

Exhibit 3

Tax Division Access to Criminal Division Files Previously
Claimed to have been Destroyed by the Criminal Division and the Tax
Division

Exhibit 3(a)

February 8, 2001 letter from R. Heggstad to D. Hubbert

LAW OFFICES
HEGGESTAD & WEISS, P.C.
A PROFESSIONAL CORPORATION
SUITE 600
1320 19TH STREET, N.W.
WASHINGTON, D.C. 20036

Robert E. Heggstad

February 8, 2001

14
(202) 289-8333
Facsimile (202) 289-8307

VIA FACSIMILE

David A. Hubbert, Esq.
Chief, Special Litigation
U.S. Department of Justice- Tax Division
P.O. Box 227
Washington, D.C. 20044

Re: Robert E. Heggstad v. FBI, et al.
Case No. 1: 00CV01960 (USDC DC)

Dear Mr. Hubbert:

Thank you for your prompt response to my February 5, 2001 letter. As a preliminary matter, I do appreciate the expeditious manner in which you have handled the production of documents as provided for in our October 13, 2001 settlement agreement. Your letter, unfortunately, does not sufficiently address my concerns.

As detailed in the complaint filed in this case, I originally sought documents relating to Mr. Stonehill and Mr. Brooks from the Internal Revenue Service ("IRS") beginning in July of 1998. I was told at that time by the IRS that no responsive documents could be found and that I should refile the FOIA request with the Department of Justice "where this case was litigated...for a number of years." The subsequent FOIA request, which was filed with the Justice Department on January 8, 1999, was forwarded to the Executive Office for U.S. Attorneys as the Department's "component most likely to have the records." That Department advised me that the records responsive to the request had been destroyed.

Following numerous letters to the Department of Justice requesting an explanation of the circumstances surrounding the destruction of documents, I was advised by Mr. Ferrel, Senior Division Counsel for FOIA and Privacy Act matters, that the FOIA request had never been received by the Tax Division and that it would be necessary to resubmit the request with new Power of Attorney forms before it could be processed. Absent the resolution of various disagreements relating to the scope of the request, the proposed search and duplication fees and Mr. Ferrel's request for a certificate of dissolution form from American Tobacco Company and a power of attorney from Mr. Spielman or his estate, the instant lawsuit was filed.

Following my meeting with Mr. Katinsky to discuss the outlines of an agreement to dispose of this litigation, you advised me in your letter dated October 2, 2000 that

David A. Hubbert, Esq.
February 8, 2001
Page 2

"nine sections of a DJ file pertaining to a criminal prosecution in the Southern District of New York were also processed." With respect to the availability of these documents, you reported to me that your record center had advised you that those sections were "no longer retrievable" and that you believed "they may have been destroyed 15 years after closing, pursuant to record retention schedules." It was on the basis of these statements that we agreed to the proposed settlement agreement which did not include the production of the nine sections of the Department of Justice file pertaining to the New York Bills of Lading case filed and subsequently dismissed against Mr. Stonehill, Mr. Blaustein and Universal New York.

As an initial observation, the Comprehensive Retention Schedule for U.S. Attorney Records provides that for closed civil and criminal cases, case files initiated before 1989 are permanent and must be offered immediately to the National Archives and Records Administration ("NARA"). Case files selected as "significant" are transferred separately from other case files to the Federal Records Center one year after the case is closed and offered to NARA 30 years after a case is closed. Under these procedures, even if the Stonehill files in the criminal case were deemed to be insignificant, which is highly unlikely, they should have been offered to NARA, not destroyed.

More fundamentally, during the three month period subsequent to the settlement agreement, we have received four separate submissions of documents from the Tax Division's trial attorneys, many of which were filed as exhibits in support of the Tax Division's Opposition and Sur-Reply to the Taxpayers' Rule 60(b) motion. The cover letters from the Tax Division forwarding these documents (all of which are responsive to our FOIA request and "have some relation to this case or to Stonehill or Brooks") state that they "obtained copies of the documents from a file of the Justice Department's Criminal Division."¹

In your letter dated February 7, 2001, you conclude with the observation that the Tax Division's trial attorneys "have independent access to the DJ files from which the responsive documents are drawn." As I am sure you can understand, these statements and your previous assertion that you have been advised and believe that the "DJ file pertaining to the criminal prosecution" has been destroyed, raise very serious concerns relating to the circumstances pursuant to which we agreed to the Tax Division's

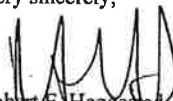
¹ One document from the Criminal Division files lists documents previously sent to the Justice Department; it summarizes a State Department memorandum from John Seigenthaler which was previously submitted by Tax Division trial attorneys as obtained by Mr. Seigenthaler from the Kennedy Library. This document was not available in the documents provided by the Tax Division and was not included or referenced as a withheld document in the State Department documents provided in response to the Taxpayers FOIA request on August 27, 1998.

David A. Hubbert, Esq.
February 8, 2001
Page 3

settlement proposal. Finally, I am very concerned that one of the documents (the Power's memorandum), referenced as attached to documents provided under the terms of our agreement, was not produced or described as withheld. Your explanation that you "can find no such memorandum in our files" is not a sufficient explanation. Please advise me whether that document was destroyed (and if so the circumstances under which it was destroyed) or whether it possibly may have been relocated to other files at the Justice Department.

