

I February 1985

Mr. David Holman
Wind River Press
3403 Andree
Austin, Texas, 78724

Dear David,

I just cannot believe that events have unfolded the way that they have. Instead of our mutual interests bringing us closer together and uniting us in a common effort as I had hoped, both you and I, the principals in these negotiations, have been driven so far apart that the likelihood of our reaching a contract becomes more remote each day. Why has this happened? How could you and I who have been dealing with each other as friends for a long time now have arrived at this point when we have always regarded one another with trust and mutual respect? The recent weeks have been very frustrating for me as I am being forced to realize that you and I do not have the power to reach a contract without recognizing the fact that each of us has overriding responsibilities to relatives and co-workers, to financial backers, and in my case to customers who have placed in me not only their trust but also their money in reliance on my promise to produce a ^Nunique and beautiful book that will be well-written, wonderfully designed and printed, and filled with fine reproductions of our paintings. Perhaps if we trace the history of our past agreements as my notes and my memory recall them, we can get an insight into why we have arrived at this present impasse.

Almost from the time of our first meeting when Tom Taylor introduced us at your old studio behind your house, you were my choice to do the text for our book, OF BIRDS AND TEXAS. I think that perhaps if we had kept our attention only on your doing the text, we would not have gotten into any complications. At that time, of course, I did not yet know Craig Jensen, and my original concept was different than it is now. From wanting to have the prints and the text bound, my mind was changed to the concept of having the prints and text left unbound and stored in a wooden box having two drawers, one for the text and one for the prints. In addition to this I wanted to include a small book printed by letterpress which would serve as a reference catalogue with John Grave's text for convenient reading.

From that point the concept changed still further to its final format, a book which will be composed of, in addition to the text, 10 reproductions of our landscapes, 40 paintings of our birds, 1 reproduction of Scott's portrait of John James Audubon, 1 facsimile reproduction of the first page of Audubon's autograph manuscript on the Red-shouldered Hawk, and one facsimile reproduction of Audubon's unpublished painting of the Boat-tailed Grackles. The text and the prints were finally to be contained in two portfolios placed within a splendid linen-covered box of book board designed and manufactured by Craig Jensen. This, to the best of my knowledge, is the final format for the book, and I anticipate no further changes in this concept.

Except for the addition of the Audubon manuscript and unpublished painting the plans for the production of the book were set by early summer of 1984. You were to design and print the text. Craig had agreed to make the portfolios and box, and Blanks Engraving of Dallas had been hired to provide us with the color reproductions. Such was the status of the project when you sent me your letter of July 25th. In that letter you offered to print all of the color work at a discount of 15% off Blanks' price. You went on to offer among other things that you would print the paintings using a 200-line screen for finer resolution, that the press would be entirely at my disposal throughout the duration of the project, and that you would guarantee my satisfaction with your color work or you would re-print it at no additional cost to me. You added that your involvement with the entire project would greatly enhance its prestige and saleability to libraries, museums and fine book collectors. It was understood that I would help you to acquire the necessary equipment. When we talked on the phone a few days after I received your offer, I told you that I was very interested in having you do the entire job, but that I would have to sever my ties with Blanks Engraving, and that I would probably have to request a lien on the two-color press for putting so much money up front. You told me that you saw no problem as far as the lien was concerned. At that time I had not secured the financing for our project, and most of the money which we were collecting was going into an escrow account so that my operating account was limited.

As events turned out, you were able to find a press much sooner than you or I had anticipated, and this opportunity came before I could complete the necessary negotiations and paper work to obtain my financing. But when you called to

request the \$9,000.00 to pay the required deposite to secure the press, I promptly complied. I asked no further questions. I requested no signed notes. I think that such an act is a fairly substantial sign of my faith and trust in you and your word. Though you have subsequently backed off from your^R offer of July 25th, it must be kept in mind that I have continued to act in good faith, relying upon what I thought was a very sincere offer on your part. I deeply regret that I was unable to get my loan in time to help you pay the balance on the press within the required six weeks, but nobody worked harder than Ralph, Scott and myself in trying to expedite the loan process with the bank. If I had gotten the loan in time, you would have received the money in time to pay the balance on the press, and you would not have had to go to your parents for the financing.

All that is history now. Perhaps it is for the best that I did not immediately send you the money to pay for the press, since apparently you or those advising you have determined that it would be impossible for you to live up to the provisions of your offer of July 25th.

One of the essential sticking points blocking our reaching an agreement concerns my having a second lien on your^A printing press. Quite frankly, I could not care less about having a lien on your press except for one very salient fact; I am being asked to pay a great deal of money up front before any product is produced and for which I have absolutely no security. I must answer to my bankers who have requested copies of all contracts in which their funds will be used. The kind of loan which they have granted me is what is called a demand note. If the bank feels that I am not pursuing our project in a business-like manner, they can literally call my note due at any time! Knowing full well that my contract with you will be reviewed by my loan officers, and realizing that I have no security at all for the large advance payment that I am making to a very small business, I am left feeling very vulnerable. I could have the rug pulled out from under me at any time, an action that could destroy the project and ruin my brother and me.

