Wrestling with the Angel:
How we Learned to Negotiate with Norton (1994)

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"You guys are getting screwed."

So said Bill Smith in the winter of 1977 when I showed him the contract that W.W, Norton had offered me and John Lincoln for what eventually became *Writing: A College Handbook*, first published in 1982 and now in its fourth edition. At the time, Bill's comment struck me as captious. A longtime Professor of Sociology at Dartmouth (where I teach English) and a textbook author himself, he was certainly qualified to judge the terms of a textbook publishing contract. But John was unpublished, and so far I had published just one academic book whose lifetime sales of 2200 copies would net me substantially less than the $2500 advance we were now being offered for the textbook--with an additional $2500 on delivery of the manuscript. Furthermore, here was a chance to do a textbook for college freshmen writing courses--the biggest of all text markets--and to work with one of the best-known and most widely admired textbook publishers in America. Here was a chance to write a book that might well sell tens of thousands of copies. Who were we to complain about royalties of 10 percent of the list price on the first 25,000 copies sold, and 12.5 per cent thereafter? The idea that any book of ours might sell as many as 25,000 copies was heady enough to make these percentages seem positively generous.

At Bill's urging, we ventured to ask for slightly better step-up terms, and that's what we got: 10 per cent of list on the first 15,000 and 12.5 per cent thereafter, later amended (before the first edition appeared) to 10 per cent on the first 15,000, 12.5 per cent on the next 45,000, and 15 per cent thereafter. Bill still thought we were getting screwed, and we still thought he was being captious. It took us seventeen years to learn that he was right.

Paradoxically, one reason it took so long is that Norton's editors are such a pleasure to work with. Since signing our first contract, we've had four, and every one of them has been bright, sensitive, literate, congenial, hardworking, and wholly dedicated to making our book as marketable as possible. We simply could not ask for better editorial advice and support than we have had from Norton's editors over the years. On the other hand, because Norton is wholly owned by its employees, its editors can never be wholly impartial in giving *financial* advice to its authors, for Norton's editors are or aspire to be officers and shareholders in the company, members of its governing board, Their desire to serve the best interests of the author must always contend and compete with their desire to serve the best interests of the company. Most of them, therefore, learn to master the fine art of keeping their authors happy while gaining for them only as much as the board is willing to give, which in our case--except for our first very modest request--was always less than we asked. Until recently, this strategy kept us in line.

In retrospect, it seems amazing to me that we sought no professional advice at the. outset on a contract for a book that could sell over 25,000 copies. It is still more amazing to me that we sought no professional advice on renegotiating our contract when the first edition of *Writing* (1982) actually sold over 100,000 copies, breaking all records for sales of a Norton textbook in a single year. Instead we asked the late John Benedict, then our editor, if he could improve our royalty step-up terms on the second edition. In view of the book's success, John readily agreed, but from his own account of the September 1984 meeting at which he presented our request, it took some heavy arm-twisting before the board would grant even part of what we asked. What we got was a small improvement in our step-ups: 10 per cent on the first 15,000, 12.5 per cent on the next 30,000, 15 per cent on the next 40,000, and 17.5 per cent thereafter.

At the time, this seemed to us good enough. But once again, we did

not bother to seek any professional advice, nor even to learn what the authors of other composition texts were getting. Only much later did I learn a remarkable fact. In 1984, the same year in which Norton rewarded us for record sales of the first edition by reluctantly granting step-ups that would *reach* 15 per cent after 45,000 copies of the second edition were sold, another author signed a *first edition* contract granting 15 per cent on *all* copies sold.

But the figures here tell only part of the story. Around 1987, sometime between the second and third editions of our textbook, we began to realize that our royalties were being sharply reduced by just four little words in our contract: words that had stubbornly survived the various amendments we had pried from Norton thus far. Our contract specified that step-up percentages would apply not to the number of copies of each *edition* sold during its four year life, but to the number of copies sold "in each fiscal year." In other words, no matter how many copies of a new edition were sold in its first year, we had to start the second year at the bottom of the step-up ladder and climb it all over again every single year. So instead of getting 15 per cent or more on copies sold after the first year of each edition, when sales invariably drop (among other things, the book has to compete with cut-price used copies) we were getting 10 and 12.5 per cent. Through the four editions of our textbook, those four little words in our contract have cut our total royalties by at least 30 per cent. And as of now the saw has two more years to run.

