

University of Texas Press

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THE STATE OF TEXAS, COUNTY OF TRAVIS

This Agreement made the 11th day of October 1999, by and between

Scott and Stuart Gentling
4801 Harley Avenue
Fort Worth, TX 76107



(hereinafter called "Author," and meaning all of them collectively if there is more than one author) and the University of Texas Press, Post Office Box 7819, Austin, Texas, 78713-7819 (hereinafter called "Publisher").

The Author and Publisher agree that:

1. RIGHTS GRANTED

(a) The Author hereby grants and assigns exclusively to the Publisher rights described below for the manuscript currently entitled

OF BIRDS AND TEXAS

(hereinafter called "Work") throughout the world, which shall include any revisions of the Work and all rights granted to an author under the copyright laws of the United States and other countries, during the period of this Agreement, and the right to grant or license said rights, or any part of them, to third parties. The rights granted herein shall include the exclusive rights to do and to license third parties to do the following:

(i) to reproduce, distribute, publish, and transmit the Work, any portion, abridgment, digest, or excerpt of the Work in any print form, but specifically excluding movie, television, and video production;

(ii) to incorporate the Work, any portion, abridgment, digest, or excerpt of the Work into any hypertext or hyperlinked environment, multimedia work, or electronic database (with the above exceptions) for marketing, publicity, and promotional purposes only; and

(iii) to publicly perform the Work, any portion, abridgment, digest, or excerpt of the Work through dramatization, public reading, radio, and sound recording, motion picture, television, computer, or videocassette.

(b) The Publisher shall pay the Author for the exercise of said rights in accordance with Paragraphs 7 and 9 below.

(c) The decision regarding whether, how, under what terms, and in what form and media to exercise any of the rights set forth in (a) above shall be in the Publisher's absolute and exclusive discretion. With respect to any act agreed to by the Publisher or any act by any other party, the Author waives and appoints the Publisher to assert on the Author's behalf the Author's moral rights or any equivalent rights regarding authorship credit or regarding the form or extent of any alteration to, abridgment of, or excerpt from the Work, or the making of any derivative works based on the Work. The Publisher agrees to consult the Author before selling or granting rights to a third party.

(d) The Author shall, when requested by the Publisher, execute all documents which may be necessary or appropriate to enable the Publisher to exercise or deal with any of the rights granted hereunder.

2. DELIVERY AND FORM OF THE MANUSCRIPT

(a) The Author has delivered to the Publisher a copy of the Work for review, and agrees that within six (6) months after approval by the Faculty Advisory Committee of the University of Texas Press, shall deliver the Work in its final form on disk and in three (3) double-spaced printouts, including permissions and all other material as described in Paragraphs 2 (d) and (e) required to put the manuscript into production.

(b) The length of the manuscript shall be approximately 70,000 words and include 96 color plates, as the Author and the Publisher shall mutually agree upon. All illustrations will be provided by the Author, who retains ownership of the illustrations. Original materials will be returned to the Author by the Publisher after publication.

(c) If the Author fails to deliver a satisfactory manuscript on time, the Publisher will have the right to terminate this agreement and to recover from the Author any sums advanced in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been repaid, and this requirement shall survive the termination of this agreement.

Illustrations

(d) If the Author and the Publisher agree that photographs, maps, charts, or any other illustrations are necessary to the Work, the Author will provide them in a form that in the judgment of the Publisher is suitable for reproduction, with maps and charts initially furnished in draft form for editing and subsequently in final camera-ready form (as artwork or electronic file) before transmittal to production. The Author must obtain written permission from the owner of the reproduction rights to reproduce all such material and must file all permissions with the Publisher at the time the final version of the manuscript is delivered. Final selection of illustrations will be made by mutual agreement between the Author and the Publisher. All original transparencies and prints delivered by the Author will remain the property of the Author. The artwork will be returned to the Author by certified or express mail after publication of the Work and the Author will acknowledge receipt of the shipment in writing within thirty (30) days. The Publisher shall take every precaution to prevent any loss or damage while the artwork is in the Publisher's possession but shall not be liable for accidental loss or destruction of the artwork stored in its warehouse or elsewhere.

