Perhaps we should let a judge decide

The clauses in the standard textbook/professional book publishing contract tend to vary little from publisher to publisher. And they overwhelmingly favor the publisher. This is not particularly surprising since the clauses were written by the publishers' attorneys.

Most academic authors lack the clout to negotiate what would be a fair contract and consequently will sign a contract which is grossly unfavorable to them because they want to be published and have nowhere else to go.

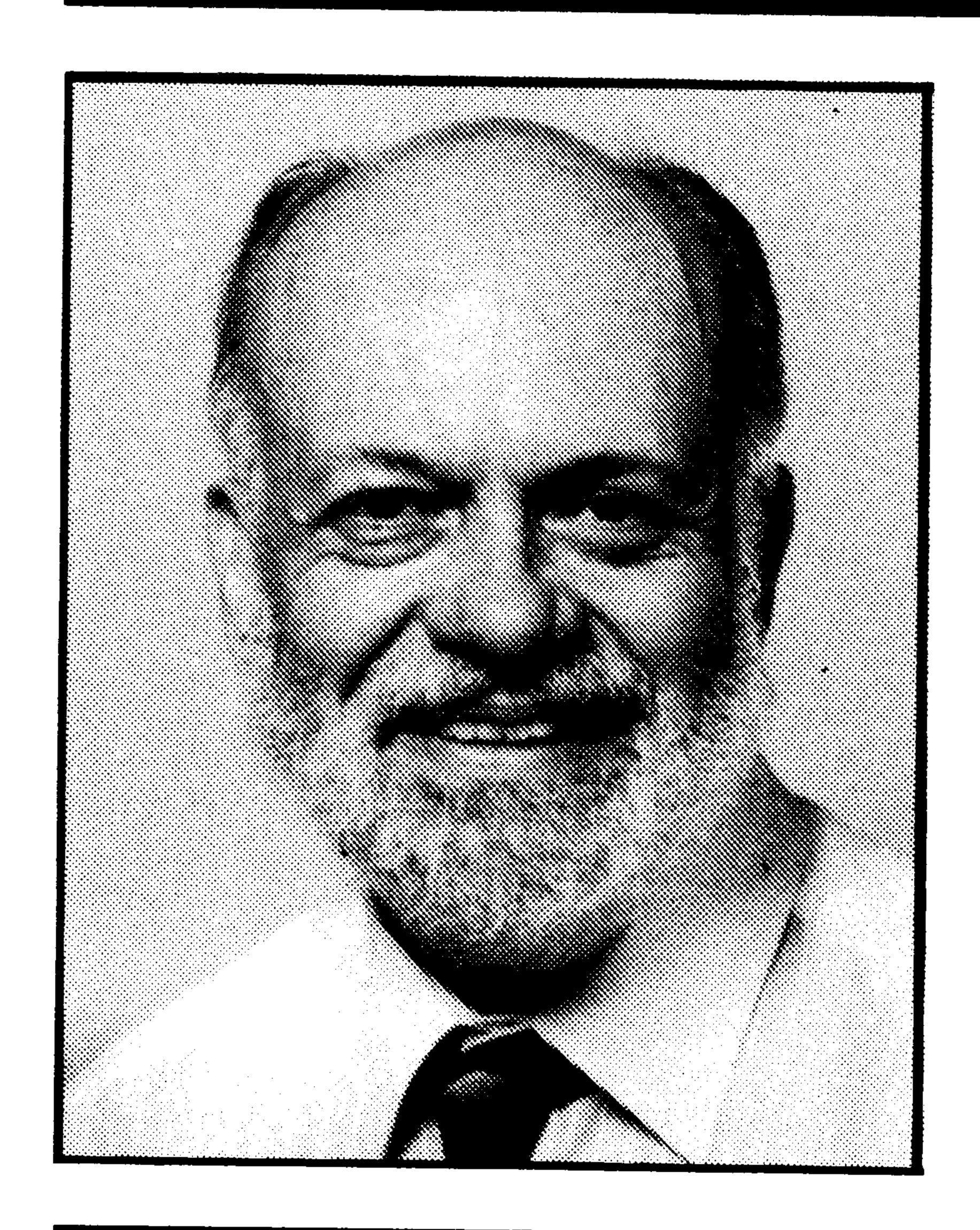
A written contract is an agreement which will be enforced by a court most of the time. There are circumstances under which a court will declare certain clauses in a contract to be "unconscionable" and refuse to enforce them. One such circumstance would be a standard contract offered on a take-itor-leave-it basis to someone with little or no bargaining power and no real options elsewhere. Such a contract is referred to as a contract of "adhesion" and if this judgment is upheld on appellate review, then some clauses in it are likely to be deemed to be unenforceable. Such a decision by a trial and appellate court would be likely to influence future court decisions regarding these clauses.