At a minimum, I expect that you will advise me immediately whether you will agree to provide me with copies of all documents maintained in the Department's Criminal Division files which have been accessible to Tax Division trial attorneys and which relate to the Stonehill case. Absent the production of those documents or the receipt of an acceptable explanation by the close of business on February 12, 2001, we intend to advise the Court, in our Status Report due next week, that we are considering filing a motion to set aside the dismissal of the Tax Division from this litigation. At that time, we also will file a motion with the Court in connection with the Rule 60(b) motion to address these concerns which are directly relevant to the issues being decided in that litigation.

Very sincerely,



Robert E. Heggestad

cc: David Katinsky, Esquire

REH:lam

Exhibit 3(b)

February 9, 2001 letter from D. Hubbert to from R. Heggstad



U.S. Department of Justice

Tax Division

Special Litigation

15

DAH:DMKatinsky
5-16-3657
CMN 2000105954

Post Office Box 227
Washington, DC 20044

Telephone: (202) 307-6435
Telecopier: (202) 514-6866

February 9, 2001

BY TELEFAX AND U.S. MAIL

Robert E. Heggstad, Esq.
Heggstad & Weiss, P.C.
1320 19th Street, N.W.,
Suite 600
Washington, D.C. 20036

Re: Robert E. Heggstad v. FBI, et al.
Case No. 1:00CV01960 (USDC DC)

Dear Mr. Heggstad:

We are in receipt of your letter dated February 8, 2001 in which you express confusion as to the documents that were the subject of your own Freedom of Information Act litigation.

As you know, by letter dated February 22, 2000, you resubmitted your FOIA request, previously submitted to the Department of Justice, to the Tax Division specifically. On August 14, 2000, you filed the above-captioned litigation against the Tax Division. In the Tax Division's answer, it asserted that the Court had no jurisdiction to consider your suit because you had failed to exhaust administrative remedies. Had we prevailed in that defense, you would have received nothing. Moreover, consideration of the jurisdictional defense would certainly have delayed any decision with respect to the release of the documents themselves.

During your meeting of September 27, 2000 with our trial attorney, David M. Katinsky, you discussed a possible settlement of this case. By letters dated October 13 and 16, 2000, an agreement was reached in which the Tax Division would forgo its jurisdictional defense and provide you with:

- documents previously provided in response to Mr. Stonehill's 1979 Privacy Act request,
- a new review of documents, or portions thereof, previously withheld in response to that request,
- the release of some of those documents, and
- a Vaughn index as to the documents or portions continuing to be withheld.

- 2 -

In addition, as a result of this settlement, you and your client were relieved of thousands of dollars in fees. In return, you agreed to waive any right to challenge the response you received and to dismiss the action with prejudice. We have done everything we promised under our settlement.

No commitment was made by this office, or insisted upon by you, to find or review Criminal Division files. While we did indicate in a letter dated October 2, 2000 that we had been advised that nine sections of a DJ file in a criminal prosecution had been destroyed, we were referring to a Tax Division, Criminal Section, file. For the record, we still understand that these files have been destroyed subsequent to the 1985 response to your client's 1979 Privacy Act request. We reprocessed documents previously withheld from the Tax Division's Criminal Section file that had been retained in the FOIA/PA Unit in connection with the 1979 request. There were additional releases of those documents, and those that continued to be withheld in whole or in part are described in the Vaughn index. In contrast to these Tax Division, Criminal Section documents, you continually refer to Criminal Division files. The Criminal Division is a different entity, which generates and controls its own documents. A Privacy Act or FOIA request for Criminal Division documents would have to be made to the Criminal Division.

When our February 7, 2001 letter referred to the Tax Division's trial attorneys having access to the DJ files from which the documents responsive to your FOIA request were drawn, we were referring to Tax Division files for the civil Stonehill suits, which are maintained by the Tax Division and have not been destroyed. We understand that, in addition, those attorneys have examined some documents from other sources, including the Criminal Division. Again, a FOIA request addressed to the Tax Division does not reach Criminal Division files. Documents gathered by Tax Division attorneys during pending litigation from sources outside the Tax Division are, likewise, not covered by the settlement.

Therefore, we have fulfilled our commitments under the settlement and will not discuss any of the other issues which your letter seeks to raise. We also expect you to honor your commitments under the settlement.

Sincerely yours,

By:

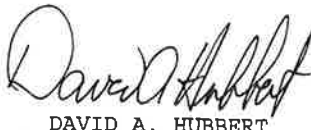

DAVID A. HUBBERT
Chief, Special Litigation

Exhibit 3(c)

**February 12, 2001 FOIA Request from R. Heggstad
to T. McIntyre**

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Robert E. Heggstad

(202) 289-8333

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February 12, 2001

By Hand

Thomas McIntrye, Esq.
Chief
Criminal Division, FOIA Unit
U.S. Department of Justice, Suite 1127
1301 New York Avenue
Washington, D.C. 20530

Re: Freedom of Information Act Request

Dear Sir:

