

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**PAULINE DALE STONEHILL** )  
Co-Executor and Co-Special Administrator )  
Estate of Harry S. Stonehill )  
Calle Guillermo Tell 14 )  
Churriana 29140 Malaga, ESP )

**Plaintiff**

Civil Action No. \_\_\_\_\_

v. )

**UNITED STATES DEPARTMENT OF** )  
**JUSTICE TAX DIVISION** )  
10<sup>th</sup> and Constitution Avenue, N.W. )  
Washington, D.C. 20530 )

**Defendant**

**COMPLAINT**

Plaintiff Pauline Dale Stonehill, Co-executor and Co-special administrator of the Estate of Harry S. Stonehill (“Stonehill”), by and through her undersigned counsel, brings this action against Defendant Department of Justice Tax Division (“Tax Division”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

**NATURE OF ACTION**

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”) to obtain agency records that the Tax Division has improperly withheld from Mrs. Stonehill, the Co-executor and Co-administrator of her husband’s estate. The withheld documents relate to the Government’s role in the investigation and wiretapping of Stonehill, the subsequent illegal raids on his businesses in the Philippines in 1962 and the use of Stonehill’s lawyer as a government informant.

2. In 1979, Stonehill filed an FOIA request with the Department of Justice (“DOJ”) Criminal Division which was referred to the Tax Division for processing. The Tax Division delayed responding to Stonehill’s FOIA request for six years. On September 20, 1985, after Stonehill’s petition for certiorari had been denied by the Supreme Court,<sup>1</sup> the Tax Division produced selected documents from four (4) Stonehill files. More than a decade later, Stonehill obtained documents in response to FOIA requests filed with the State Department and the FBI that contained evidence that Robert Hawley (“Hawley”), the FBI Legal attaché in Manila, had testified falsely during his deposition. On February 22, 2000, Stonehill’s counsel filed a new FOIA request to obtain information from the Tax Division about FBI and IRS meetings and correspondence relating to Stonehill. Stonehill also filed a Rule 60(b) motion to vacate on April 23, 2000.

3. On October 2, 2000, the Tax Division agreed to settle the FOIA litigation which had been filed by Stonehill’s counsel on behalf of Stonehill. Under the terms of the proposed Settlement Agreement (“Agreement”), the Tax Division agreed to produce copies of the documents provided to Stonehill’s previous counsel in 1985 and to reprocess documents that had been originally redacted or withheld in their entirety. Stonehill’s counsel agreed that after receiving the documents and a Vaughn Index describing the Tax Division’s basis for continuing to withhold documents, Stonehill would not dispute the FOIA exemptions “in this lawsuit.” Stonehill’s counsel also agreed to dismiss the lawsuit with prejudice if the Tax Division would agree that Stonehill or his counsel could file new FOIA requests for the Stonehill Tax Division case files seven years after the dismissal of the lawsuit. The Agreement, signed by Tax Division counsel David Hubbert (“Hubbert”) on October 16, 2000, also allowed Stonehill’s counsel to seek the

---

<sup>1 1</sup> See United States v. Stonehill, 702 F. 2d 1288 (9<sup>th</sup> Cir.1983), cert denied, 465 U.S. 1079 (1984).

documents that had been withheld or redacted thru discovery in another action prior to the expiration of the seven-year period.

4. During more than a decade of inordinately protracted FOIA and Rule 60(b)(6) litigation- -in which progressive “discoveries” of documents by the IRS led **five documents** to become **eight boxes of documents**, to become **ninety-four boxes of documents**--critical documents were unexpectedly “lost.” At the end of a two-year review process, the IRS reported that the box containing the Tax Division attorney notes for preparation of the Chief Counsel’s May 20, 1966 memorandum, detailing government participation in the raids and wiretapping, was missing. Similarly, documents stored in a Criminal Division safe, which Tax Division attorneys in the Rule 60(b) proceeding were allowed to access, were suddenly lost one year after the Tax Division insisted that Stonehill file an FOIA request with the Criminal Division to obtain access to the same documents.

