OFFICIAL STATEMENT REGARDING DEPARTMENT HEAD DR. REBECCA BRIENEN'S COPYRIGHT ALLEGATIONS BROUGHT AGAINST OSU STUDENT BRANDON NEAL JONES.

FOR ARBITRATION PURPOSES ONLY

THIS OFFICIAL STATEMENT IS TO REMAIN **CONFIDENTIAL**. IT IS INTENDED FOR THE RELEVANT PARTIES TO THE ARBITRATION PROCEEDINGS – ONLY. IT IS NOT TO BE PUBLISHED, MADE AVAILABLE FOR PUBLIC VIEW, USED IN COURT PROCEEDINGS, OR FOR ANY USE THAT IS BEYOND THE SCOPE AND NATURE OF THE ARBITRATION BY ANY PERSONS OTHER THAN THE PRODUCER OF THE ORIGINAL DOCUMENT AND THE ORIGINAL CONTENTS, HEREIN KNOWN AS THE RESPONDENT, BRANDON NEAL JONES.

USE OF THIS INFORMATION, OTHER THAN FOR WHAT IT IS INTENDED, WILL VIOLATE THAT WHICH IS SET FORTH WITHIN THE ARBITRATION AGREEMENT AND WILL RESULT IN LEGAL ACTION BEING BROUGHT AGAINST THE ALLEGED OFFENDER(S).

The following text(s), exhibit(s), illustration(s), scenario(s), hypothetical(s) including/but not limited to, legal theory(ies) and methodology(ies) [collectively referred to as *information*] is/are for the sole use of the pertinent parties (named below), and exclusively for fact finding purposes within the scope of the arbitration proceedings *regarding Department Head Dr. Rebecca Brienen's Copyright Allegations Brought Against OSU Student, Brandon Neal Jones*. The following *information* is for the purposes of the arbitration proceedings between Dr. Rebecca Brienen and OSU student, Brandon Neal Jones, within the Oklahoma State University system.

This document, and the *information* provided, is the work-product of Brandon Neal Jones and will be protected, as such, under the privileges and protections of the Oklahoma State and Federal Civil Rules of Discovery and the right to *Pro se* representation. This statement does not revoke or deny any legal actions that may be brought against any party named within this arbitration. It simply limits the scope with which the participants in this arbitration may use the enclosed *information*. Furthermore, this statement in no way diminishes the scope with which I, Brandon Neal Jones, or any counsel of my choosing, may use or disseminate this document and its *information*.

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This document, inclusive of the *information* contained herein, is provided as complete, and wholly inseverable. There are five (5) extant copies of this document, which have been made available for review by, and to, the following persons:

Dr. Lee Bird – Vice President for Student Affairs (and her immediate staff on a need-to-know basis),

Mackenzie Wilfong, Esq. – General Counsel for the Board of Regents (and her immediate staff on a need-to-know basis)

Dr. Rebecca Brienen – Department Head for Art, Graphic Design, and Art History

Dr. Ronald Beer – Ombudsman, The Office of the President

Brandon Neal Jones, Master of Science Candidate in International Studies

NOTE: a copy will be made available to any representative counsel for the aforementioned parties and/or other relevant parties as it specifically relates to the proceedings of this arbitration, only. This type of request requires a twenty-four (24) hour lead-time to fulfill, and a majority vote from the above-mentioned, and specifically named, persons, before release to parties that are not directly representing the interest of a member, specific to this arbitration, in a fully professional and legal capacity.

ALL COPIES OF THIS OFFICIAL STATEMENT WILL BE SURRENDERED AT THE CONCLUSION OF ARBITRATION EXCEPT ONE COPY THAT WILL BE MAINTAINED BY THE OFFICE OF STUDENT AFFAIRS, ALONG WITH THE FINAL DISPOSITION DOCUMENTS OF THE ARBITRATION PROCEEDINGS, AS DEEMED NECESSARY BY THE ARBITRATORS OF THIS MATTER.

FURTHERMORE, this official statement has been produced by, and for, the sole efforts of the Respondent to exonerate himself, once again, from baseless allegations brought by Dr. Rebecca Brienen. The Respondent, Brandon Neal Jones, in no way professes to be a licensed attorney. Nothing found within this document, inclusive of its *information*, should be construed as legal advice. Please contact professionally licensed legal counsel, with an expertise in the appropriate field for your legal needs, if legal advice is what you seek. AGAIN, THIS IS FOR INFORMATIONAL PURPOSES – **ONLY**.

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THE FACTS AS THEY ARE UNDERSTOOD BY THE RESPONDENT

1. Recently, Dr. Rebecca Brienen, the Complainant, brought grievances by way of threat of lawsuit against the Respondent, Brandon Neal Jones, OSU Masters of Science candidate in International Studies, for the alleged use of material images (photographs) that are currently in the physical ownership of the Complainant.[1]

    1.1. The Respondent understands that this complaint was initially brought to the attention of Mackenzie Wilfong, Esq. – General Counsel for the Board of Regents.

    1.2. As the Respondent understands it, Mackenzie Wilfong, Esq. advised the Complainant, Dr. Rebecca Brienen, as to her alleged rights under Mrs. Wilfong's interpretation of U.S. Copyright Law – further discussed in bullet point number two (2).