Pursuant to the Freedom of Information Act, 5 U.S.C. sec. 552, the Privacy Act, 5 U.S.C. sec. 552 (a), and 28 CFR sec. 16.1 et seq., please consider this a request for a copy of all records, files, hearing transcripts, notes or memoranda of meetings or telephone conversations, and other data in the custody or control pertaining to Harry S. Stonehill, Robert P. Brooks, Menhart Spielman, the United States Tobacco Company and Universal New York, Inc. during the periods January 1, 1952 through January 1, 1976 including but not limited to:

(1) all documents relating to meetings or correspondence pertaining to Howard L. Parsons (Economic Counselor for the United States Embassy in the Philippines), Minister John Gordon Mein (Acting Ambassador), Consul General J. R. Ylitalo, the Department of State, IRS representative Robert Chandler or employees of the IRS Office of International Operations, the Philippine National Bureau of Investigation, the Office of the United States Attorney General, Attorney General Robert Kennedy, Assistant Attorney General John Seigenthaler, the United States Embassy in the Philippines, the Federal Bureau of Investigation ("FBI") and the Central Intelligence Agency ("CIA").

(2) all documents relating to meetings or correspondence to or from Robert Hawley, FBI agent attached to the United States Embassy in Manila, Harold Child, FBI agent attached to the United States Embassy in Hong Kong, J. Edgar Hoover, Robert Chandler, Sterling Powers, Richard Reynolds and William Ragland of the IRS, Menhart Spielman, Donald Richardson of the CIA, Howard L. Parsons, Economic Chancellor, Secretary of Justice, José Diokno, Colonel Jose Lukban, Danny Nocon, and/or the Philippine National Bureau of Investigation ;

Thomas McIntyre, Esquire
February 12, 2001
Page 2

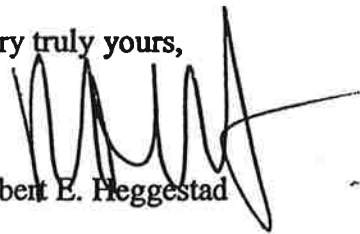
(3) all reports, inquiries or recommendations to or from the Department of Justice regarding the investigation of Harry Stonehill, Robert Brooks, Universal New York, Inc. or the U.S. Tobacco Company in the Philippines;

As you know, the FOIA requires that even if some material is properly exempt from mandatory disclosure, all segregable portions must be released. If any material covered by this request is withheld, please inform me of the specific exemptions that are being claimed. If material is being released with deletions, I request that each deletion be marked to indicate which exemption[s] is [are] being claimed to authorize each particular withholding. In addition, I ask that your agency exercise its discretion to release information that may be technically exempt but where withholding it would serve no important public interest. Also, please identify the person or persons responsible for the decision declaring an exemption.

My clients, Harry S. Stonehill and Robert P. Brooks, agree to pay any and all reasonable expenses incurred in connection with fulfilling this request. Please find enclosed Power of Attorney forms which have been endorsed by Mr. Stonehill and Mr. Brooks. As provided under the FOIA, I will expect a reply within ten (10) working days. To assist you in your search, please be advised that these documents can be easily located and have been recently reviewed and made available to Department of Justice Tax Division trial attorneys, Seth Heald and Charles Duffy. This request has been filed with the Department on at least two other occasions during the past two years. Initially, it was referred to the Executive Office for U.S. Attorneys in January 1999 and refiled with the Tax Division in February 2000. We have been advised by the Tax Division that the FOIA filed there does not reach criminal Division files.

Given the already three year delay in processing this request and because both Mr. Stonehill and Mr. Brooks are 82 and in poor health, I am requesting that you make every effort to expeditiously process this request. The files which are responsive should be readily available for review and release. If you have any questions regarding the foregoing, please do not hesitate to call.

Very truly yours,


Robert E. Heggestad

Encls.
REH:lam

Exhibit 3(d)

**March 6, 2001 letter from T. McIntyre to R.
Heggstad re FOIA Request**



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

CRM-200100282F

MAR 6 2001

Robert E. Heggstad, Esq.
Heggstad & Weiss, P.C.
Suite 600
1320 19th Street, N.W.
Washington, D.C. 20036

Dear Mr. Heggstad:

This is to acknowledge receipt of your letter of February 12, 2001, requesting records of the Criminal Division under the Freedom of Information Act (FOIA). This request has been assigned file number 200100282F. Please refer to this number in any future correspondence with this Unit. We will make every effort to expeditiously process your request. However, due to the age of the records (pre 1980), we cannot conduct the searches in this Unit, so the search process takes longer.

We will conduct a search to determine what records (if any) we have that are within the scope of your request. Once we have completed our search, we will notify you as to our disposition of your request. Please note that this search will encompass only Criminal Division records.

If you have any questions regarding the status of this request, you may contact Denise Kennedy on 202-616-0307.

Sincerely,

Thomas J. McIntyre
by *KUP*

Thomas J. McIntyre, Chief
Freedom of Information/Privacy Act Unit
Office of Enforcement Operations

Exhibit 3(e)

**March 14, 2001 letter from R. Heggstad to T.
McIntyre**

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HEGGESTAD & WEISS, P.C.