This scenario is, I think, unlikely to happen. But I am certain that the bank is expecting me to take at least some measures to minimize our risk. A second

lien on the press would not help me any way, for in order to ^{take} possession of the press (the last thing in the world that I would want to do!) I would have to pay your mother who, I believe, holds the note and the first lien, and then I would have to sell the press myself to recover what money I could. I might add here that your mother's investment would be protected and repaid, and I would be stuck with a project that would be halted and in limbo, and I would be in possession of a piece of machinery that I do not want.

A much better situation would be for me to at least have a lien on the paper, since I am paying for it up front anyway. We could then forget about the printing press, and I think that the attorneys and the bankers would be satisfied. Even a lien on the paper and your life insurance policy offers me very little protection. Since there are ways to insure to you that we will have the monies available when the times for making payments arrive, I frankly can not see where you are risking anything at all unless you personally feel that the project is too big or too difficult for you and that you might eventually be in default of our agreement. Not only do I put most of the money up front on a very open-ended contract, I have no assurance as to how long the project will take, and I really do not know if your knowledge and considerable skills at printing on a small two-color press are sufficient for you to produce large color reproductions of the Imperial Folio size with a newly acquired press from which you are yet to produce a single copy of anything. It is a measure of Scott's and my faith in you — a trust that I hope you appreciate — that we have been willing to go along with you as far as we have.

There have been so many changes in the last few weeks that I am not sure where we stand. I simply cannot keep in my mind the alterations which both of us have made with our changes of mind, our ammdements, our proposals and counter-proposals. Instead of you and me being able to take the responsibility of dealing directly with each other and abiding by our promises we have been drawn apart by too many other people. You may be confused in dealing with my attorneys but they do speak for me, and they are the drafters of the contract. On the other hand since I am in Fort Worth and away from face-to-face negotiations with you, I am finding it particularly difficult to know who is speaking for whom. I find myself in the peculiar position of trying to satisfy your father and mother and you all at the same time when all of you seem to have

differing views. It seems that I must bend and compromise and place myself at considerable risk to satisfy your parents, and yet they are not the persons who are going to sign the contract.

The standard printer's contract which I received in the mail was the kind of answer that I ^{had NOT} expected from you. It was simply another new contract offer. I can appreciate the wisdom in trying to cut through the apparent legal tangles of previous negotiations, but Mr. Ingram had told me that he thought that your father had agreed to all but a couple of the provisions of the last contract that we had offered you. By submitting to me a slightly altered standard printer's contract with a new payment schedule your father and mother -- and, I presume, yourself included -- have swept aside all the previous extensive and costly legal work which had been employed to protect both parties. I am being offered an entirely new contract which will simply be starting this tedious process all over again.

When it comes to standard practices, I might add here that I have had a lot of experience working with printing companies for the past 17 years producing color reproductions of our work. While I have had varying degrees of success with these printing firms, not one of them placed upon Scott or me the restrictions and the potential for added costs that you have been requesting. For instance, I am fully aware that a Gaver proof or a Chromolin can be very close in color to the original painting but that the print as it finally comes from the press is almost always different from those early proofs. I once made the mistake of approving a Gaver proof which was wonderfully close in color to the original painting. I ok'd the proof and went home fully confident that the final print would be a handsome facsimile reproduction. I certainly got an unwelcome surprise. The final print was so different from the proof that I had approved that I refused to accept the press run until a new corrected press run was produced. I was allowed to suggest color changes on the press so that alterations could be made until the printers and I arrived at a mutually acceptable reproduction. That finished reproduction was still different from the original Gaver proof and from the original painting, but it was a handsome print, nevertheless, and it was the result of a cooperative compromise between artist and printer.

I was not charged any more than the original estimate which the printing company quoted me before any work had commenced. They promised to print a work that would satisfy me, and they kept their promise. They did not charge me for the time that the press was idle while I drove from Fort Worth to Dallas to be with the printers. I was not charged for requesting color adjustments on the press. The printing company that I was dealing with on that occasion was Broadnax Printing Company of Dallas. The year was 1971. In all the years that I have been working with printing companies from Broadnax, Stafford Lowden, Anchor Printing, Regency House, and Blanks Engraving I have met with the same treatment. I was allowed approval of the Gaver or chromolin; I was given the opportunity to judge the press run and to suggest adjustments in color, and I was given the right of approval of the reproduction just prior to the final run. Even then the company assumed the responsibility of insuring that the last reproduction printed matched my signed press proof. All of this was at no extra cost. You may feel free to call any of these companies if you wish. The prints which my brother and I produced in collaboration with these printers are products in which both artist and printer take a mutual pride. In all that time, though the final prints have differed in varying ways from the original paintings, I was never charged for the extra time and labor that might have been required to make an acceptable print. If, on the other hand, I am not satisfied with your chromlin, or if your press run does not match the press proof that I or my proxy may have approved and signed, then, as I understand it, you are going to charge me an extra \$2,800.00 to re-do the print, and I will have no guarantee that the second print would be any better than the first, not to mention the possible added costs of additional press time. I would have no idea what this would do to my budget.