5. Five years after the Tax Division litigation had been settled, Stonehill filed a motion to compel production of approximately 1500 Tax Division Stonehill related documents in the Rule 60(b) proceeding. On December 20, 2005, the District Court ordered the Government to produce all documents that *DOJ* determined were *relevant* to the issue of Government participation in the raids. The Court limited Stonehill’s discovery to documents found in the 94 boxes of *IRS* Stonehill files “discovered” in 2001 but did not require the Tax Division to search its own files for relevant documents. On April 14, 2006, the Government claimed that out of thousands of documents, only 11 heavily redacted documents from the IRS Stonehill boxes were relevant to the Government’s participation in the raids. The District Court allowed these redactions following an *ex parte* in-camera meeting with Tax Division lawyers and three CIA agents, despite Stonehill’s objections.

6. On May 7, 2007, five months *before* the expiration of the FOIA restrictions agreed to in the October 16, 2000 Settlement Agreement, Hubbert informed Stonehill's counsel that the Tax Division would provide Stonehill with a copy of IRS Special Agent Sterling Powers' deposition transcript, which Stonehill had sought in the IRS-FOIA litigation, if Stonehill would agree to extend the terms of the October 16, 2000 Settlement Agreement (which precluded Stonehill from filing any new FOIA requests for Tax Division Stonehill related documents for seven years) for an additional seven-year period. The agreement that was reached prohibited Stonehill or his counsel from filing new FOIA requests with either the Tax Division or the IRS until May 2014.

7. On October 27, 2014, after the expiration of the agreement with the Tax Division, and after the Ninth Circuit had upheld the District Court's denial of Stonehill's Rule 60(b) motion, Bethany McLean, an investigative journalist, filed a new FOIA request on behalf of Mrs. Stonehill for Tax Division Stonehill documents. The Tax Division delayed a final response to her FOIA request for almost three years; on September 27, 2017, the Tax Division released "21 pages and portions of some of the more than 96 boxes" of Stonehill related documents and withheld the remainder of the 96 boxes of Stonehill documents based on various claims of privilege. Mrs. Stonehill appealed the Tax Division's decision on December 13, 2017. The Tax Division did not respond to her appeal and on September 13, 2018, the undersigned counsel filed a new FOIA request on behalf of Mrs. Stonehill. The Tax Division has never responded to the September 13, 2018 FOIA request which is the subject of this action.

8. The Tax Division's refusal to respond to Mrs. Stonehill's FOIA request is part of the decades-long effort by the Government, described in part above, to delay and to prevent disclosure of documents which show government misconduct during the original Stonehill

investigation and its participation in the subsequent raids which were precipitated by an American Embassy (in context, CIA) cable that said:

It is imperative for American Interests in the Philippines that some way be found to get Stonehill out of the Philippines and break his stranglehold here...the only attack that can be made on Stonehill is through the IRS.<sup>2</sup>

Seven weeks later, seventeen Stonehill corporations were raided by the Philippine National Bureau of Investigation (“NBI”) and Stonehill was arrested and deported. FBI documents reflect that J. Edgar Hoover personally oversaw the raids and related strategy. In connection with the original underlying litigation, the FBI advised the DOJ there is “much in the file of an **administrative** and security nature that we would not want defendants to see.” Only as recently revealed by a scholarly book on J. Edgar Hoover, has it been disclosed that he had developed a scheme to divide the investigative file into two parts, with one part labelled “administrative,” in which he had agents place illegal wiretapping evidence and the like, so as to avoid having to disclose it as part of the “investigation file.”<sup>3</sup>

9, As detailed herein, over several decades and continuing to the present, the efforts of Mr. Stonehill, when he was alive, and his wife as his executor, to obtain vital documents from the federal government through various FOIA requests have been thwarted through various government wrongdoing, apparently ranging from mere negligence and sloth, to false statements and representations to various courts, to outright apparent document destruction of incriminating documents, to which we believe culpable individuals were given access. The documents that Stonehill seeks to have the court compel production have already been or readily could be assembled by the government—the requests addressed herein are very focused, and the

---

<sup>2</sup> Memorandum dated January 10, 1962 from Robert Chandler, Revenue Service Representative in Manila to C. I. Fox, Director, IRS Office of International Operations.