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WASHINGTON, D.C. 20036

Robert E. Heggstad

(202) 289-8333

Facsimile (202) 289-8307

March 14, 2001

By Hand

Thomas McIntrye, Esq.
Chief, Criminal Division, FOIA Unit
U.S. Department of Justice, Suite 1127
1301 New York Avenue
Washington, D.C. 20530

Re: FOIA Request-Ref. No. 200100282F

Dear Mr. McIntrye:

As a follow up to our conversation yesterday, I thought the following information might help facilitate the processing of this request:

- (1) Mr. Stonehill originally filed an FOIA request with the Criminal Division of the Department of Justice on October 19, 1979. He requested documents related to the Bills of Lading case filed in 1964 in the Southern District of New York, United States v. Blaustein, et.al., 325 F. Supp. 233 (S.D.N.Y. 1971) and the Internal Revenue Service ("IRS") tax case. (Att.A) According to the Tax Division, the Criminal Division referred the portion of his request dealing with the "IRS case" to the Tax Division. (Att. B) Although it is not clear whether the Criminal Division ever responded to the 1979 FOIA request, Mr. Stonehill has not received copies of any documents responsive to that request, which was refiled in my request to you dated February 12, 2001.
- (2) Attorneys representing the Tax Division in United States v. Stonehill, et al., submitted documents relevant to the Stonehill tax case on October 3, 2000 (Att.'s C & D), November 8, 2000 (Att. E) and November 29, 2000 (Att.F). According to the Tax Division attorney, Seth Heald, "we obtained copies of these documents from a file of the Justice Department's Criminal Division." All documents maintained in this file relating to the Stonehill case should also be responsive to my February 12, 2001 FOIA request filed with the Criminal Division.
- (3) Previously, as explained during our conversation, a similar FOIA request for all documents related to the Stonehill case was filed with the Director of Information and Privacy at the Department of Justice on January 8, 1999. (Att. G) That request was referred to the Executive Office for U.S. Attorneys which responded on February 5, 1999 that records responsive to the request

Thomas McIntyre, Esquire
March 14, 2001
Page 2

had been destroyed pursuant to Department of Justice guidelines. (Att. H) The attachment to that letter from the U.S. Attorneys Office stated "no records, records are destroyed after 10 years."

On May 13, 1999 I requested an explanation regarding the destruction of documents which would have been contrary to the Comprehensive Retention Schedule for U.S. Attorney Records. (Att. I) The Stonehill civil tax case and the criminal bills of lading case were initiated in the mid-1960's and thus should have been offered to the National Archives and Records Administration ("NARA"). If the cases had been deemed "significant," the criminal cases which were closed in 1967 and 1971 should have been transferred to the Federal Records Center one year after they were closed. The civil tax case is still pending. Under any of the above scenarios, the 10-year rule which applies to civil cases would not apply. I did not receive a response to this request and an appeal of the FOIA determination was filed on July 31, 1999 (Att. J)

- (4) An FOIA complaint against the Tax Division and against the Federal Bureau of Investigation ("FBI") was filed in the District Court for the District of Columbia on 8/14/2000. I was subsequently informed by the Tax Division that "nine sections of a DJ file pertaining to a criminal prosecution in the Southern District of New York were also processed," that the "file was closed in February 1971" and that the "record center" had advised the Tax Division that "the sections of that file are no longer retrievable." The Tax Division further advised me that they believed that the records "may have been destroyed 15 years after closing, pursuant to records retention schedules." (Att. K)

Justice Department records pertaining to the criminal bills of lading case in New York, which was initiated on June 23, 1964 are "permanent" and should have been offered to NARA immediately after the case was closed. If the case was deemed "significant," it should have been transferred to the Federal Record Center within one year after closing. The Federal Records Center was not authorized to destroy those files after 15 years; the records must be offered to NARA 30 years after the case was closed which would have been in February of this year.

The Tax Division has advised me that I am not entitled to an explanation regarding the circumstances surrounding the possible destruction of documents and now claims that "no Criminal Division files were sent to the Tax Division." Department of Justice files which contain documents pertaining to the bills of lading case, (these are not Tax Division documents), are directly responsive to the FOIA request which I have filed with the Criminal Division of the Justice

Thomas McIntyre, Esquire
March 14, 2001
Page 3

Department and I am requesting that these documents been located and produced at your earliest possible convenience

Both Messrs. Stonehill and Brooks are in their mid-eighties and the considerable delay encountered to date in an attempt to obtain the documents requested has caused great hardship for my clients. If I can provide you with any additional information which will help to expedite your search and to locate responsive documents, please let me know.

Very sincerely.



Robert E. Heggestad

Encls.
REH:lam

Exhibit 3(f)

March 28, 2001 FOIA Appeal from R. Heggstad to T. McIntyre

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Robert E. Heggstad

March 28, 2001

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BY HAND

Thomas McIntrye, Esq.
Chief, Criminal Division, FOIA Unit
U.S. Department of Justice, Suite 1127
1301 New York Avenue
Washington, D.C. 20530

Re: **FOIA Appeal-Ref. No. 200100282F**

Dear Mr. McIntrye:

On February 12, 2001 I filed, by hand delivery, an FOIA request seeking copies of all documents relating to Harry S. Stonehill, Robert P. Brooks, Menart Spielman, the United States Tobacco Company and Universal New York, Inc. during the periods January 1, 1952 through January 1, 1976. (Attachment I) To assist you in your search, on March 14, 2001, I provided you with documents which Tax Division attorneys had obtained "from a file of the Justice Department's Criminal Division" relating to the Stonehill case; these documents were forwarded to me on November 8 and November 29, 2000 by Tax Division Attorney Seth Heald. I also suggested to you that you contact Mr. Heald directly to expedite your search.

