In addition, I received several grants from the Fund for Investigative Journalism in Washington, D.C. My primary areas of research included labor extortion schemes, particularly in the steel-hauling industry, and the union terrorist squads which carried them out, via arson, bombings, beatings, shootings, and sabotage.

Because of the nature of my investigation, I was nearly killed on at least three different occasions. I have been in the past, and continue to be, closely allied with the rank-and-file reform movement within the Teamsters Union.

On August 10, 1977, the New Republic Book Co. in Washington, D.C., purchased the rights to my book. Based upon an outline and two sample chapters, I received a \$5,500 advance and was told to submit the completed manuscript by March 1, 1978, in anticipation of an October 1978 publication date. My agent, Philip Spitzer of New York, negotiated the contract and received the standard 10 percent commission for the sale.

Six months later, in or about late January 1978 I learned that New Republic, which printed its own books, had an exclusive distribution contract with Simon & Schuster, which is owned by Gulf + Western Industries. Knowing that Simon & Schuster was publishing a rival book, "The Teamsters," by Steven Brill, also scheduled for fall publication, I asked my publisher whether its distribution contract would jeopardize my book. Consequently, in early February, a representative from New Republic Books met with Brill's editor at Simon & Schuster to discuss the situation. The New Republic official reported to me that he anticipated no major problems with Simon & Schuster.

On February 15, Brill—whom I had met in June 1977 and talked to on the telephone several times since—called me at my home and offered to share some information on two conditions: that he be credited for his work and that the publication of my book be delayed until 1979. I told Brill that I didn't need his help, and that I was willing to let the public be the judge as to which book was better.

Senator METZENBAUM. Let me interrupt you for just a minute.

Mr. MOLDEA. Yes, sir.

Senator METZENBAUM. Did Steve Brill actually call you and say you should let his book be published before yours?

Mr. MOLDEA. Yes, sir.

Senator METZENBAUM. What was his reason for doing that? That seems to me to have a lot of guts to make that kind of a suggestion. I think that is almost unbelievable, although knowing Steve Brill, I guess I could believe it.

But, that was his actual conversation with you?

Mr. MOLDEA. Yes, sir. That's correct.

Senator METZENBAUM. I am just flabbergasted. Please proceed.

Mr. MOLDEA. Three weeks later, on March 8, during a telephone conversation with a representative from New Republic Books, I was told that rumors were circulating that Simon & Schuster "might not try very hard" to distribute my book for fear of competition with the Brill book. He said that New Republic was planning to print 10,000 copies of "The Hoffa Wars" but was afraid of how many could be sold if Simon & Schuster balked. I asked what the chances were that Simon & Schuster would flatly refuse to distribute my book. He said that it would be unlikely since it could open itself up for possible antitrust violations. He added that their best ploy would be to keep control of the book and simply instruct their sales people to downplay it.

The following day, I telephoned my attorney and explained the situation to him. He warned that I should begin taking precautions against the possible suppression of my book.

On March 14, my attorney's law partner, Steven Martindale of Washington, called Martin Peretz, the publisher of New Republic Books, and asked if the distribution contract with Simon & Schuster was going to pose a major threat to my book. Peretz, according to Martindale, said that the worst thing that could happen would be that the distributor would not try very hard to sell it.

Three days later, after receiving a month's extension for submitting my completed manuscript to New Republic, I delivered 16 of 18 chapters to the publisher, with a proviso, drafted by my attorneys, that confidentiality be assured. Because of the uncertainty of the situation, and upon the advice of my attorneys, I withheld the chapter which examined Hoffa's disappearance—which included my exclusive interview with his alleged killers—and a second chapter in which I discussed the possible roles of a Louisiana crime boss, a Florida underworld figure, and Hoffa in the assassination of President Kennedy in 1963. The information in this latter chapter was essentially confirmed in the final report of the U.S. Select Committee on Assassinations nearly a year after my book was finally released.