<sup>3</sup> J. EDGAR HOOVER, *The Man and the Secrets*, Curt Gentry at 374.

government has asserted no ground, much less good ground, for its continued failure to produce them - - thus necessitating this action.

### **JURISDICTION AND VENUE**

10. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552 (a)(4)(B) and 28 U.S.C. §1331.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (e).

### **PARTIES**

12. Plaintiff is the Co-executor and Co-special administrator of the Estate of Harry S. Stonehill, and she resides at Calle Guillermo Tell 14, Churriana 29140, Malaga, Spain.

13. The Defendant is an agency of the United States and is headquartered at 10<sup>th</sup> and Constitution Avenue, N.W., Washington, DC 20530. Defendant has possession, custody and control of public records to which Plaintiff seeks access.

### **STATEMENT OF FACTS**

#### **The Original Proceedings**

14. In 1962, Philippine authorities conducted warrantless raids of Stonehill's Philippine enterprises.

15. The Philippine government then provided seized documents to the United States, and the United States used these materials to commence both civil and criminal tax proceedings against Stonehill.

16. The criminal proceedings in New York ended in an acquittal following a bench trial.

17. In the civil tax litigation, Stonehill moved to suppress the seized documents on the theory that the United States, acting without a warrant, actually instigated and helped plan the raids in violation of the Fourth Amendment to the United States Constitution.

18. The Government vehemently denied these charges to both the United States District Court of California and the United States Court of Appeals for the Ninth Circuit. (“Ninth Circuit”)

19. After producing a handful of documents related to Government instigation and participation in the raids during the suppression hearings in 1967, the Government further represented to the Ninth Circuit that “[e]very piece of relevant correspondence, memoranda, cablegrams etc. whose existence has been identified in either the extensive discovery conducted on behalf of the taxpayers or at the trial had been produced.”

20. In reliance on the Government representations, a divided Ninth Circuit panel found that the Government did not instigate or help plan the raids, which they acknowledged would be illegal if instigated by the U.S. *See Stonehill v. United States*, 405 F. 2d 738 (9<sup>th</sup> Cir. 1968)

21. The dissenting judge concluded that, despite Government representations otherwise, the evidence indicated that the Government instigated and helped plan the raids without a warrant, thereby rendering the search illegal. *See id.* (Browning, J., dissenting).

22. The Government ultimately obtained a tax judgment against Stonehill in 1984 and receivership proceedings continued for twelve years thereafter. The Government economically destroyed Stonehill.

**1979 FOIA (FOIPA/Tax No. 1319)**

23. On October 19, 1979, Stonehill filed an FOIA request with the DOJ Criminal Division which was referred to the Tax Division for processing. (Attached hereto as Exhibit 1(a))

24. The Tax Division responded to Stonehill's FOIA on September 30, 1985, six years after his FOIA request was filed, and 1 ½ years after the Supreme Court had denied Stonehill's petition for a writ of certiorari to review the Ninth Circuit tax judgment against Stonehill which exceeded \$8 million. Letter from R. Olsen to H. Nathan (September 30, 1985) attached hereto as Exhibit 1(b).

25. The Tax Division informed Stonehill that a "search of the indices to the files of the Tax Division was conducted, and four (4) files responsive to his request were located." *Id.*

26. These files included documents from Department of Justice File No 5-12-4862 (Civil Tax Case) and DOJ File No. 5-51-9780 (Criminal Tax Case).