On March 20, 2001 you advised me, by voice message, that you had spoken to Mr. Heald and that the two documents he had provided did not originate with the Criminal Division but had originated with the IRS and that they were both originally marked confidential so they were "in a safe" at the Criminal Division. You stated that they may have been placed there "because they were classified, stuck in a safe and forgotten about."

During our conversation on March 21, 2001, I informed you that in addition to the two IRS documents attached to Mr. Heald's November 29, 2000 letter (Att. F to my March 14, 2001 letter), Mr. Heald had forwarded six documents obtained "from a file of the Justice Department's Criminal Division" on November 8, 2000 (Att. E) and that 8 documents attached to the Declaration of Herbert Miller (Att's C-D) also were obtained "from a file of the Justice Department's Criminal Division." With the exception of three State Department memorandum's marked secret, none of the remaining 11 documents were classified. You stated that you were unable to tell me whether these documents had also been located in the Criminal Division safe. I requested that you make further inquiries of Mr. Heald and you advised me that you were awaiting a return call from Mr. Heald's staff.

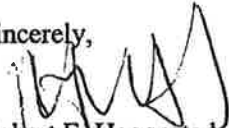
Thomas McINtrye, Esq.
March 28, 2001
Page 2

Finally, with respect to my request that this search be expedited, you informed me that "my clients had slept on their rights" and that given the age of the case, I should not expect that these documents could be located easily if they could be located at all. I informed you that my clients had filed an FOIA request with the Criminal Division in 1979 and had made efforts to obtain these same documents. At a minimum, I asked that the files related to the Stonehill case which had been made assessable to Tax Division lawyers during the past four months and all documents stored in the Criminal Division safe could easily be located and provided in response to this request.

I have not received a determination, responding to my February 12, 2001 FOIA request within the time limits provided for under the Act as set forth at 5 U.S.C. sec. 522 (a)(6)(A)(i) or (a)(6)(B). Pursuant to the Act, 5 U.S.C. sec. 522 (a)(6)(C), I am construing the Criminal Division's failure to comply with the applicable time limits as a denial of my request. The documents that have been requested and which recently were provided to Tax Division attorneys in connection with ongoing litigation related to the Stonehill case should also be readily available to my clients within the applicable time limits. The claim that my clients have "slept on their rights" has no relevance to the time requirements for a response to my request under the FOIA.

A reply is expected to this appeal within 20 working days of receipt as provided for at 5 U.S.C. sec. 522 (a)(6)(A)(ii). Both Messrs. Stonehill and Brooks are 82 years old and in failing health. Whatever can be done to expedite this request would be greatly appreciated.

Sincerely,



Robert E. Heggstad

Enclosure.
REH:lam

Exhibit 3(g)

**March 30, 2001 letter from T. McIntyre to R.
Heggstad**



U.S. Department of Justice

Criminal Division
Office of Enforcement Operations

(202) 616-0307

Washington, D.C. 20530

CRM-200100282

MAR 30 2001

Robert E. Heggstad, Esq.
Heggstad & Weiss, P.C.
Suite 600
1320 19th Street, N.W.
Washington, D.C. 20036

Dear Mr. Heggstad:

This is in response to your hand-delivered letter dated March 28, 2001, purporting to file an administrative appeal of the above-numbered Freedom of Information Act request on behalf of your clients.

Department of Justice regulations, at 28 C.F.R. § 16.9(a), plainly provide that appeals for Justice Department components be submitted to:

Office of Information and Privacy
United States Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Moreover, according to the material you attached to your letter to me dated March 14, 2001, you previously submitted at least one administrative appeal, regarding an FBI request related to this matter (Appeal No. 99-2084), and received a response dated July 14, 1999, from that Office (Tab J, Att. A). I would assume that you had also filed an appeal in connection with your clients' request to the Tax Division.

In any event, as a matter of professional/administrative courtesy, I am forwarding your appeal letter to the Office of Information and Privacy. You should be aware that the statutory period for a response by OIP will not commence until your appeal is actually received by that Office. I would recommend against your now submitting a duplicate appeal to OIP, as this may engender confusion and result in an additional delay in a case in which you have repeatedly urged that time is of the essence.

I do, however, appreciate the opportunity to clarify some of the points you raise in your letter. In response to your several communications to me regarding this matter I did advise you that I felt that your clients had "slept on their rights" by

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neglecting to pursue this matter for more than twenty years following their original request. I want to emphasize that I also explicitly advised you that I nonetheless intended to now provide them fully with everything required by law.

Records retention requirements provide that FOIA records must be maintained for only a six-year period. Consequently, your clients' 1979 request and responsive documents-which would be invaluable in now responding to their latest request-were destroyed years ago. Moreover, from the records you have attached, it appears that even at the time of your clients' original request most of the responsive records were, by then, already fifteen years old.