On March 20, amidst further rumors that my book might indeed rival the Brill book—which Simon & Schuster had already promised to be "the book of the year"—New Republic was notified by Richard E. Snyder, the president of Simon & Schuster, that his company was going to flatly refuse to distribute my book until the following spring. I was not told of this decision until the next day, even though I had had three conversations with New Republic officials during the interim.

Later, when I asked why I wasn't notified immediately, I was told that New Republic Books could "suffer" from a confrontation with Simon & Schuster. After explaining the decision to my agent and attorneys, we began moving to break the contract with New Republic.

Finally, on April 4, New Republic Books, in defiance of the Simon & Schuster directive to hold my book until the following spring, wrote my attorneys and offered to dissolve my contract, in return for my initial advance and signed affidavits which released any legal claims against both New Republic and Simon & Schuster. Discussions of a possible antitrust action against Simon & Schuster ceased soon after I was told that it might cost \$50,000 or more to sue. On April 11, upon mutual consent, my contractual arrangement with New Republic Books was terminated in compliance with the publisher's conditions.

Meantime, my attorney, Steven Martindale, contacted John Marqusee, the president of Paddington Press, another small, independent publishing house with offices in New York and London. Marqusee liked the manuscript and asked to meet with my agent and me. The contract with Paddington Press was signed on April 24, and I was given a \$10,000 advance. But because Marqusee pledged to fight to keep my October publication date, I had to make several concessions in the contract, including points on the royalty rate, foreign and first serial rights. For instance, instead of the standard 10, 12.5, and 15 percent royalty rate—which I had with New Republic—I conceded to a reduced 10, 11, and 12 percent rate.

In addition, because of the importance of the work done by my attorneys, they, like my agent, requested, and received a 10-percent commission on all royalties. In effect, my book was saved by these three people, who, up to that point, had worked for free on my behalf.

On June 29, 1978, Herbert Mitgang, literary editor for the New York Times, reported the history of the New Republic-Simon & Schuster-Paddington Press dispute in an article, entitled, "Two Hoffa Books Pose Publishing Problem." I have submitted the Mitgang story for the record.

[The article is contained in the appendix.]

Soon after Mitgang's work appeared, the Book-of-the-Month Club, Playboy, and the New York Times Syndication Service purchased the rights to "The Hoffa Wars." The book club and the Times had access to both manuscripts before their decisions were made.

My book was released on September 15, 1978—a month ahead of schedule and the same week as the Brill book—with a first printing of 45,000, a second printing of 5,000 before publication, and a 5,000-copy third printing soon after. Paddington Press' books are distributed by Grosset & Dunlap. A subsidiary of Grosset & Dunlap, Charter Communications, later purchased my paperback rights.

When asked in both public appearances and private conversations about the publishing controversy, Brill and Simon & Schuster officials claimed that Simon & Schuster always had its choice between the two books and selected Brill's after seeing both.

But because Simon & Schuster never had access to my manuscript until my book was released in September 1978, this explanation is simply not true.

As a member of the Washington Independent Writers Association, I am concerned for others who have been, are now, or will in the future find themselves confronted with a similar dilemma—without agents and attorneys, like mine, who are willing to gamble on the future of equally unknown freelance writers.

I have been told by WIW executives that their files contain several instances in which authors, under contract with independent publishing houses, have been abused by larger publishing firms which continue to exercise considerable influence over the smaller publishers.

As Herbert Mitgang wrote in his June 29 article, each such case is an example "of (a) possible loss of independence—with implicit censorship—where there is conflict on a controversial nonfiction book."

Senator METZENBAUM. The Mitgang article will be included with your statement, in the record.

Mr. Moldea, if Simon & Schuster had distributed your book on a delayed basis as it had planned, in your opinion, what effect would that have had on the sale of your book?