Quoted Material and Grants of Permissions

(e) With the exception of short quotations from prose which constitute fair use, the Work will contain no material from copyrighted works without written permission of the copyright holders. Such permissions will be obtained by the Author at the Author's own expense and will be filed with the Publisher at the time the manuscript is delivered. Such permissions must encompass all of the rights granted to the Publisher in this agreement. Any free copies of the Work requested by the copyright holders who grant the Author permission to use copyrighted material will be supplied by the Author.

3. COPYEDITING AND PROOFREADING

(a) The manuscript of the Work in its typewritten or electronic version will be copyedited by the Publisher and returned to the Author for reading and correction. The corrected manuscript will be returned to the Publisher by the Author within three (3) weeks. This will be the Author's last opportunity to make any substantive changes without cost to the Author.

(b) The Author will read and check galley and/or page proofs for printer's errors and deliver them within three (3) weeks following receipt. It is agreed that an index is not required for the Work.

(c) The Author will bear the expense of any alterations made in galley and/or page proofs (apart from corrections of printer's or Publisher's errors) which exceed 5% of the cost of composition.

4. PUBLICATION OF THE WORK

Following formal acceptance of the Work by the Faculty Advisory Committee of the University of Texas Press, the Work will be published by the Publisher at the Publisher's own expense in September 2001 provided the final manuscript is delivered before April 1999; otherwise within eighteen (18) months following receipt of the final manuscript, in such manner and form and at such price or prices as the Publisher shall deem best suited to the sale of the Work. All details of publishing the Work in any form, including but not limited to format, design, jacket/cover, quantity, price, and marketing strategy, shall be determined by the Publisher. The Publisher agrees to consult with the Author in matters of reproduction of the photographs and of design and agrees that the Author will be allowed to see and comment on sample page design and to see and comment on first proofs.

5. COPYRIGHT

The Publisher shall register copyright in the Work in the Author's name within three (3) months of publication, in accordance with the requirements of the copyright law of the United States. The Author hereby appoints the Publisher to be the Author's attorney-in-fact to execute in the Author's name and to file any and all documents necessary to record in the Copyright Office the grant of exclusive rights made to the Publisher hereunder. The Publisher may also register copyright in the Work in the Publisher's name, subject to Author approval, in other jurisdictions when the Publisher determines, in its sole discretion, that such registration is required or advisable to protect its rights in the Work.

6. AUTHOR'S WARRANTY

The Author warrants that the sole ownership of all rights to the Work that are granted, assigned, and transferred in this agreement is vested in the Author and that the Author has full power and authority to make this agreement; that no rights in the Work have previously been assigned, and that neither the Work nor any portion of it has been published elsewhere, except as the Author has advised the Publisher in a written statement attached as an Appendix to this agreement; that the Author has used all reasonable care to ensure that all facts and statements in the Work are true; that the Work does not violate any right of privacy or infringe any valid copyright or other proprietary right of any other person; and that the Work contains no defamatory or other unlawful material. This warranty shall survive the termination of this agreement. The Author will defend and indemnify the Publisher and/or the Publisher's licensees and assignees and hold them harmless against all claims, suits, costs, losses, damages, and expenses, including reasonable attorneys' fees, that the Publisher and/or the Publisher's licensees and assignees may sustain by reason of any scandalous, libelous, or unlawful matter contained in the Work or of any infringement or violation of any copyright or property right by the Work or resulting from exercise of the Publisher's rights in the Work as granted in this agreement; and until such claim or suit has been settled or withdrawn the Publisher may withhold any sums due the Author under this agreement.

7. ROYALTIES

As full payment to the Author for the Author's grant of rights and fulfillment of obligations under this agreement, and in addition to any payments pursuant to Paragraph 9, the Publisher shall pay to Stuart Gentling on each copy of the Work published and sold by the Publisher the following royalties based on the net sales of the Work (net sales being defined as sales, less returns, at list price less standard industry discounts):