I want to further clarify that I have in no way denied expedited treatment to your clients because they have "slept on their rights." My denial is based exclusively on their failure to meet any of the requirements for expedited treatment set forth in 28 C.F.R. § 16.5(d). Neither age nor health are ordinarily factors in the consideration of expedited treatment. Nor, under these circumstances, can it plausibly be argued that your clients have only recently become aware of their statutory right of access to their files.

While it is my intention to respond as soon as circumstances allow, I have made clear to you that my resources at this time are extremely limited. Further, as I advised you in my letter of March 6, 2001, because your clients' request is apparently archival in nature (pre 1980 records), the search process requires more time than for more recent records. I can only push your clients' request forward at the expense of other requesters who have been patiently awaiting their turn. Under these circumstances I do not believe that either fairness or departmental regulations permit me to do so.

Finally, I want to briefly elaborate on another topic mentioned in our conversations. With regard to the long-term retention of files, the Department of Justice is not the National Archives. Indeed, in light of our differing functions and resources, the Criminal Division is in no way comparable even to the FBI with regard to long-term record keeping. Once a file exceeds its statutory retention period it becomes a financial liability to retain it and there are now significant financial incentives for agencies to destroy files as soon as legally permissible. Like private law firms, federal agencies must pay for off-site storage of their inactive records.

At this very early juncture it is obviously somewhat speculative for me to anticipate the result of our searches.

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However, based on nearly twenty years of experience with the files of this agency and others, I want to again advise you that it will be in no way surprising if our search efforts today fail to identify a volume of documents comparable to those located twenty years ago. Indeed, I would ordinarily have expected to find that documents of this vintage had been either destroyed or, if of historic value, accessioned by the National Archives, some time ago. As I have already explained to you, the fact that some of the documents were originally classified may be the only explanation for why they are still maintained in the Criminal Division. Obviously, classified documents--and any unclassified documents that may have been attached to a classified document--would have been stored separately from wholly unclassified materials.

I want to assure you and your clients that the Criminal Division will conduct all appropriate, reasonable searches and will fully comply with all statutory search requirements, as interpreted by the courts. Any discrepancies with regard to documents located now, as opposed to previously, or documents located in the files of other components or agencies, will be attributable solely to the fact that, by Criminal Division standards, the files on your clients are extremely outdated and any legal preservation obligations on our part expired years ago.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas J. McIntyre".

Thomas J. McIntyre, Chief
Freedom of Information/Privacy Act Unit
Criminal Division

Exhibit 3(h)

April 3, 2001 letter from S. Heald to R. Heggstad



U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Western Region
P.O. Box 683
Ben Franklin Station
Washington, DC 20044

Facsimile No. (202) 514-6770
Trial Attorney: Seth G. Heald
Attorney's Direct Line: 202-514-6508
E-mail: Seth.G.Heald@usdoj.gov

CMN 1977107280

April 3, 2001

Robert E. Heggstad, Esquire
Heggstad & Weiss, P.C.
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1320 19th Street, N.W.
Washington, DC 20036

Re: **United States v. Stonehill, et al.**
Civil No. 65-127 (USDC CD Calif.)

Dear Mr. Heggstad:

You asked me in your March 26th letter to advise you "whether the documents attached to [Herbert J.] Miller's Declaration . . . and the documents attached to your November 8, 2000 letter were also found in the safe at the Criminal Division." As we said at p. 48 of our initial brief, the documents attached to the Miller declaration (and in Government Ex. 525) came from a Criminal Division file. Because some of the documents in the two folders from that file that we looked at were classified or otherwise confidential, the two folders were stored in a safe. Any confidential or classified documents were declassified or determined no longer to be confidential before copies were provided to Mr. Miller, the Court, and you.

I am unclear as to what you mean by your statement, in quotation marks, about documents being "apparently forgotten about." That is not something I ever said to anyone, and is not something I have any knowledge of. I assume that you are referring to Thomas McIntyre's speculation regarding why some portions of a Criminal Division file have not yet been destroyed. As Mr. McIntyre stated in his March 30th letter to you, "the fact that some of the documents were originally classified may be the only explanation for why they are still maintained in the Criminal Division. Obviously, classified documents—and any unclassified documents that may have been attached to a classified document—would have been stored separately from wholly unclassified materials."

You have also asked whether "the documents attached to your November 8, 2000 letter were also found in the safe at the Criminal Division." As my November 8th and 29th letters stated, the documents enclosed with those letters also came from the same Criminal Division file. Because some of the documents in the two folders from that file that we looked at were classified or otherwise confidential, the two folders were stored in a safe. Any confidential or classified documents were declassified or determined not to be confidential before copies were provided to you.

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Finally, you have also asked "whether all documents from the Criminal Division files which you reviewed related to the Stonehill case have been provided or whether there are additional documents other than those which were attached to you [sic] Opposition Brief and forwarded separately on November 8 and 29, 2001 [sic]." We did not (and did not purport to) provide to you copies of all of the documents in the Criminal Division file. Rather, we provided the Court and you with all documents of which we are aware that we believe are useful to resolving the issues raised by your motion.