David, I can not help but feel that neither you or your father are giving me any credit for tolerance or for the ability to compromise and work with you to reach a product which, though it might differ somewhat from the original art work, nevertheless could be something in which both you and your parents and Scott and I would be very proud. It is my hope that the above restrictions and the potential for added costs which you apparently are insisting upon is more or less a tactic proposed by you to keep me or my people out of your press room and out of your hair. Frankly, I don't blame you. I want you to understand that nothing would please me more than to be able, upon being satis-

fied with your work on the first few prints, to turn my attention ~~to turn my attention~~ to other aspects of this complicated enterprise, knowing that the color work is in good hands. I am certain that you would see me in your press room very rarely after that.

If we reach a contract, I would like Craig Jensen to be my proxy when you run the prints. I have asked him, and he has agreed to do it. I think that my choice of Craig for this job is very fair, for he knows much more about the printing business than any other person that I can think of. He is very familiar with your abilities and your personal standards of quality, and after he stands by the press with me when you run the first four or five prints, he will know the kind of print that I am expecting you to produce. He is fair and tolerant. He is a mutual friend, and I will abide by any decision which he makes in compromising with you. He will not be liable for the cost of re-running the print if I do not agree with his choice.

David, this letter is being written in an attempt to review our situation and to determine how and why we have arrived at this present state of affairs. I sincerely believe that the main reason why our negotiations have become more complicated and have bogged down is because both of the parties to this contract are essentially small businessmen. Neither one of us is wealthy nor do we possess vast reservoirs of funds to buffer us against financial disaster if the other party fails to comply with the terms of the contract. Both you and your parents are left feeling quite vulnerable should I not be satisfied with your work, and I also feel quite vulnerable, for, to be frank, I really do not know if you actually are capable of handling a big new press to print our project, or if it might take weeks or even months of experimentation for you to get the proper feel for the new machinery before you could do satisfactory work. By backing away from your offer of July 25th you certainly put doubts in my mind that were not there before, and your parents' nervousness about this whole business has not helped me to maintain my former confidence in you, though I still have a great deal of faith in you. If you were a big printing company with experience in dealing with large projects such as ours, and if Scott and I were famous artists who had already published fine books, then I think that we could approach our negotiations with a greater ease of mind,

and therefore a standard printer's contract would probably be sufficient to cover most of the potential problems. But that, I think, can not be the case for you and me. Our mutual respect simply may not be enough to overcome mutual doubts. As I see it, then, there are three alternatives for us to consider:

1.) We should return to the contract which Mr. Ingram and I last submitted to you and then negotiate the adjustments which you and your father desire.

2.) Since most of our problems have arisen since I decided to put the whole project in your hands, it might be better for Scott and me to look elsewhere to have the color work done. In dealing with a larger company I could pay for each color print as it is produced. I would not have to pay a large deposit or a huge paper cost up front, and this would greatly reduce my costs in the rates of interest that the bank would charge me for my having to make such substantial advance payments. This certainly would relieve you of a huge responsibility and would greatly ease the anxiety of your parents. You would be able to turn your attention exclusively to the design and printing of the text, and the project would be completed much faster.

3.) Rather than drag this contract process out any more and delaying us both in getting on with our projects, perhaps it would be best to call the whole thing off and for you to return my deposit.

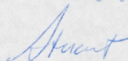
I would be less than candid if I did not tell you that I have begun making tentative inquiries to other people for the purpose of doing both the text and the color work. I will not commit Scott and myself to any other people until it is apparent that we are not going to be able to work together. If we can not reach a contract for you to do the entire publication or at least the text, then it will certainly be a sad turn of events. I have this deep feeling that once all of this contract business is behind us there would be few problems that mutual cooperation and common sense and respect could not overcome. I think that the product that would be created by you would exceed all expectations and would be something of which all of us would be immensely proud. And this book would be, I hope, only the beginning of a relationship that would extend to other books in the years ahead.

The key words to apply for this contract and for the future are mutuality and reciprocity. For us to ^{reach} an agreement of any kind there should be at least

some recognition on your part of the responsibilities that my brother and I have toward our clients and our bankers. So far in negotiating with you and your father, you have spoken only of your demands and needs, and neither one of you has shown us the slightest sympathy for our situation or have indicated that you even care.

I personally would like for this project to have no risk for any of us, but that is impossible. As I see it, the risk is really with us and once a contract is signed Scott and I not only assume all of the risk but we also give up any real power to influence the quality of the book or the course of its production. It appears as if our input will be kept to a minimum and that we may even have to pay extra for that. Neither my brother nor I are meddlers, but the prospect of our having little or no say as to how the book will be printed is a prospect that we do not relish. David, please let your mother and father have a look at this letter. I think that it adequately states our position and that it defines the spirit in which we have entered into these negotiations.

Sincerely yours,



Stuart W. Gentling