- (a) On casebound copies: no royalty, copies 1-5,000; 10%, copies 5,001-10,000; 12.5%, copy 10,001 and thereafter
- (b) On paperbound copies: 7.5%, copies 1-5,000; 8%, copies 5,001-10,000; 10%, copy 10,001 and thereafter.
- (c) On audiocassettes: 10%
- (d) On videocassettes: 10%
- (e) On casebound and/or paperbound copies at a special discount of 60% or more from the list price, a royalty of 5% of the amount the Publisher receives, except as provided in paragraph 7 (i).
- (f) On casebound and/or paperbound copies sold for export (outside the United States and Canada), 75% of the royalties stipulated in paragraphs 7 (a) and (b), except as provided in paragraph 7 (h).
- (g) On copies (casebound, paperbound, or in sheets) sold for copublication at discounts of 60% or more, 10% of the amount the Publisher receives.
- (h) No royalty shall be paid on bound books, audiocassettes, videocassettes, or other products sold at remainder price (any sale at or below manufacturing cost being deemed a remainder sale) or on copies furnished without charge for review, advertising, promotion, or other similar purposes, or on damaged copies.
- (i) If copies of the Work are sold at remainder prices, Author shall have the right to purchase a reasonable number of copies at that price.

If there is more than one author, royalties shall be divided between the authors as follows:
n/a

Special Provisions: n/a

8. SELECTIONS FOR PUBLICITY PURPOSES

(a) The Publisher may publish or permit others to publish, broadcast, telecast, or transmit on-line or by any other electronic or optical method of transmission, or otherwise reproduce, without charge and without royalty, brief selections from the Work for publicity purposes that may benefit the sale of the Work.

Recordings for the Blind and Physically Handicapped

(b) The Publisher may permit publication of the Work without charge and without royalty in Braille or by any other method primarily designed for the physically handicapped.

Author's Name and Likeness

(c) The Publisher may use the name and likeness of the Author on the jacket and cover, and generally in connection with the advertising, promotion, and exploitation of the Work and of any derivative work based on the Work.

9. SUBSIDIARY RIGHTS PAYMENTS

As full payment to the Author for the Author's grant of rights and fulfillment of obligations under this agreement, and in addition to the royalties set forth in Paragraph 7, the Publisher shall pay Stuart Gentling in connection with the Publisher's licensing or other transfer of subsidiary rights as follows:

(a) the Publisher shall remit to Stuart Gentling 50% of the Publisher's net receipts from payments for the licensing or other transfer of any rights other than those set forth in subparagraph (b) below.

(b) the Publisher shall remit to Stuart Gentling 15% of any option payments and 60% of the Publisher's net receipts from other payments for the licensing or other transfer of the following performance rights: dramatization, public reading, radio, sound recording, motion picture, television, computer, videocassette.

(c) For purposes of this Paragraph "net receipts" shall mean payments that the Publisher actually receives in excess of \$50.00 and after all manufacturing costs, commissions, foreign taxes, and other charges have been deducted.

- (d) If there is more than one author, payments shall be divided between authors as follows:
n/a

10. COMPETING PUBLICATIONS

During the term of this agreement, the Author agrees not to make, write, edit, publish or furnish to any other publisher, without the Publisher's written consent, a work on the same subject and of the same content and character as the Work made or licensed by the Publisher pursuant to this agreement if in the Publisher's opinion the publication, distribution, transmission, or public performance of such a work would clearly conflict with the sale of the Work or the exercise or license of any rights granted to the Publisher under this agreement.

11. AUTHOR COPIES

- (a) The Publisher shall furnish the Author, free of charge thirty (30) copies of the casebound edition, audiocassette, videocassette, or other products of the Work as published, and thirty (30) copies of the paperbound edition. Any additional copies desired by the Author for personal use (not for resale) shall be supplied at a discount of 40% from the list price, without royalty to the Author.

If there is more than one author, Author copies will be divided between the authors as follows: n/a

- (b) The Author will be allowed to purchase one thousand (1,000) unbound copies of the Work at manufacturing cost (minus binding, plus cost of making changes to front matter, plus freight) for private sale in a limited, custom-bound edition. Imprint on these copies shall read as follows: Fort Worth, Gentling Publications.