When we asked Norton to delete those words before the third edition appeared, the editorial board refused, citing the rising cost the life of an edition. Without fully understanding this reason, we nonetheless swallowed it for both the third and fourth editions. But in the spring of 1994, shortly after the fourth edition appeared, Norton asked us to produce a concise version of it, which has just appeared under the title *Writing: A Concise College Handbook*. For this new book Norton offered us a new contract with a hefty advance. The size of the advance plus the accelerated step-ups (10

percent of list on the first 15,000, 12.5 on the next 10,000, 15 on the next 15,000, and 17.5 thereafter) told us that Norton was very eager for us to do this new book. Given that leverage, and given our lingering annoyance with the "fiscal year" phrase, which of course re-appeared in the new contract, we finally decided to do what we should have done twenty years ago: we joined the Authors Guild and sought their professional advice.

One of the first things we learned from the guild--more precisely from Kay Murray--is that Norton' way of calculating step-up percentages is an anomaly, something she had never seen in any other book contract. When I pointed this out to our editor, Julia Reidhead, and asked her to delete the "fiscal year" phrase from our original contract so that the newly published fourth edition would be free of its cutting effect, she faxed me on June 10 a letter that read in part:

> **The Authors Guild is oriented to trade publishing, where books are not expected to go beyond a first printing, or to last more than a year. In that world "in any fiscal year" would be an inappropriate drag on the author's earnings. In college publishing, "in any fiscal year" works as a profit-sharing mechanism; when sales are strong. royalties are high. When sales drop off over the life of an edition, reprint quantities also drop, and unit costs soar. The reduced 5 of 7 generated by the book can't support the highest author's royalty rate. It would make more short-term economic sense to let the edition go out of print.**
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> **Also, unlike trade books, where the price is set to recover plant costs in the first printing, with college books we have to allocate plant costs over the four-year lifespan in order to keep the price down in the initial year. We pay off plant costs, then, over four years, but our**

> **manufacturing costs go up with each successive (smaller) reprint. Again, given the Author Guild's trade emphasis, the attorneys might be less familiar with these trade cost issues. They are, however, the ones by which we live, which is why we cannot agree to altering the current terms.**

Julia is a superb editor, but she was writing as the Vice President she had newly become, eloquently defending and explaining the financial interests of the company. From this letter it was clear to us that we had no serious chance of changing the royalty terms on a fourth edition that had already appeared. But it was equally clear that to get the best possible terms in our contract for the new handbook, we would need more information and advice. We got all we needed from the Authors Guild and its new sister, the Textbook and Academic Author Association (TAA).

At Kay Murray's suggestion, we wrote to authors of the seven leading textbooks competing with ours and asked them what their royalty terms were. The authors were surprisingly forthcoming. We learned not only that one of them had obtained 15 per cent of list on all copies of a first edition, as mentioned above, but that another pair of authors had obtained on a first edition *20* per cent of net (equalling 16.8 per cent of list) for the first 100,000 copies, and 22 per cent thereafter. We also learned what had been gleaned from a study of over 100 textbook contract examined by Michael Lennie, a California attorney specializing in representing textbook authors throughout the country. In the April 1991 issue of *The Academic Author*, Lennie reported that the basic royalty rate for a college textbook ranged from 10 to 18.75 percent of net--that is, to a high equalling 15 percent of list--with a few reaching 21 percent of net (16.8 percent of list). Given those facts and our track record, we felt fully entitled to get at least 15 per cent of list on all copies of the new book.

The Authors Guild also gave up all the ammunition we needed to blast the "fiscal year" phrase right out of the new contract. On June 16, Bloomsday, we wrote as follows to Julia Reidhead:

> **We faxed a copy of your letter of June 10 to our contact at the Authors Guild, who in turn coneulted Paul Rosenzweig of the Royalty Review Service, one of the most highly respected New York accountants specializing in royalties and publishing contracts for both trade and textbooks. He has never seen the "fiscal year" phrase in any contract for a trade book or textbook, and he finds your justification for such a phrase unconvincing. According to him, the unit cost of reprints plays only a "very minor" role in the total cost of producing a book, which largely depends on the cost of producing the plates for the initial printing. Furthermore, attorneys for the Authors Guild have reviewed textbook contracts issued by the publishers of all the leading composition handbooks that compete with our--including Harcourt Brace, Random House, Little Brown, St. Martin's, Simon and Schuster. Not one of their contracts contains the "fiscal year" phrase. If indeed this phrase is really needed to cover the "soaring" cost of small-run reprint, we cannot understand why no other publisher finds this phrase necessary in its contracts.**

Shortly after sending this letter, we were offered a new contract that gives us 15 per cent on the first 100,000 copies of each edition for its life, and 16% thereafter. The "fiscal year" phrase--without which, we had been led to believe, Norton would crumble into bankruptcy--is gone. And so far as I know, Norton remain solvent.

The lessons taught by our experience are now obvious. No matter how gracious and congenial and intelligent its editors may be, the contracts offered by a publishing company are drafted by its own

lawyers and accountants to serve its own interests above all. Signing a publishing contract without getting professional advice is like playing poker with a blindfold on.