    1.3. As a result of this complaint, a previously granted scholarship from Dr. Lee Bird's Office of Student Affairs, was rescinded with the provision that it would be reinstated when the complaint brought by Dr. Rebecca Brienen was resolved according to a phone call made to the Respondent by Dr. Lee Bird.[2]

2. The allegations brought forth by the Complainant allege infringement of copyright according to U.S.C. Title 17, and its subsequent sections and amendments, including, but not limited to, the Visual Artists Rights Act of 1990, the Copyright Renewal Act of 1992, and the Sonny Bono Term Extension Act of 1998.[3]

3. Dr. Rebecca Brienen has presented a history of unsubstantiated allegations, attacks, and provocations against the Respondent, Brandon Neal Jones; this is not the first time, even though I am a graduate student with a proven record of ethical scholarship and an unshakeable commitment to this university.[4]

    3.1. Nonetheless, similar allegations to the aforementioned were also inflicted upon the Respondent as an undergraduate under the tutelage of the Complainant, Dr. Rebecca Brienen, both as student and employee – ironically one year ago, almost to the day. Note: these accusations were found to be baseless, also.[5]

4. Dr. Rebecca Brienen, her staff, and her faculty, have consistently proven a cycle of intentionally invoking emotional distress against the Respondent at both a student level and employment level.[6]

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[1] The Respondent understands that no evidence was provided by the Complainant to support these allegations.
[2] It should be noted that the Respondent was contacted by Kathy Shelton to confirm reinstatement of the scholarship, even though arbitration is still pending, due to the fact that this scholarship is in no way related to the incident as alleged by Dr. Rebecca Brienen. Please see attached email conversation. Titled: Exh. A.
[3] As interpreted from the actual United State Code Title 17, provided by the United States Copyright Office, a department of the Library of Congress, and discussed in further detail in the chapter titled, "How Copyright Actually Works." http://www.copyright.gov/title17/
[4] Please see attached Curriculum Vitæ for more information. Titled: Exh. B.
[5] See chapter titled, "History in Brief" for further information and support of this counterclaim.
[6] Ibid. Further evidence in support of this counterclaim will be found throughout this document and its *information*.

HISTORY IN BRIEF

The current events have this uncannily eerie resemblance to events that unfolded pretty much one year ago to the day, as I was about to graduate from Oklahoma State University's Department of Art, Graphic Design, and Art History with my bachelors in art history. The reason why this narrative needs to be recounted (and reconstructed) is due to the fact that, unlike this go-around, the agreements that were made were done so behind closed-doors and/or on the telephone. A *true* record of the events that should be easily producible – is not – strictly because of a lack of transparency that the Respondent never should have agreed to in the first place, let alone have allowed to happen. What is done is done, but that is why we find ourselves here today. No *true* record can be brought forth to end this, once and for all. Additionally, Oklahoma State University is displaying a habit of assuming the Respondent is guilty (at least) until the Respondent is able to prove their innocence. All with nothing more than a baseless complaint brought by a vindictive and retaliatory professor and Department Head – Dr. Rebecca Brienen.

Last spring, after receiving the "Best Research Award" and "Outstanding Senior" from the Art History Department,[7] along with a series of unfortunate incidences, Dr. Rebecca Brienen and Dr. Jennifer Borland chose to withhold my course grades allegedly because I had not submitted a document for grading.[8] It should be noted that this document was in no way a part of the grading rubric and was not required for any courses that I was taking that spring. It was the equivalent of withholding my grades for choosing not to participate in end of semester evaluations. Throughout a slew of unethical behavior by Dr. Rebecca Brienen, her staff, and her faculty, we ended the arbitration through Dr. Lee Bird's office with the agreement that I would turn over a disc of the digital copies of the images (because she alleges that she did not receive a copy – even though that is inaccurate), and that I would turn over what ever work I had done so they could complete their department diagnostic report, which I did that day in the presence of Dr. Bird and her staff.[9] It was also during this time that Dr. Bird helped to facilitate my transfer from the graduate art history program that I had been accepted into for the graduate program in international studies.

BASIC AMERICAN JURISPRUDENCE THAT NEEDS TO BE CONSIDERED, SUCH AS STANDING

Unless I am severely mistaken, or there has been a recent death in the family (if so my sincerest condolences), Dr. Rebecca Brienen has no standing in Federal court to sue me for infringement of copyright based upon both the language of the United States Code Title 17, along with Federal Civil Rule 12. Let me explain:

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[7] Please see the attached blah blah and copy of speech from Dr. Borland

[8] I believe this had more to do with the fact that Dr. Rebecca Brienen's administrative assistant, Dawn Behrens, decided to play vigilante cop and defame me through stalker-like tendencies by collecting shoddy "evidence" from Facebook to disseminate to the staff and faculty of the Department of Art, Graphic Design, and Art History inferring that I had broken into an art installation, after hours, at Hanner Hall with a group of friends, which led to the events discussed in the History in Brief, amongst many others. It also explains Dr. Bird's participation in the original set of events.

[9] See the attached receipts, signed by Dr. Rebecca Brienen, at conclusion of the last arbitration session. Titled: Exh. C.