12. ROYALTY STATEMENTS AND PAYMENTS

The Publisher shall render to the Author in October of each year an annual statement of account as of the preceding August 31. Each statement shall be accompanied by payment of all sums due thereon. If in any yearly period the total payments due are less than \$50.00 the Publisher shall render the statement but may defer the payment until such time as the sum of \$50.00 or more shall be due. In a situation where large advance sales warrant it, the Publisher may establish a reasonable reserve for returns and reduce the amount payable accordingly. At the next payment period, the amount payable will be adjusted to include unused reserve funds. Any share of net receipts from subsidiary rights sales as defined in Paragraph 9 will be included in the annual royalty statement and payment.

13. TERMINATION OF THE AGREEMENT

(a) The Work shall be considered to be "in print" if it is offered for sale by the Publisher in any edition in the United States and continues to generate payments to the Publisher in excess of \$50.00 per year. In the event that the Publisher fails to keep the Work in print and the Author makes a written request of the Publisher to keep the Work in print, the Publisher shall, within sixty (60) days after receipt of a written request, notify the Author in writing of the Publisher's decision in the matter. If the Publisher elects to keep the Work in print, the Publisher shall have six (6) months thereafter to make copies of the Work available again. In the event that the Publisher elects not to keep the Work in print or fails to comply with the six (6) months' deadline (unless the failure is due to circumstances beyond the Publisher's control), then this agreement shall terminate and all rights granted to the Publisher shall revert to the Author. The Publisher shall inform the Author in writing about the Publisher's decision to let the Work go out of print.

Licenses, Grants of Rights, Options, or Agreements with Third Parties

(b) Nothing contained in Paragraph 13 (a) of this agreement shall affect any licenses, other grants of rights, options, or agreements made with third parties prior to the termination date or the rights of either the Author or the Publisher in income resulting from such licenses, other grants of rights, options, and agreements.

Discontinuing Manufacture

(c) When the Publisher decides that the public demand for the Work no longer warrants its continuing sale, the Publisher may discontinue manufacture. In case of such decision the Publisher will inform the Author in writing and the Author shall have the right for thirty (30) days after receipt of the notice to receive from the Publisher films of the Work free of charge. If the Author fails to do so, the Publisher may dispose of all of them without liability to the Author.

14. APPROVAL OF THE FACULTY ADVISORY COMMITTEE OF THE UNIVERSITY OF TEXAS PRESS

This agreement will be canceled if the manuscript fails to receive the approval of the Faculty Advisory Committee of the University of Texas Press. If such approval is not granted within four (4) months of the receipt of a satisfactory manuscript by the Publisher, the Author may withdraw the manuscript without penalty except as specified in Par(c).

15. ENTIRE AGREEMENT; AMENDMENTS

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the Publisher concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

16. CONSTRUCTION, BINDING EFFECT, AND ASSIGNMENT

This agreement shall be construed and interpreted according to the laws of the State of Texas and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the Publisher shall include their heirs, successors, assigns, and personal representatives. If there is more than one person who is the Author hereunder, then each person shall be jointly and severally liable for the fulfillment of the Author's obligations under this agreement.

17. NOTICE

Notice to each party may be accomplished by writing to the party's address as set forth in the preamble to this agreement. A party may change its address by written notification to the other party.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.

AUTHOR STUART GENTLING
ADDRESS 4801 HARLEY AVE
Ir. Worth, TX 76107
SSN Edward W. Gentling
DATE 1 April 2000

AUTHOR SCOTT GENTLING
ADDRESS 4801 HARLEY AVE.
Ir. Worth, TX 76107
SSN Scott Gentling
DATE 1 April 2000

AUTHOR _____
ADDRESS _____
SSN _____
DATE _____

AUTHOR _____
ADDRESS _____
SSN _____
DATE _____

THE UNIVERSITY OF TEXAS PRESS

BY Joanna Hitchcock
JOANNA HITCHCOCK
DIRECTOR

DATE 5/11/00

rev 7-97

THE UNIVERSITY OF TEXAS AT AUSTIN
OFFICE OF BUSINESS AFFAIRS

BY Debra Y. Stevens
DEBRA Y. STEVENS
BUSINESS CONTRACTS ADMINISTRATOR

DATE 5/22/00



line coming in the house from the Box does not ^{work}

Line coming did not have polarity
documented security system for the
phone - and still no dial tone.

did line at the Box.