Your clients, of course, had an opportunity to obtain documents from this Criminal Division file in connection with the FOIA request submitted by their lawyer, Hans Nathan, in 1979. I do not know whether that FOIA request covered this particular Criminal Division file. If it did, I assume that copies of pertinent documents were provided to Mr. Nathan at that time or were identified as not being produced for appropriate reasons under FOIA. I understand that when you started working for Messrs. Stonehill and Brooks you were unable to obtain from Mr. Nathan the FOIA documents he had earlier received, and you were unable to obtain any information indicating what he had or had not received in connection with the 1979 FOIA request. Furthermore, I am informed that under its standard document-destruction policies, the Criminal Division also does not currently have any such information for FOIA requests that it processed some 20 years ago.

As you know, the Tax Division does keep such records, which show that the Tax Division released many documents to Mr. Nathan in 1985. I understand that you have previously advised the Tax Division's FOIA lawyers that Mr. Nathan did not turn those documents over to you, which is why you submitted a new FOIA request to the Tax Division in February, 2000.

In any event, if any documents from the Criminal Division were not provided to Mr. Nathan back in 1979 or the early 1980s, it appears that neither your clients nor Mr. Nathan took any further action to obtain them until you recently made a FOIA request to the Criminal Division. I understand that the Criminal Division is now processing that recent request.

Sincerely yours,



Seth G. Heald

Exhibit 3(i)

February 6, 2002 letter from T. McIntyre to from R. Heggstad



U.S. Department of Justice

Criminal Division
Office of Enforcement Operations

(202) 616-0307

Washington, D.C. 20530

CRM-200100282

Robert E. Heggstad, Esq.
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Washington, D.C. 20036

FEB 6 2002

Dear Mr. Heggstad:

This is in further response to your Freedom of Information Act request dated February 12, 2001, seeking information on Harry S. Stonehill, Robert P. Brooks, Menhart Spielman, the United States Tobacco Company, and Universal New York, Inc. from January 1, 1952 through January 1, 1967. Please see also my earlier letter dated March 30, 2001.

Please be advised, that after a diligent search for records pertaining to Harry S. Stonehill, Robert P. Brooks, Menhart Spielman, the United States Tobacco Company, and Universal New York, Inc., we have been unable to locate any records responsive to your request at this time. One of the reasons for the delay in responding was our continuing efforts to locate material which it appears we previously did have. However, at this time, we are forced to conclude that these records can no longer be located, although copies of some of them may have been obtained from us by the Tax Division. As I previously advised you, I would ordinarily have expected to find that Criminal Division documents of this vintage had been either destroyed or, if of historic value, accessioned by the National Archives, some years ago. We will, of course, provide a description of our search efforts in our declaration to the court in conjunction with your recently filed litigation.

In view of the fact that you have elected to file suit, I am omitting our customary paragraph advising you of your right to file an administrative appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas J. McIntyre".

Thomas J. McIntyre, Chief
Freedom of Information/Privacy Act Unit
Criminal Division

Exhibit 3(j)

March 22, 2002 statements from Leslie Rowe and Jennifer Wang

Statement of Leslie H. Rowe regarding the receipt and control of records in the Harry S. Stonehill case.

In September of 2000, Seth Heald of the Tax Division requested that I search for and obtain any Criminal Division files relative to the Harry S. Stonehill case. I requested the files I could identify as related to that case from the Washington National Records Center (WNRC), part of the National Archives and Records Administration (NARA) which stores our records and they found two file jackets. Specifically, under the name Robert P. Brooks, DJ# 46-16-704, Accession # 60-90-467. Generally it takes the WNRC a week or two to locate and deliver files to us. Thus, sometime in late September or early October of 2000, pursuant to standard security requirements, those files would have been double wrapped and sent directly to the Criminal Division's Records Unit. The package containing the files would have been addressed to the person (in this case myself) who requested them. When the package arrived I would have opened it up to see what the contents were. This is done by a quick reference to the numbers (the Department of Justice Case or DJ Number and the NARA Accession Number) both of which appear in large print on the hard cardboard cover that is the front of the file jacket. The jackets were then placed in the Records Unit vault (rated as a Secure Classified Information Facility (SCIF), for keeping material up to and including Code Word). At that time, including myself, only three people in the Records Unit had access to the SCIF. None of the other two ever had possession of or looked at the jackets. No one from the Tax Division, or any other component had access to the SCIF or its' contents.

I then called Mr. Seth Heald of the Tax Division to advise him that the files were here and he had Ms Jennifer Whang come over sometime in October/November to review them. She is the only person who ever came (from any source) to review them. She conducted her review in the Records Unit, selected certain pages which she made copies of and returned the original files to me. I returned the files to a shelf in the SCIF. Access to the SCIF is severely limited for security reasons and those of us who work in it on a regular basis make it a point to never move or in any way disturb the files of others working there. Under no circumstances would any of us grant access to files which had been checked out of the WNRC by anyone other than ourselves. To my knowledge, no one other than Ms Whang reviewed the contents of those files. Given the standard security practices of the office, no one else would have known they were there or had access to them.

The SCIF, approximately 1,000 sq. ft. in size, had floor to ceiling shelves along both sides and one end and was used by the Division to store, process and review classified and other unique

files. At that time the open shelves held the equivalent of several hundred records boxes of file jackets as well as approximately five to seven hundred other boxes of records on the shelves or stacked on the floor. Each box holds one cubic foot of records. In addition to the normal storage and review duties, at that time, the vault was filed with numerous boxes being reviewed pursuant to the Nazi War Crimes Disclosure Act and EO 12958. At that time the vault was located on the 8th floor of space at 1331 F Street NW, Washington, DC.