27. The Tax Division determined that one thousand one hundred forty-five (1,145) documents were "releasable in their entirety," portions of one hundred fifty-one (151) documents were withheld and one-hundred and three (103) documents were withheld in their entirety. *Id.*

**1998 FOIA Request No. 99-12084**

28. On July 10, 1998, Stonehill filed FOIA Request No. 99-12084 with the IRS seeking "all records, files, hearing transcripts, notes or memoranda of meetings or telephone conversations, and other data in your possession, custody, control pertaining to Robert P. Brooks [and] Harry S. Stonehill[.]"

29. Stonehill also filed FOIA requests with the State Department, the Federal Bureau of Investigation ("FBI") and the CIA on July 10, 1998.



30. On December 11, 1998, the IRS produced **five documents**. Letter from S. Flesner to R. Heggestad (December 11, 1998) attached hereto as Exhibit 2(a).

31. According to IRS Disclosure Officer Steven Flesner (“Flesner”), these five documents were located following “a thorough search of all available records under the jurisdiction of the Assistant Commissioner (International)” and that if additional documents “exist, they are not in [IRS] possession at this time.” *Id.*

32. Flesner misrepresented to Stonehill’s counsel on January 6, 1999, that other than the few documents that had been provided in full, there “were no other documents under our jurisdiction responsive to your request.” Letter from S. Flesner to R. Heggestad (January 6, 1999) attached hereto as Exhibit 2(b).

33. Flesner recommended that because “this case was litigated by the Department of Justice for a number of years.... further correspondence concerning these records” should be directed “to the Department of Justice under a Freedom of Information Act request.” *Id.*

34. Stonehill appealed the IRS decision on July 31, 1999.

35. On October 29, 1999, Donald Squires, the Chief of Disclosure Litigation in the Office of Chief Counsel confirmed that these documents “could not be located, and through conversations with appropriate Service employees, we believe that these documents indeed cannot be found.” Letter from D. Squires to R. Heggestad (October 29, 1999) attached hereto as Exhibit 2(c).

36. After obtaining documents from the FBI and the State Department that contained evidence that FBI attaché Robert Hawley had lied when testifying during his deposition in the suppression hearings, Stonehill filed a motion to vacate pursuant to Rule 60(b) of the Federal Rules of Civil Procedure on April 25, 2000.

37. Stonehill's counsel also contacted Flesner, the original IRS Disclosure Officer and asked why IRS authored documents in FBI and State Department files had not been produced in response to Stonehill's 1998 FOIA request.

38. On March 15, 2001, two years after claiming only 5 Stonehill related documents could be located, Flesner admitted to Stonehill's counsel that the IRS documents responsive to Stonehill's 1998 FOIA request were located and readily assessable in the Office of the Associate Chief Counsel, International Operations Branch.

39. Stonehill filed a new FOIA with the IRS on March 15, 2001, and informed Catherine Campell, Manager, IRS Headquarters Disclosure Office that the documents responsive to his 1998 FOIA request were readily assessable in the Office of the Associate Chief Counsel, International Operations Branch. Letter from R. Heggstad to C. Campbell (March 15, 2001) attached hereto as Exhibit 2(d); letter from R. Heggstad to C. Campbell (March 16, 2001) attached hereto as Exhibit 2(e).

40. On May 18, 2001, the IRS notified Stonehill's counsel that 8 boxes of Stonehill documents had been located at the Office of the Associate Chief Counsel, International Operations Branch. Stonehill filed a motion to stay the Rule 60(b) proceedings pending the review of the newly discovered boxes.

41. In June 2001, at the end of the review of the 8 boxes of Stonehill documents, 84 additional boxes of IRS Stonehill related documents (the numbers marked on the outside indicated that they were part of a grouping of 86 boxes) were located at the IRS's Washington Records Center in Suitland, Maryland ("the Records Center"). R. Fultz Declaration (June 5, 2005, par. 5) attached hereto as Exhibit 2(f).