Mr. MOLDEA. It would have been devastating to me, both professionally and personally. I had worked for 4 years on this book. Four years of work literally would have gone down the drain. I frankly don't think that either the book club, or the New York Times, or even Playboy magazine would have been interested in buying their respective rights to my book had it not come out when it did.

Senator METZENBAUM. You say in your testimony that you were told Simon & Schuster might not try very hard to distribute your book.

What are you saying? What do you mean?

Mr. MOLDEA. When I heard this, I assumed that Simon & Schuster's sales people, under specific instructions or acting on their own, would simply ignore my book when dealing with booksellers around the country.

Senator METZENBAUM. You also say you were told that the New Republic, the original publisher, could suffer from a confrontation with Simon & Schuster. Did they spell that out?

Mr. MOLDEA. New Republic had an exclusive distribution contract with Simon & Schuster. It did not only affect my book. The distribution contract also affected other books which New Republic had published or was planning to publish and would need distribution.

I know as a fact that Richard Snyder, during an August 1978 meeting with New Republic officials for the renegotiation of their distribution contract was strongly critical of New Republic for their handling of my book. I know that he was also extremely upset about the Mitgang story in which he admitted that he had asked New Republic to suppress my book.

Senator METZENBAUM. How do you account for the fact that in breaking with the New Republic, as I understand your testimony, you also had to agree to release Simon & Schuster from any claim; is that correct?

Mr. MOLDEA. Yes, sir. That's correct.

Senator METZENBAUM. How does that come about? I don't understand that as a concept of law. You had no dealings with Simon & Schuster.

Mr. MOLDEA. I believe that the proposal that you are referring to was included in the April 4 letter from New Republic Books in which they offered to break the contract.

I was in a situation where I had worked very long and very hard to get this book out.

Senator METZENBAUM. Sure.

Mr. MOLDEA. I had to get my book out by fall, by October, and I was ready to do just about anything to break that contract. Releasing Simon & Schuster was a requirement for dissolving the contract.

The only thing, as I recall, that we refused to do with New Republic was grant it the publication rights to my second book, as it had requested in the April 4 letter. We obviously rejected that proposal.

I should say, though, I have absolutely no bitterness at all toward New Republic. New Republic, according to the contract, could have held my book for 18 months. But over the period of time that I was working with New Republic, we had become, quite frankly, friends.

When the decision came down that Simon & Schuster wasn't going to distribute my book, the New Republic people were just as afraid as I was—not because they were afraid of what I was going to do to them, but because they knew an eventual confrontation was going to come with Simon & Schuster. And they knew they couldn't morally hold me to this contract.

Senator METZENBAUM. I don't find any difficulty with New Republic, and I understand what you are saying. What I am saying is, as a lawyer, I don't understand how if you and I have a contract, where there is any consideration at all that we agree that we will release this man over here or that man over there.

It seems to me there never was any consideration from Simon & Schuster for you to release them. I actually question, A, the propriety of it being in the release, and B, its validity if it was in the release, and you tell me it was.

Mr. MOLDEA. Yes, sir. I would simply—

Senator METZENBAUM. You just wanted to sign anything to get rid of it and go about your business.

Mr. MOLDEA. I was an innocent bystander caught in the crossfire. I wanted to get rid of this contract as quickly as possible, because Paddington Press had already made overtures that they were interested in my book. I wanted to get on with publishing my book. Considering all my expenses, I would estimate that it cost me at least \$30,000 to change publishers.

I should point out that our contract was signed with Paddington Press on April 24. The editing process for my book began the second week of May. We had this book out by the third week of August. It did not come out earlier in September because of the contract with Playboy, which stated that we could not release the book until September 15. I consider myself fortunate to have gotten the book out then. If I hadn't signed the Simon & Schuster release, it might never have come out.

Senator METZENBAUM. This was 1978?

Mr. MOLDEA. Yes, sir, 1978.

Senator METZENBAUM. What advantages do books published by large companies like Simon & Schuster have over books published by small companies like New Republic and Paddington?