According to U.S.C. Title 17 § 304 [Duration of copyright: Subsisting copyrights[10]], title of succession goes from author to widow/er to children to grandchildren. Dr. Rebecca Brienen is the granddaughter of Howard Goodrich – who she alleges took the material objects that are currently in her possession.[11] She has spoken many times of an uncle who, from the context of those conversations, is the actual heir by way of U.S.C. Title 17, and thusly, the rightful owner of the copyright that Dr. Rebecca Brienen alleges to hold.

WHY OWNERSHIP OF THE PHYSICAL OBJECT DOES NOT AUTOMATICALLY CONVEY RIGHTS UNDER U.S.C. TITLE 17

In plain language, owning the object does not automatically give the owner of the object the copyright. This is spelled out rather plainly in U.S.C. Title 17 § 202 – *Ownership of copyright as distinct from ownership of material object.*[12]

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[10] **"**(a) Copyrights in Their First Term on January 1, 1978. —
(1)(A) Any copyright, in the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.
(B) In the case of —
(i) any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or
(ii) any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire,
the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of 67 years.
(C) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work —
(i) the author of such work, if the author is still living,
(ii) the widow, widower, or children of the author, if the author is not living, [*continued on next page*]
(iii) the author's executors, if such author, widow, widower, or children are not living, or
(iv) the author's next of kin, in the absence of a will of the author, shall be entitled to a renewal and extension of the copyright in such work for a further term of 67 years" U.S.C. Title 17 § 304.

[11] (I am not going to even broach the topic of authorship, even though it is a very valid legal theory to appreciate, as she has no proof there either, especially since there is more than enough evidence to reveal when strictly looking at U.S.C. Title 17 and the Federal Civil Rules. But, there is any interesting note re: authorship in an email communication from Dr. Rebecca Brienen.)

[12] "Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phono record in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object" U.S.C. Title 17 § 202.

DR. BRIENEN'S CLAIM IS MOOT, PRIMA FACIE

If Dr. Rebecca Brienen does not actually hold the copyright, then she has no standing to sue. In turn, I can easily submit a Motion to Dismiss under the authority of Federal Civil Rule 12(b)(1), which states, "a court must grant a motion to dismiss if it lacks subject-matter jurisdiction to hear a claim." **A motion to dismiss for want of standing is…properly brought pursuant to [this rule] because standing is a jurisdictional matter** [emphasis added]."[13]

Furthermore, to hold standing within any court **one must be able to prove that a litigant has actually suffered injury** [emphasis added]. This is supported by Article III of the U.S. Constitution,

> [which] limits the scope of the Federal judicial power to the adjudication of "cases" or "controversies." U.S. Const. art. III, § 2. This "bedrock requirement," Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 471 (1982), protects the system of separated powers and respect for the coequal branches by restricting the province of the judiciary to "decid[ing] on the rights of individuals." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 170 (1803). Indeed, "'[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.'" Raines v. Byrd, 521 U.S. 811, 818 (1997) quoting Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 37 (1976).
>
> The courts have developed several justicability [sic] doctrines to enforce the case-or-controversy requirement, and "perhaps the most important of these doctrines" is the requirement that "a litigant have 'standing' to invoke the power of a federal court." Allen v. Wright, 486 U.S. 737, 750 (1984). "[T]he standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth, 422 U.S. at 498-99 citing Baker v. Carr, 369 U.S. 186, 204 (1962).
>
> **The plaintiff** [in this hypothetical case Dr. Rebecca Brienen] **bears the burden of meeting the "irreducible constitutional minimum" of Article III standing by establishing three elements**:

[13] Joseph Hage Aaronson, LLC. Motion to Dismiss for Lack of Standing Properly Brought under Rule 12(b)(1) and Decided under 12(b)(6) Standards — Elements of Article III Standing. (2012, May 18). Retrieved May 2, 2015, from http://www.jha.com/us/blog/?blogID=2078

> **First,** the plaintiff must have suffered an injury in fact — an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.
>
> **Second,** there must be a causal connection between the injury and the conduct complained of — the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.
>
> **Third,** it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).
>
> We have recognized that of the three required elements of constitutional standing, **"the injury-in-fact element is often determinative"** [emphasis added]. Toll Bros., Inc. v. Twp. of Readington, 555 F.3d 131, 138 (3d Cir. 2009). To satisfy this requirement, **the alleged injury must be "particularized," in that it "must affect the plaintiff in a personal and individual way."** Lujan, 504 U.S. at 560 n.1.
>
> "[T]he 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." Id. at 563 (quoting Sierra Club v. Morton, 405 U.S. 727, 734-35 (1972)). **The injury must also be "an invasion of a legally protected interest."** Id. at 560.[14]

Now, the reason I find this interesting is that I have made no attempts to cause an invasion of any kind against anyone, let alone Dr. Brienen; furthermore, I do not believe she is even the affected party. The Complainant has proffered no evidence, whatsoever, to support the allegations that she has set forth. At this point we just have another sham allegation brought as an act of retaliation and retribution. There has been no attempt whatsoever by the student to achieve monetary gain from these images – no matter who holds the copyright.[15]

Lets suppose, for a moment, that a party with actual standing is willing to take me to court over the alleged copyright infringement the case, and completely forget the jurisprudence regarding actual injury to the party. This, too, can easily be dismissed with prejudice, and here is why:

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[14] Joseph Hage Aaronson, LLC. Motion to Dismiss for Lack of Standing Properly Brought under Rule 12(b)(1) and Decided under 12(b)(6) Standards — Elements of Article III Standing. (2012, May 18). Retrieved May 2, 2015, from http://www.jha.com/us/blog/?blogID=2078

[15] In fact, as you will see from the financial aid communications, I have only lost money on this research.