42. Richard Fultz (“Fultz), the IRS attorney with the Office of Associate Chief Counsel (the IRS Office where the 8 boxes of Stonehill documents were located) assisted Field in the review of the newly discovered boxes of Stonehill documents.

43. Fultz later claimed in the IRS Stonehill FOIA litigation, that only “82” boxes (from a group of boxes originally numbered 84) had been “discovered” in the Federal Records Center. Declaration R. Fultz (March 16, 2007) attached hereto as Exhibit 2(g).

44. In his March 16, 2007 sworn Declaration, Fultz misrepresented that the boxes were not discovered until September 2001.

45. Fultz waited until October 16, 2001, one month after the District Court had denied Stonehill’s motion to stay the proceeding and had denied Stonehill’s Rule 60(b) motion, to inform Stonehill that “an additional 86 boxes of Stonehill documents” responsive to the July 10, 1998 FOIA request had been located at the Federal Records Center. Letter from R. Fultz to R. Heggstad (October 16, 2001) attached hereto as Exhibit 2(h).

46. On November 14, 2002, after the completion of the review of the 86 IRS Stonehill boxes and shortly before oral argument in the Ninth Circuit, Field notified Stonehill’s counsel that boxes 17 and 83 were “missing from the Federal Records Center.” Letter from C. Fields to R. Heggstad (November 14, 2002) attached hereto as Exhibit 2(i).

47. One of the missing boxes, Box 17, was described as containing the “Chief Counsel Criminal Division notes and papers for the review of the Stonehill and Brooks cases in preparation of the Chief Counsel’s memorandum dated May 20, 1966.” General Index and attachment, attached hereto as Exhibit 2(j).

48. The May 20, 1966 memorandum prepared by IRS Chief Counsel Lester Uretz (“Uretz”), described the IRS investigation of Stonehill’s allegations concerning wiretapping and

the illegal search and seizure by the Philippine National Bureau of Investigation (“N.B.I.) and the alleged participation by United States personnel.

49. The May 20, 1966 memorandum stated that there would be a problem in making material available to Stonehill “in view of the sensitive matters discussed in reports and memorandum prepared by the agents, including the activity of CIA agent Joseph McGee.”

50. The IRS May 20, 1966 memorandum concluded that with regard to Stonehill’s tax deficiencies, IRS agent Ragland’s computations “revealed that either *de minimus* or no tax deficiencies would be involved as to each year” and that “it appears they should not be the basis for criminal prosecution.”

**January 8, 1999 FOIA Request to Tax Division-No. 99-318**

51. On January 8, 1999, Stonehill submitted a new FOIA request to the Department of Justice (“DOJ”) which included the related correspondence from the IRS directing Stonehill to file an FOIA request with the DOJ.

52. On January 23, 1999, the DOJ Management Division advised Stonehill’s counsel that the request had been forwarded to the Department’s component most likely to have records, the Executive Office for U.S. Attorneys (EOUSA”).

53. On March 5, 1999, DOJ Senior Counsel for the FOIA/PA Unit for the EOUSA responded that the requested Stonehill records had been destroyed. Memorandum from B. Gay to R. Heggstad (March 5,1999) attached hereto as Exhibit 3.

**February 22, 2000 FOIA Request to Tax Division # 6923**

54. On February 22, 2000, Stonehill filed a new FOIA request with the Tax Division requesting documents related to meetings or correspondence pertaining to IRS Special Agent

Robert Chandler, the NBI, the Office of the Attorney General, Attorney General Robert Kennedy, John Seigenthaler, the US Embassy in the Philippines the FBI and the CIA; all documents related to meetings or correspondence between FBI agent Robert Hawley, Chandler, IRS agents Sterling Powers, Richard Reynolds and William Ragland, Spielman, Donald Richardson (CIAS), Howard Parsons, Economic Chancellor, Diokno, Lukban and NBI agent Danny Nocon; and all documents relating to Menhart Spielman. FOIA Request (February 22, 2000) attached hereto as Exhibit 4.