Mr. MOLDEA. I think we could probably talk for hours about that. I have learned that all is fair in love and war and in the publishing industry.

Senator METZENBAUM. Are you now going to do a book investigating the publishing industry?

Mr. MOLDEA. I——

Senator METZENBAUM. You can take the fifth on that, if you want.
[Laughter.]

Mr. MOLDEA. I think there are some very heavy duty people within the press who would be more qualified to do that.

We found ourselves in a position where we were ready to pull, from what I understood, one of the biggest coups in the history of publishing. We were going to be literally upsetting Simon & Schuster's highly publicized number one book—an unknown author and a small independent publisher. It was a genuine David and Goliath situation.

Then, on September 11, I turned on the television and saw Steven Brill make his first of six appearances on the Today Show which I understand is unprecedented—over a period of 3 days; two appearances each day on the Today Show. I can't say that I was angry about that, actually I was quite envious. Frankly, I have the highest respect for any company that has that kind of clout with NBC.

From a promotional standpoint, Simon & Schuster had a tremendous advantage over Paddington. But, as I said, that is all part of the game.

We had a limited advertising budget. Simon & Schuster had——

Senator METZENBAUM. Better access to retail sales, would you say, through Simon & Schuster than through Paddington or New Republic?

Mr. MOLDEA. I would imagine, yes, of course.

Senator METZENBAUM. Having said all of that, how did your book's success compare with the success of Simon & Schuster's competitive book?

Mr. MOLDEA. Well, I can't really speak for the success or failure of the Brill book without a representative of Simon & Schuster here to refute what I say. But, with regard to my book, as I said, I went into three hardcover printings. It was picked up by the Book-of-the-Month Club. Playboy magazine excerpted it. The New York Times Syndication Service purchased it. The London Observer bought it for worldwide syndication. And it has been translated into a couple of languages. I think by anybody's standards, that would be a successful first book. In addition, the factual content of my book has stood the test of time.

Senator METZENBAUM. Would you say that you think you may very well be the exception rather than the rule as far as being published by a small—brought out by a small publisher as compared to a large publisher?

Mr. MOLDEA. As I indicated in my testimony, I understand the Washington Independent Writers' Association—and I would assume the Authors' Guild and other organizations—probably have details of numerous such cases where writers have been exploited by larger publishing houses owned by large corporations.

One additional problem that I do have with regard to large corporations owning publishing houses is, for instance, in Gulf + Western Industries' 1978 annual report, which was published in Time magazine, one finds that under their Leisure Times subdivision there are about eight different groups.

Included in this subdivision are areas such as motion pictures, film for television, theater operations, sports, racing and entertainment, book publishing and so on.

My question is—and I don't know if this is a legitimate question or not, but I believe that it is—but if any of the categories which were under Gulf + Western came under investigation by an author who was doing a nonfiction book would Simon & Schuster publish that book or would they be willing to distribute that book if it was published by a publisher with whom it had an exclusive distribution contract?

I think, speaking as a nonfiction writer, that is one question which should be addressed at some point.

Senator METZENBAUM. Do you feel that if a magazine such as Time, Inc., controls—I think they control one of the publishing houses, do they not?

Mr. MOLDEA. Little Brown, I believe.

Senator METZENBAUM. Is a review in Time, Inc., very valuable as a way of promoting the sale of a book?

Mr. MOLDEA. Yes, sir, I would say that would be very valuable.

Senator METZENBAUM. So that whether it is actually used or not used, whether the facts are that there is that kind of relationship, the potential for its use when you have these kinds of tie-ins is apparently your point.

Mr. MOLDEA. It is very difficult for me to talk about reviews. As a first-time author, I was very thin-skinned about whatever criticism I got. My reviews were generally very good. But it is difficult for me to be objective when talking about reviews.

Senator METZENBAUM. Does it not help a book even if there is a critical review, a negative review? Doesn't it actually help just to be discussed?