THE REAL MATH THAT FURTHER REFUTES DR. BRIENEN'S ALLEGATIONS

Works produced before 1923 are in the public domain without question. Several of the works held by the Complainant were created by this date. For the works created between 1923 and 1963, they have an original term of 28 years that can then be renewed for another 67 years if the copyright was officially renewed. If not, than it is in the public domain, and need I remind you that physical ownership of the material does not convey copyright. Let alone the fact that the Claimant does not have a complaint to begin with, the copyright on these images most likely ended at the very latest (by my estimates on dating of the photographic paper, context, and the NARA records in my possession, which puts creation at the very latest in 1930) in 1958 unless a renewal was submitted to the Library of Congress Registrar of Copyrights by end of calendar year 1957, which would then add on an additional 67 years [even considering the egregious Sonny Bono Term Extension Act of 1998, which added another twenty (20) years to the already long, forty-seven (47) years][16] putting the end of this copyright at 2025, but I highly doubt the true copyright owner submitted this required renewal within the required time frame allowed by law.[17]

Please note: I could easily hold off ten (10) years before publishing the allegedly controversial document circumventing copyright, obviously with a severe emphasis on the hypothetical nature of this statement, since no true claim actually exists. Furthermore, I do not have to publish my work to assert copyright of my intellectual property as it pertains to this research. If the Claimant wishes to pursue her own research regarding this topic that is to be by, and through, her own accord, but strict scrutiny will apply to all published, unpublished, and conference works on this topic. Plagiarism, injury, or theft of any kind, against my intellectual property, will result in litigation.

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[16] "In 1998, the Sonny Bono Copyright Term Extension Act amendment to subsection 304(b) completely deleted the previous language that was originally part of the 1976 Copyright Act. Pub. L. No. 105-298, 112 Stat. 2827. That earlier statutory language continues to be relevant for calculating the term of protection for copyrights commencing between September 19, 1906, and December 31, 1949. The 1976 Copyright Act extended the terms for those copyrights by 20 years, provided they were in their renewal term between December 31, 1976, and December 31, 1977. The deleted language states:

The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976, and December 31, 1977, inclusive, or for which renewal registration is made between December 31, 1976, and December 31, 1977, inclusive, is extended to endure for a term of seventy-five years from the date copyright was originally secured.

The effective date of this provision was October 19, 1976. That effective date provision is contained in Appendix A, herein, as section 102 of the Transitional and Supplementary Provisions of the Copyright Act of 1976. Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541, 2598" Copyright Law of the United States of America. (n.d.). Retrieved May 2, 2015, from http://copyright.gov/title17/92chap3.html

[17] "If an application to register a claim to the renewed and extended term of copyright in a work is made within 1 year before its expiration, and the claim is registered, the certificate of such registration shall constitute prima facie evidence as to the validity of the copyright during its renewed and extended term and of the facts stated in the certificate. The evidentiary weight to be accorded the certificates of a registration of a renewed and extended term of copyright made after the end of that 1-year period shall be within the discretion of the court" U.S.C. Title 17 § 304 (4)(B).

FOR THE SAKE OF ARGUENDO: LETS SAY THAT COMPLAINANT HAS ALL OF THE VARIABLES IN PLACE TO TAKE HER ALLEGATIONS TO TRIAL, THERE IS ALWAYS – FAIR USE

Besides the language of the Copyright Law, itself, which should be investigated thoroughly with its section on Fair Use [Limitations on exclusive rights: Fair use [18]], there are a multitude of fair use Circuit and Supreme Court cases, which would back my ability to win this [hypothetical] case.

Examples of Fair Use

> **Fair use.** Publisher Larry Flynt made disparaging statements about the Reverend Jerry Falwell on one page of Hustler magazine. Rev. Falwell made several hundred thousand copies of the page and distributed them as part of a fund-raising effort.
>
> **Important factors:** Rev. Falwell's copying did not diminish the sales of the magazine (since it was already off the market) and would not adversely affect the marketability of back issues. *Hustler Magazine, Inc. v. Moral Majority, Inc.*, 606 F. Supp. 1526 (C.D. Cal. 1985).
>
> **Fair use.** A biographer of Richard Wright quoted from six unpublished letters and ten unpublished journal entries by Wright.
>
> **Important factors:** No more than 1% of Wright's unpublished letters were copied and the purpose was informational. *Wright v. Warner Books, Inc.*, 953 F.2d 731 (2d Cir. 1991).
>
> **Fair use.** The makes of a movie biography of Muhammad Ali used 41 seconds from a boxing match in their biography.
>
> **Important factors:** A small portion of film was taken and the purpose was informational. Monster Communications versus Turner Broadcasting (1996).
>
> **Fair use.** It was fair use, not an infringement, to reproduce Grateful Dead concert posters within a book. [19]

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[18] **"**Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords [sic] or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), **scholarship, or research**, [emphasis added] is not an infringement of [*continued on next page*]
copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.
The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors" U.S.C. Title § 107.