In December of 2000 the Records Unit was moved to new quarters in Suite 100, 1409 New York Ave. NW, Washington, DC. All of the files in the vault, not already in boxes, were packed in moving boxes and moved to a new vault at the New York Ave. location. Some months after that move I was asked to locate the two Stonehill related file jackets that had been held back. I was unable to find them anywhere. In an extraordinary effort to find those jackets I:

placed two separate requests with the WNRC to see if they had them. There was always the possibility that the files had been returned to the WNRC. The WNRC responded that their records showed the files as being on loan to us.

personally opened and reviewed the contents of every box in the vault. There was always the chance that those two file jackets could have been placed in the wrong box during the packing and moving of the Records Unit. This extensive search took the better part of a week. I did not find the files.

conducted an extensive and thorough search among all the records not kept in the vault. There was the possibility that some boxes or files which should have been put in the vault were miss-placed and put in with the open files. I did not find the files.

Inquired of all the members of the Records Unit staff to see if anyone had knowledge of or possession of the files. No one did.

Leslie H. Rowe 3/22/02
Date

Leslie H. Rowe
Records Consultant
Criminal Division, US Department of Justice

Statement of Jennifer Whang

I am a trial attorney in the Tax Division, United States Department of Justice. I worked with Seth Heald and Charles Duffy in representing the United States in responding to a Rule 60 motion filed in August, 2000 in *United States of America v. Harry S. Stonehill and Robert P. Brooks*, Case No. 65-127 PA (USDC C.D. Cal.). A former Tax Division attorney, John McCarthy, who had worked on the case before his retirement, also worked with us as a contractor. The government's response to the taxpayers' Rule 60 motion was initially due on September 6, 2000. We obtained an extension for our response, making it due on November 6, 2000. Additionally, in September and October we advised the taxpayers' attorney, Robert Heggstad, that we were amenable to an additional extension in order to allow him sufficient time to obtain documents he wanted under the Freedom of Information Act. Heggstad did not respond to those offers.

In mid-October, 2000, Heald, the senior attorney on the case, asked me to call Les Rowe of the Justice Department's Criminal Division and make arrangements to review a Department of Justice Criminal Division file (commonly called a "DJ file") located in the Criminal Division offices at 1331 F Street N.W., Room 850, Washington, D.C. This was in connection with our efforts to locate documents that might assist us in responding to the taxpayers' Rule 60 motion. My review of documents was not related to any pending discovery request.

I called Rowe on or about October 11, 2000, and learned that he had two folders of a DJ file consisting of a total of approximately three inches of papers. It was my understanding from talking with Rowe that the two file folders were located in a vault because they contained some classified documents.

Rowe informed me that, after the Criminal Division security officer verified that I had the appropriate level of security clearance to review the two folders, I could either look at them at the Criminal Division offices and photocopy what I wanted, or check the files out and bring them to my office. After checking with Heald, we decided that because the two file folders were not very voluminous, I would go over to the Criminal Division location to review the files, rather than checking them out.

I arranged a convenient time to meet with Rowe at his office within a few days after our October 11th telephone conversation. When I arrived at the Criminal Division offices at 1331 F Street I met with Rowe, who showed me the two folders and directed me to an empty desk so I could look through them. I was given access to a photocopy machine, so that I could photocopy documents. I looked at two folders from DJ file number 46-16-704. I reviewed the documents in the two folders. I removed some documents that I thought were relevant to our case, photocopied those documents, and returned the originals to the file folders. Then I returned the two folders to Rowe. I brought the photocopies I had made back to my office.

In addition to the documents that I photocopied, I also recognized some of the documents in the two folders as being the same as documents that were exhibits to the taxpayers' Rule 60 motion.

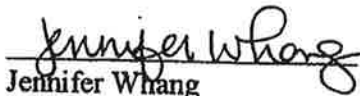
Because we already had received copies of those documents from the taxpayers, I did not make additional photocopies of them. In addition, there were other documents in the file that I did not find necessary to photocopy because they did not seem to me to be relevant to our case.

When I returned the two folders to Rowe I requested that he keep them in the Criminal Division, rather than send them back to the regional records center, until we were certain that we did not need anything else from the files. When I returned to my office, I showed Heald what I had photocopied. We determined that we would provide copies of all the documents that I copied to the taxpayers' attorneys. After determining which documents required declassification, we immediately started the declassification process so the documents could be released to the taxpayers' attorneys.

In several installments we turned over all the photocopied documents to the taxpayers' attorneys. First, we provided six documents to the taxpayers' attorneys (and the court) as Government Exhibit 525 to the government's brief opposing the Rule 60 motion, filed on or about November 6, 2000. On that same date, we provided seven additional documents as Exhibit A to the Declaration of Herbert J. Miller, filed in support of the government's brief opposing the Rule 60 motion. We provided six more documents, after declassification, to the taxpayers' attorneys by letter on November 8, 2000. Finally, on November 29, 2000 we mailed the remaining two documents, after declassification, to the taxpayers' attorneys.

I went to the Criminal Division offices alone and only once—as described above in mid-October, 2000.

March 22, 2002


Jennifer Whang