



Smithsonian Institution

Smithsonian Institution Archives

Proceedings of the Board of Regents Meeting held on September 18, 1995

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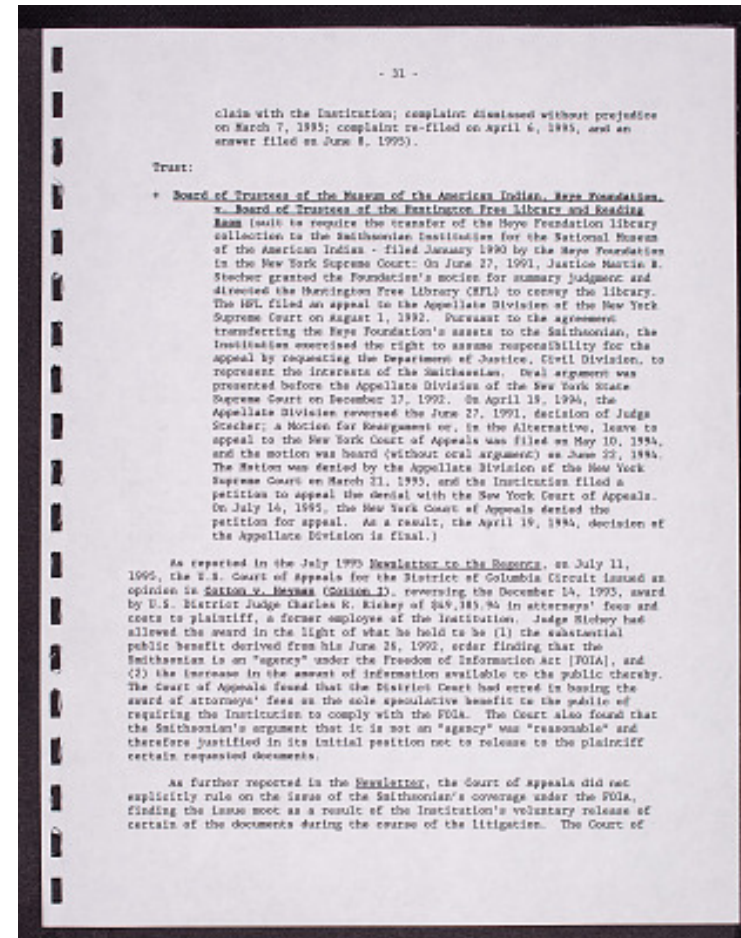
claim with the Institution; complain dismissed without prejudice on March 7, 1995; complaint re-filled on April 6, 1995, and an answer filled on June 8, 1995).

Trust:

+ Board of Trustees of the Museum of the American Indian, Heye Foundation, v. Board of Trustees of the Huntington Free Library and Reading Room (suit to require the transfer of the Heye Foundation library collection to the Smithsonian Institution for the National Museum of the American Indian - filed January 1990 by the Heye Foundation in the New York Supreme Court: On June 27, 1991, Justice Martin B. Stecher granted the Foundation's motion for summary judgment and directed the Huntington Free Library (HFL) to convey the library. The HFL filed an appeal to the Appellate Division of the New York Supreme Court on August 1, 1992. Pursuant to the agreement transferring the Heye Foundation's assets to the Smithsonian, the Institution exercised the right to assume responsibility for the appeal by requesting the Department of Justice, Civil Division, to represent the interests of the Smithsonian. Oral argument was presented before the Appellate Division of the New York State Supreme Court on December 17, 1992. On April 19, 1994, the Appellate Division reversed the June 27, 1991, decision of Judge Stecher; a Motion for Reargument or, in the Alternative, leave to appeal to the New York Court of Appeals was filed on May 10, 1994, and the motion was heard (without oral argument) on June 22, 1994. The Motion was denied by the Appellate Division of the New York Supreme Court on March 21, 1995, and the Institution filed a petition to appeal the denial with the New York Court of Appeals. On July 14, 1995, the New York Court of Appeals denied the petition for appeal. As a result, the April 19, 1994, decision of the Appellate Division is final.)

As reported in the July 1995 Newsletter to the Regents, on July 11, 1995, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion in *Cotton v. Heyman* (Cotton I), reversing the December 14, 1993, award by U.S. District Judge Charles R. Richey of \$49,385.94 in attorneys' fees and costs to Plaintiff, a former employee of the Institution. Judge Richey had allowed the award in the light of what he held to be (1) the substantial public benefit derived from his June 26, 1992, order finding that the Smithsonian is an "agency" under the Freedom of Information Act [FOIA], and (2) the increase in the amount of information available to the public thereby. The Court of Appeals found that the District Court had erred in basing the award of attorneys' fees on the sole speculative benefit to the public of requiring the Institution to comply with the FOIA. The Court also found that the Smithsonian's argument that it is not an "agency" was "reasonable" and therefore justified in its initial position not to release to the plaintiff certain requested documents.

As further reported in the Newsletter, the Court of Appeals did not explicitly rule on the issue of the Smithsonian's coverage under the FOIA, finding the issue moot as a result of the Institution's voluntary release of certain of the documents during the course of the litigation. The Court of



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The mission of the Smithsonian is the increase and diffusion of knowledge - shaping the future by preserving our heritage, discovering new knowledge, and sharing our resources with the world. Founded in 1846, the Smithsonian is the world's largest museum and research complex, consisting of 19 museums and galleries, the National Zoological Park, and nine research facilities. Become an active part of our mission through the Transcription Center. Together, we are discovering secrets hidden deep inside our collections that illuminate our history and our world.

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