[19] Stim, R. (2013, April 4). Summaries of Fair Use Cases. *NOLO*.com. Retrieved May 2, 2015, from http://fairuse.stanford.edu/overview/fair-use/cases/

Important factors: The Second Circuit focused on the fact that the posters were reduced to thumbnail size and reproduced within the context of a timeline. Bill Graham Archives versus Dorling Kindersley Ltd. (2006).

Fair use. A publisher of monster magazines from the 1950s, '60s, and '70s sued the creator and publisher of a book, Famous Monster Movie Art of Basil Gogos. (Gogos created covers for the magazines.) The book publisher had obtained licenses from the artist directly, but not from the magazine publisher who claimed copyright under work-made-for-hire principles. The district court determined that the use was transformative.

Important factors: The use was for a biography/retrospective of the artist, not simply a series of covers of magazines devoted to movie monsters. In addition, the magazines were no longer in print, and the covers amounted to only one page of the magazine, not the "heart" of the magazine. *Warren Publishing Co. v. Spurlock d/b/a Vanguard Productions*, 645 F. Supp. 2d 402, (E.D. Pa., 2009).

Fair Use. A seven-second clip from the Ed Sullivan TV was used in a staged musical history ("The Jersey Boys") based on the career of the musical group, the Four Seasons.

Important factors: The use was transformative ('Being selected by Ed Sullivan to perform on his show was evidence of the band's enduring prominence in American music,' the judge wrote in the ruling. 'By using it as a biographical anchor, [the defendant] put the clip to its own transformative ends.') Further, the use caused no financial harm to the copyright owners of the show. *SOFA Entertainment, Inc. v. Dodger Productions, Inc.*, No. 2:08-cv-02616 (9th Cir. Mar. 11, 2013).[20]

NOT TO MENTION THE VERY RECENT LANDMARK SUPREME COURT DECISION *CARIOU VS. PRINCE*. Surely you are aware of what a victory this was for the doctrine of fair use:

Fair Use. The painter, Richard Prince, created a collage using — in one collage — 35 images from a photographer's book. The artist also used 28 of the photos in 29 additional paintings. In some instances the full photograph was used while in others, only the main subject of the photo was used.

Important Factors. The Second Circuit Court of Appeals held that to qualify as a transformative use, Prince's work did not have to comment on the original photographer's work (or on popular culture). The Court of Appeals concluded that twenty-five of Prince's artworks qualified as fair use and remanded the case to determine the status of the remaining five artworks. *Cariou v. Prince*, U.S. Court of Appeals for the 2nd Circuit, No. 11-1197.[21]

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[20] Stim, R. (2013, April 4). Summaries of Fair Use Cases. *NOLO*.com. Retrieved May 2, 2015, from http://fairuse.stanford.edu/overview/fair-use/cases/

[21] Ibid.

SIDE NOTE

Does Dr. Rebecca Brienen realize that over a quarter of the images in her collection are (without a doubt) Official U.S. Marine Photographs that are property of the United State Marine Corps, History Division which actually puts them into the public domain?[22] [This will be commented on further in the chapter called, "Proposed Resolution to This, and All Future Matters, Related to Dr. Rebecca Brienen, and the Department of Art, Graphic Design, and Art History".] This leaves me to believe that the U.S. Government is going to protect their property from false claims of copyright ownership if she, or any hypothetical party, were to bring suit against my person as it pertains to this collection [Subject matter of copyright: United States Government works].[23] I really cannot imagine that the U.S. Government would not want to protect their intellectual property — which, again, is automatically in the public domain.

[22] May I remind everyone that according to U.S.C. Title 17 § 202 "Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phono record in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

[23] "Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise" U.S.C. Title 17 § 105.

ARGUENDO AND LEGAL THEORY ASIDE – THE TRUTH OF THE MATTER IS

Dr. Rebecca Brienen provided me with an oral contract for use of the images, even though no permission is legally required of me. Even though oral contracts are difficult, they are usually upheld within the Courts of the State of Oklahoma; especially when an oral contract is supported with this much tangible (and admissible) evidence. From the email conversations to the signed documents, there is not one shred of evidence to support her bogus claim in any way, shape, or form. This is truly a mockery of not only Oklahoma State University, but of Academia, itself. Besides her emails of support for *my project*, which included the material images at issue, and the extremely supportive emails back-and-forth with Dr. Louise Siddons, still regarding the same project, I find it hard to believe that the Claimant is going to have any compelling evidence proving her claim.

Furthermore, her signed receipt stating that she received the disc with the digitized images also supports this. If there was a stipulation that I was not to use the images, why was it not included in that document, or any document for that matter? With regards to the acceptance of my paper that uses those images, she refused to sign the originally provided document because she disagreed with a short statement included *that the paper was not apart of the grading rubric*. The new statement of receipt that she wrote up, and signed, included nothing about discontinuing the use of the images. Once again, no addendum was added to the receipt for the digitized images requesting that I stop use of the images. If she has a document with my signature, and a date on it, which shows where I agreed to not use the images, I would be more than happy to inspect it, but I am quite certain – it does not exist.

