



**Smithsonian Institution**

*Smithsonian Institution Archives*

## **Proceedings of the Board of Regents Meeting held on September 16, 1991**

Extracted on Mar-29-2024 08:54:59

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The Secretary pointed out that, on the second issue of reimbursing with Federal funds the legal expenses of a Federal employee involved in a Federal criminal proceeding, the opinion states:

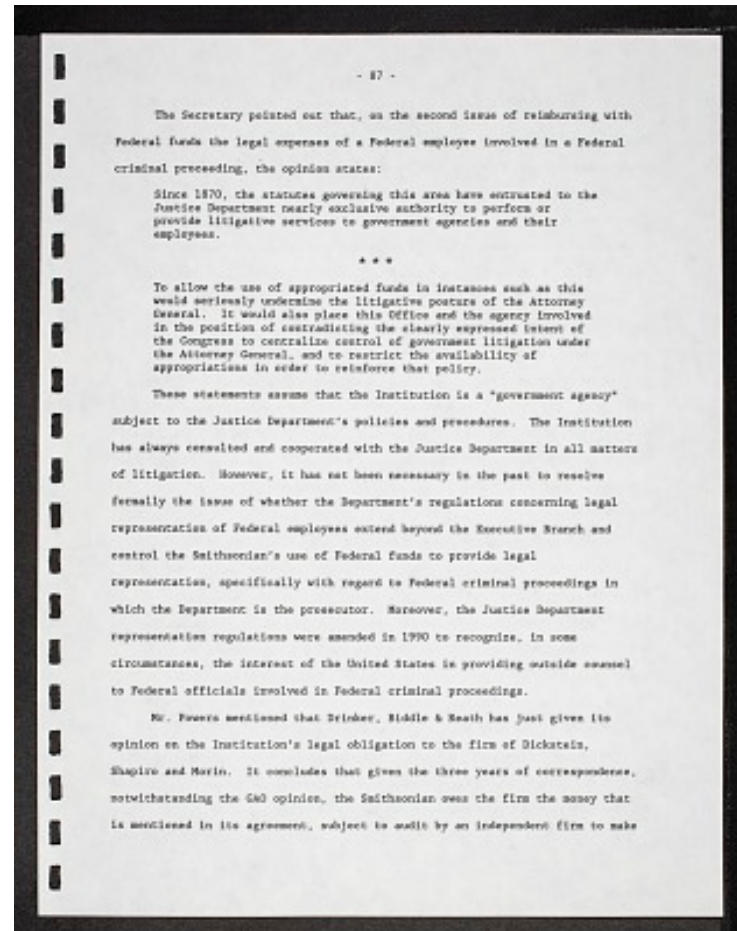
Since 1870, the statutes governing this area have entrusted to the Justice Department nearly exclusive authority to perform or provide litigative services to government agencies and their employees.

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To allow the use of appropriated funds in instances such as this would seriously undermine the litigative posture of the Attorney General. It would also place this Office and the agency involved in the position of contradicting the clearly expressed intent of the Congress to centralize control of government litigation under the Attorney General, and to restrict the availability of appropriations in order to reinforce that policy.

These statements assume that the Institution is a "government agency" subject to the Justice Department's policies and procedures. The Institution has always consulted and cooperated with the Justice Department in all matters of litigation. However, it has not been necessary in the past to resolve formally the issue of whether the Department's regulations concerning legal representation of Federal employees extend beyond the Executive Branch and control the Smithsonian's use of Federal funds to provide legal representation, specifically with regard to Federal criminal proceedings in which the Department is the prosecutor. Moreover, the Justice Department representation regulations were amended in 1990 to recognize, in some circumstances, the interest of the United States in providing outside counsel to Federal officials involved in Federal criminal proceedings.

Mr. Powers mentioned that Drinker, Biddle & Reath has just given its opinion on the Institution's legal obligation to the firm of Dickstein, Shapiro and Morin. It concludes that given the three years of correspondence, notwithstanding the GAO opinion, the Smithsonian owes the firm the money that is mentioned in its agreement, subject to audit by an independent firm to make



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