Would a judge be likely to declare a standard academic book publishing contract to be one of "adhesion?" A fascinating article appeared in the summer, 1996, issue of the *Authors Guild Bulletin*, which not only begins to provide an answer to this question, but also indirectly suggests a coping strategy for authors who are being hurt by such a clause in the contract.

The article deals with litigation concerning the "net profit participation" clause which apparently is a standard in movie contracts. The way this clause is worded, a person who contributes the scenario for a film may not receive any income from the film even if it's highly successful

One of the cases cited was Art Buchwald's suit against Paramount Studio over the 1988 film "Coming To America." The film, based on a scenario by Buchwald, earned \$300 million but amazingly not a dime in net profits. Los Angeles Superior

FROM THE VICE PRESIDENT



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Frank Silverman is a professor of speech pathology at Marquette University, a clinical professor of rehabilitation medicine at the Medical College of Wisconsin and TAA vice president and president-elect.

BY FRANKLIN H. SILVERMAN

Court Judge Harvey Schneider set aside the terms of the net profits clause to which Buchwald had agreed because he regarded it as "unconscionable...egregiously unfair....unduly oppressive" and as being "forced on a party in a vastly inferior bargaining position."

While Paramount filed an appeal for this aspect of the decision, they settled with Buchwald before the appellate court issued its opinion. According to Tania Zamorsky, author of the article, Paramount most likely settled with Buchwald because, "had Buchwald been affirmed by a California appellate court, a significant legal precedent for future contract litigation would have been created."

That is, the contract would have been declared to be one of "adhesion."

What implications does the judge's decision in the Buchwald case and Paramount's decision to settle before an appellate court ruling was handed down have for academic authors? There are several.

The first is courts may refuse to enforce clauses which almost any reasonable person would regard as unconscionable. A second implication is authors can refuse to be

bound by such clauses and force the publisher to litigate if it wants them enforced.

One circumstance in which you may want to do this is if a publisher invokes the "satisfactory manuscript" clause without good reason and insists the advance be returned.

A third implication is few academic publishers would want to risk having a court declare their standard contract to be one of the adhesion. Consequently, if a publisher believed you were serious about suing and a judge could decide in your favor, it would be likely to try to find a face-saving way to settle the disagreement with you.

If your publisher tries to enforce a clause in your contract which you believe almost any reasonable person would regard as being unconscionable, you may want to respond you will only abide by it if a judge declares the contract is not one of adhesion.

Of course, you will probably have to pay a price for doing so: no further contracts from that publisher.

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Last Russian bookstore closes, manager hopes to open another

Citing soaring costs which include the equivalent of \$48,600 a month in rent, the last bookstore in Russia closed shop last month.

"It was everything," said manager Zoritsa Radosavljevic, who has worked at the store since 1968. "It was a book shop, a library. It was a social club. You'd have artists coming, painters coming, writers, journalists," Radosavljevic told the Associated Press.

In a typical Russian toast. the manager poured a glass of vodka as

she closed the door of the what many Russian intellectuals felt was haven for left-wing thought and debate.

About two-thirds of the shop contained books translated from English while the rest were Russian and Eastern European language books.

Radosavljevic hopes to open a similar store sometime in the future.