Dr. Rebecca Brienen pursued this groundless accusation out of a spirit of retaliation and retribution, I believe to be still based in the events that played out one year ago with a renewed vigor that can only be speculated. It seems to me that if I were not doing well at the graduate level, she would not give one iota about the alleged work I am doing with those images.

COUNTERCLAIM AGAINST DR. REBECCA BRIENEN AND THE FACULTY AND STAFF OF THE DEPARTMENT OF ART, GRAPHIC DESIGN, AND ART HISTORY FOR RETRIBUTION AND RETALIATION AGAINST A STUDENT

I am officially bringing allegations against Dr. Rebecca Brienen and her Department that I hope can be resolved through this arbitration process. My official counterclaim is for intentionally invoking emotional distress against my person. There also may be a claim to be made under EEOC since Dr. Rebecca Brienen has created a hostile work environment for me as a disabled, gay man. The speculative legal possibilities truly know no bounds. But, lets consider a few of the more obvious options:

OKLAHOMA JURISPRUDENCE AND CASE LAW AS IT REGARDS INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

In her feeble attempt to destroy my time and finances through these unfounded allegations, which is nothing more than retaliation against the Respondent, all she has truly accomplished is injury to my health – emotional, physical, and mental. The wanton retribution, with which Dr. Rebecca Brienen exhibits has consistently proven her unreliability as a professor, let alone a department administrator, and further begs the question as to whether she has made herself liable to a truly viable tort action within State and/or Federal courts. As I am not an attorney, I can only speak hypothetically, and up until now my area of study has been primarily in Oklahoma civil law, not the Federal system, but there is a claim that can be made under Oklahoma jurisprudence known as "intentional infliction of emotional distress," and I am certain there are similar, or at least complementary, examples of jurisprudence and case law to support this allegation, also.

> To establish a prima facie case of intentional infliction of emotional distress in Oklahoma, a plaintiff must demonstrate: (1) that the tortfeasor acted intentionally or recklessly; (2) that the tortfeasor's conduct was extreme and outrageous; (3) that plaintiff actually experienced emotional distress; and (4) that the emotional distress was severe. *Ishmael v. Andrew*, 2006 OK CIV APP 82, ¶19, 137 P.3d 1271, 1277; *Breeden v. League Services Corp*., 1978 OK 27, ¶7, 575 P.2d 1374, 1376. Whether an actor's conduct is so extreme and outrageous as to permit recovery constitutes a question of law. *Breeden*, 1978 OK 27, ¶12, 575 P.2d at 1377-1378. Questions of law are resolved by the court, not by the jury. That is, the court would have to decide if the evidence supported a claim for intentional infliction of emotional distress before the question can be submitted to a jury for decision. Unlike a cause of action for *intentional* infliction of emotional distress, *negligent* infliction of emotional distress is not an independent tort. *Kraszewski v. Baptist Medical Center of Oklahoma, Inc*., 1996 OK 141, ¶1, 916 P.2d 241, 243, fn. 1. (Citation omitted.) That is to say, "[u]nder Oklahoma's jurisprudence the negligent causing of emotional distress is not an independent tort, but is in effect the tort of negligence." *Lockhart v. Loosen*, 1997 OK 103, ¶16, 943 P.2d 1074, 1081.

THE POSSIBILITY OF ALLEGATIONS OF NEGLIGENCE BY OKLAHOMA STATE UNIVERSITY AND ITS REPRESENTATIVES, INCLUDING BUT NOT LIMITED TO, THE OKLAHOMA STATE UNIVERSITY BOARD OF REGENTS, IN ALLOWING THEIR FACULTY TO COMMIT THE ALLEGED TORTIOUS CLAIM(S) OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS UPON A STUDENT DUE TO THE FIDUCIARY RESPONSIBILITY OWED BY THOSE NAMED

Furthermore, if this arbitration proceeding is not resolved successfully, and this must go to trial, Oklahoma State University, along with its representatives, and every member of the Board of Regents will be named in a case of negligence, as I will explain:

> The essential elements of a negligence claim are: (1) a duty owed by defendant to protect plaintiff from injury, (2) a failure to properly exercise or perform that duty, and (3) injuries to plaintiff proximately caused by defendant's failure to exercise his duty of care. *McKellips v. St. Francis Hospital Inc*., 1987 OK 69, 741 P.2d 467, 470. Duty is the threshold question in any negligence action. *Haas v. Firestone Tire & Rubber Co*., 1976 OK 178, 563 P.2d 620, 625; *Kraszewski*, 1996 OK 141, ¶1, 916 P.2d at 243, fn. 1.
>
> Duty can be established by law, or by the parties' relationship with each other. Oklahoma State University has a fiduciary responsibility to protect its students from harassment, retaliation, and retribution by one of its administrators; especially, harassment to the point of intentional infliction of emotional distress by its faculty members upon its students.

A case could also be made for Dr. Brienen's hostile actions against Dr. Louise Siddons, but that is another matter all together, and one for Dr. Siddons to argue.