Mr. MOLDEA. I will point out one specific instance. Brill's book and my book were reviewed in tandem on the front page of The New York Times Book Review. In fact, it was the first issue after the strike, November 1978. I felt that I had been treated unfairly, because a known Hoffa apologist had been commissioned to write the review of both books.

Indeed, the opening line of chapter 1 of my book is that "Jimmy Hoffa's most valuable contribution to the American labor movement came at the moment he stopped breathing, on July 30, 1975."

That may have been the starting and stopping point of that reviewer's analysis of my book.

Senator METZENBAUM. Thank you very much, Mr. Moldea.

Mr. CHUMBRIS. Mr. Chairman.

Senator METZENBAUM. Mr. Chumbris?

Mr. CHUMBRIS. Thank you, Mr. Chairman.

As a point of information, you said that you have paperback rights. Are they out now?

Mr. MOLDEA. Yes, sir. I received a modest paperback contract from Charter Communications, a subsidiary of Grosset & Dunlap.

Mr. CHUMBRIS. How many issues of your paperback are out or have been sold?

Mr. MOLDEA. I have no idea, sir.

Mr. CHUMBRIS. How long has it been in effect?

Mr. MOLDEA. The paperback was released in September 1979.

Mr. CHUMBRIS. Let us use \$10 per book. You sold 55,000 copies; right?

Mr. MOLDEA. At \$10.95, yes, sir; that's correct.

Mr. CHUMBRIS. So that would be close to half a million dollars. Is that considered a good gross, a bestseller like yours?

Mr. MOLDEA. For the record, my book never made a national best-seller list, like those in the New York Times or Publisher's Weekly.

Mr. CHUMBRIS. But you did make the Book-of-the-Month.

Mr. MOLDEA. That is correct, sir.

Mr. CHUMBRIS. Thank you.

Senator METZENBAUM. Thank you very much, Mr. Moldea.

Mr. MOLDEA. Thank you, Senator.

Senator METZENBAUM. I appreciate your testimony.

Let us call Mr. Maxwell J. Lillienstein, general counsel, American Booksellers Association.

**STATEMENT OF MAXWELL J. LILLIENSTEIN, GENERAL COUNSEL,
AMERICAN BOOKSELLERS ASSOCIATION, NEW YORK**

Senator METZENBAUM. Mr. Lillienstein, I am concerned about my time running out and precluding certain witnesses from being heard.

Your entire statement will be included in the record at the conclusion of your oral presentation. I wonder if you could summarize it in 5 minutes?

Mr. LILLIENSTEIN. I would like to ask for 8.

Senator METZENBAUM. You have it.

Mr. LILLIENSTEIN. Simply because this is a summary of 150 pages, of a manuscript about the book business. I tried to consolidate it.

Senator METZENBAUM. You have 8 minutes. I will hold you to the 8 very strictly.

Mr. LILLIENSTEIN. I am general counsel to the American Booksellers Association, a trade association consisting of approximately 5,500 members including independent bookstores, chains and department stores, in all 50 States.

The views that I express here today have not been expressly authorized by the American Booksellers Association board of directors, although I believe they represent the views of the vast majority of ABA members.

The problem of book industry concentration is real and escalating. In 1958 the 50 largest trade publishers accounted for 65 percent of trade booksales as opposed to 75 percent in 1976. The five largest trade publishing giants, all of which are members of media conglomerates, accounted for one-third of all trade sales in 1978.

Even more startling is the trend toward concentration in book-selling.

In 1972 there was only one chain with more than 100 branches, and the four largest chains accounted for 11.6 percent of all trade booksales by general interest bookstores.

By the end of 1979, B. Dalton Booksellers and Walden Books, each owned by a large conglomerate, owned approximately 1,000 stores between them.

Their projected combined sales of \$425 million accounted for almost one-third of the estimated \$1.3 billion of 1979 trade, mass-market paperback, religious, and professional booksales by general interest bookstores.