EVIDENCE IN SUPPORT OF MY COUNTERCLAIMS

Besides a ridiculously complete medical record compiled throughout the years by Primary Care Physicians, Rheumatologists, Psychologists, Psychiatrists, and most recently the Stillwater Medical Center emergency room, where I have specifically named Dr. Rebecca Brienen as the cause of my distress, there is a litany of history and supporting documentation to sustain these findings. So, tot only is the intentional infliction of distress manifesting itself emotionally, but it is also affecting me physically. My most recent trip to the ER was due to an irregular heartbeat, a blood pressure of 180/120, and severe tension headache, all of which required medications to relieve. There are plenty of other doctors' visits that can be attributed to Dr. Rebecca Brienen's brazenly unsubstantiated allegations, and as I previously mentioned, the endless pages of evidence attached to this official statement. Should leave any reasonable person wondering about her true intentions.

Not only has Dr. Rebecca Brienen found ways to affect my health and finances, but she has also succeeded in destroying my graduate committee. One can only draw conclusions at this point, but it has been within the same timeframe that I have lost Dr. Louise Siddons as my graduate committee chair and thesis advisor. A professor who at one time was excited about my research and scholarly endeavors (one can only suspect) has become so afraid of her supervisor, Dr. Rebecca Brienen that she has informed me by phone that she can no longer be a part of this project and that she must resign all positions held with respect to my masters program. I also find it highly curious that Dr. Louise Siddons would provide non-factual information to the Office of Financial Aid, knowing full well that it was a part of my course, and that there were several emails to back that finding.

The increasingly litigious nature of Dr. Rebecca Brienen's actions should be stopped by OSU, if not to protect the students, then to protect OSU from students who are unwilling, or unable, to participate in arbitration and would rather have their case heard in court.

This also may be an ADA issue as it is greatly affecting my (well-known by Dr. Rebecca Brienen) autoimmune-based disability, Behçet's Syndrome. It very well could be a case of defamation, which I would be more than happy to take to an Oklahoma District court, if this matter is not permanently resolved within the purview of these arbitration proceedings.

RECOMMENDATION TO AUDIT DEPARTMENT OF ART, GRAPHIC DESIGN, AND ART HISTORY

There are a few administrative issues within the Department of Art, Graphic Design, and Art History that I believe may be telling, not only as to the character of Dr. Rebecca Brienen as it concerns these heinous allegations against my person, but also with regards to the ethical (or possibly unethical) nature in which Dr. Rebecca Brienen operates her department.

As an employee of the State of Oklahoma, Dr. Rebecca Brienen, and all professors for that matter, should be keeping a complete record of all emails that are sent with government equipment as a duty to fulfill the Open Records Act, when it is invoked. A full and true audit of Dr. Rebecca Brienen, and her faculty in the art history department, may shine an even better light on this situation. At least more than I would ever be able to provide even with this smorgasbord of legislation, case law, records, and emails, gathered and maintained by the Respondent, along with a dose of good old common sense, and I believe these emails could be very significant.

A review of where the funds came from to pay for the picnic tables in front of the Bartlett Center for the Arts may raise some eyebrows, too.

Lastly, it would be nice to know if anyone ever investigated the alleged Family Education Privacy Rights Act (FERPA) violation committed by Dr. Jennifer Borland against the Respondent that was reported last spring when the alleged violation happened.[24]

[24] Please see email…

But please remember, these are mere suggestions and are no part of the requirements for mediation within the scope of these arbitration proceedings. These are merely hypothetical situations that the University could reasonably pursue if they were to further their investigations into Dr. Rebecca Brienen for whatever matters they may wish.

PROPOSED RESOLUTION TO THIS, AND ALL FUTURE MATTERS, RELATED TO DR. REBECCA BRIENEN AND THE DEPARTMENT OF ART, GRAPHIC DESIGN, AND ART HISTORY

I was always under the impression that the university was for the pursuit of scholarly discussion and research. Never in a million years will I understand the logic behind Dr. Rebecca Brienen's thought processes. The lengths with which she is willing to go to (attempt) to destroy a student's education and career prospects is beyond comprehension.

But for the sake of a quick resolution, I am willing to accept the following as the conditions of this arbitration. A more formal document should be drawn up, by Dr. Lee Bird with the consultation of Mackenzie Wilfong, and should be signed to by Dr. Rebecca Brienen and Brandon Neal Jones. If any portion of the formal disposition document is violated by any parties involved the case may be remanded to court (State or Federal, as appropriate) for adjudication.

First condition: A formal apology to the student, Brandon Neal Jones, from the Department of Art, Graphic Design, and Art History.

Second condition: Even though Dr. Brienen was the one who encouraged my scholarly pursuit of these photos (giving me an oral contract, which can be enforced in the state of Oklahoma), I am finished working with her photographs. At this time, I find that it would be best to cut all ties with the Department of Art, Graphic Design, and Art History, starting by the complete removal of the photographs that are in her physical possession. This does not preclude me from using any research that was obtained, in whole or in part, by the student, Brandon Neal Jones. Furthermore, this does not preclude use of any and all theories or methodologies that have been used, or created, by the student, Brandon Neal Jones.

Third condition: Dr. Rebecca Brienen will not use any information, research, theories, methodologies and/or resources that were obtained, in whole or in part by the student, Brandon Neal Jones. This aforementioned use, or any part thereof, will lead to automatic suit in Federal courts for plagiarism and intellectual property theft.

Fourth condition: As such, I will withdraw from future courses with an ART- prefix, and I will not enroll in any such courses between now and graduate. I will update my Plan of Study to reflect this.

I will also withdraw Dr. Louise Siddons name from her role as Chair and thesis advisor. I will update my Plan of Study to reflect this, as soon as I can replace Dr. Louise Siddons with a third member. Dr. Joel Jenswold has agreed to become the Chair and advisor.

I am no longer pursuing the Thesis Option with Oklahoma State University. Instead, I will complete a creative component to fulfill my requirements for graduation.

NOTE: This is NOT to say that I will abandon the full pursuit of my research. The records that were collected at NARA are public domain, and Dr. Rebecca Brienen has every right to spend the time, money, and resources on locating those records, but I owe her no responsibility in providing my research to her that is altogether separate from the ownership of the material images themselves. I spoke with the United Marine Corps History division at Quantico and they have offered to support me in anyway possible, including providing me with a database of 16,000 images from 1920s China. They ironically commented that it would not be surprising if photos from Dr. Rebecca Brienen's collection are already in their archives, which are explicitly in the public domain, and I have full permission to use any of their photos in any way that I see fit, including publishing of my work. So instead of crediting Dr. Rebecca Brienen for the gracious use of her images and the encouragement to work on this project, it will now say, "Courtesy of the United States Marine Corp, History Division, Official U.S. Marine Corps photo."

Fifth condition: This arbitration agreement will effectively serve the role of a restraining order against Dr. Rebecca Brienen for the remainder of the student's education at OSU.

Sixth condition: I am planning on applying to Columbia Law, which receives approximately 7,000 applications for about 370 spots. I am doing everything in my power to achieve an application worthy of this program and school. The catch is that I have to get a "dean's certification" from every program that I have a degree. I do not trust the administration that has been involved in these, and past proceedings, not to mention the politics involved. Is there a solution that we can arrive at that will provide a true *picture* of my time as an undergraduate, when the time comes for this "dean's certification?"

Seventh (and final) condition: My Cost of Attendance adjustment regarding the trip to St. Louis/NARA will be correctly reported by Dr. Louise Siddons as being relevant to my course with her, this spring semester. Appropriate action regarding adjustment and disbursement should take place as soon as possible by the Office of Financial Aid and the Office of the Bursar.

I do want to make it clear that the ideas and theoretical framework that I have built, and will continue to build, around the idea of those material objects is my intellectual property, and I will enforce my rights to the fullest extent of the law. If Dr. Brienen makes any attempt to plagiarize, or use any portion of my research (broadly defined), I will see her in Federal court.

If Dr. Lee Bird and Mackenzie Wilfong would like to draw the official documents that adhere to these provisions, as a full settlement of these issues, than I will be more than happy to sign and comply with these conditions. To be fair to all parties, everyone should provide written comment regarding this Official Statement in a timely manner. Unfortunately, I leave for Japan on the 13th of May and do not return until the 27th of May. This means that all parties will have until close-of-business (5PM) on the 28th of May to submit their written comments to be disseminated amongst the parties adhered to these arbitration proceedings. If there is not dissent or comment regarding this Official Statement, than all necessary documents should be drawn up and ready for review and signature on, or around, the 30th of May 2015.

Likewise, all documents including the signed final disposition, formal apology, the official statement of Brandon Neal Jones, and official statements provided by all other parties, as the arbitrators deem necessary, will be stored with the Office of Student Affairs. These documents will remain confidential unless enforcement by the courts is necessary.

CONSIDERATION OF THE TIME AND QUALITY OF RESEARCH FOR THIS OFFICIAL STATEMENT AS FULFILLING THE REQUIREMENTS OF MY COURSE WITH DR. LOUISE SIDDONS

Finally, due to the extreme lack of judgment on the part of Dr. Louise Siddons, no matter the reason, I do not feel as though I will receive an impartial and honest grade for my course that I am taking with her this semester. The agreement (of course, by telephone) was that I would provide a portfolio of the research that I have been working on. The reason for the portfolio is because a significant amount of information was serendipitously discovered on one of my topics, which halted the publication of the document until the information can be appropriately account for within my journal article. Dr. Louise Siddons was satisfied with this agreement per our telephone conversation, which happened the 29th of April 2015. To circumvent anymore impropriety on the part of the Department of Art, Graphic Design, and Art History, I ask that the Provost's office handle the final grading of this coursework.

Along with the considerations of the quality of research with which I was unjustly subjected by the Department of Art, Graphic Design, and Art History, I believe it to be of the utmost importance that this document, and the *information*, contained herein be used when considering my grade for the course with Dr. Siddons. The amount of time and effort that I have had to commit to the exoneration of my name, by the very same professors who are now in control of my grade, should be weighed heavily with regards to my performance in this course.

For further review, I have created one copy of the portfolio that I am providing to Dr. Lee Bird, Vice President of Student Affairs, who may share this one, singular copy with the Provost. Dr. Louise Siddons may submit comment, in person, on the work, but at no time is she, or anyone outside of the immediate staff of the Office of Student Affairs and/or the Office of the Provost allowed to be alone with the portfolio. No photocopies are to be made for any reason. No electronic dissemination of this work will be tolerated. Once a grade has been submitted, the original portfolio will be returned to the student, Brandon Neal Jones. This grade should be submitted to the Registrar, immediately, so that the appropriate steps may be taken for appeal, if necessary.