55. On March 29, 2000, Ferrel advised Stonehill's counsel that the FOIA request could not be processed without a valid power of attorney from Spielman's estate (Spielman was the government informant who had been deceased since 1962) and from Stonehill's business partner Robert Brooks (claiming Brooks' power of attorney was not valid because it was executed in a foreign country where Brooks was residing) and a certificate of dissolution from U.S. Tobacco Company, which had been put out of business by the Government decades earlier.

56. On May 9, 2000, Ferrell also requested that Stonehill pay an estimated fee of \$14,140 to process the request. According to Ferrel, the estimated fee represented only a portion of the expected charges consisting of duplication fees to copy more than 200,000 pages of documents of \$10,000 and a minimum search fee of \$2,240 which would be incurred unless the request was refined to exclude records labeled as exhibits and deposition transcripts.

57. On May 23, 2000 Stonehill's counsel disputed that the new power of attorney was invalid, agreed to limit the scope of the FOIA request and asked that the decision to treat Stonehill as a commercial user be reconsidered or that the costs be waived because the disclosure was in the public interest.

58. On May 26, 2000 the Tax Division agreed to reduce the fees if a certified check for \$7,000 was forwarded within 20 days.

59. On June 5, 2000 Stonehill appealed the Tax Division's denial of his request not to be treated as a commercial user.

#### **August 14, 2000 FOIA Complaint and October 2000 Tax Division Settlement**

60. On August 14, 2000 Stonehill filed an FOIA Complaint against the FBI and the Tax Division.

61. On October 2, 2000, the Tax Division proposed a settlement agreement which would require Stonehill to dismiss the FOIA lawsuit in exchange for the Tax Division reprocessing Stonehill's 1979 FOIA request. .

62. In letters exchanged between Stonehill's counsel and the Tax Division's Chief of Special Litigation, David A. Hubbert ("Hubbert"), dated October 13, 2000, and October 16, 2000, a settlement agreement was entered into between the Tax Division and Stonehill's counsel. Letter from D. Hubbert to R. Heggstad (October 13, 2000) attached hereto as Exhibit 5(a) and Letter from D. Hubbert to R, Heggstad (October 16, 2000) attached hereto as Exhibit 5(b))

63. As part of the Settlement agreement, Stonehill's counsel agreed to provide a new power of attorney and to pay a portion of the previously accessed fees.

64. The Tax Division agreed to release all documents contained in the 31 sections of the DJ file in *United States v. Stonehill, et. al.*, Civil No. 65-127 previously released to Stonehill pursuant to his 1979 FOIA request.

65. The Tax Division also agreed to review again documents withheld in whole or in part pursuant to the 1979 request to see which documents could be released consistent with the Freedom of Information Act at that time.

66. Within 60 days *after* Stonehill had agreed to the Tax Division's Settlement terms, the Tax Division agreed it would provide a Vaughn Index describing the documents or portions of documents that were still being withheld and the basis for the claimed exemption

67. The documents released pursuant to the Agreement were identified in the Vaughn Index as either Department of Justice File No's 5-12-4862 (Civil Tax Case) or DOJ #5-51-9780 (Criminal Tax Case).

68. After receiving the second release of documents and the Vaughn Index, Stonehill agreed to promptly dismiss the lawsuit with prejudice and not to challenge "the exemption decisions in the Vaughn Index *in this FOIA lawsuit.*"

69. The Government agreed that Stonehill could file new FOIA requests for documents in the Stonehill Tax Division case files 7 years after the complaint was dismissed.

70. The Tax Division also agreed that the Agreement did not prejudice Stonehill's right, where appropriate, to seek these documents in discovery in another action.

71. On November 30, 2000, the Tax Division provided Stonehill with documents that were previously fully released in 1985, including over 80 documents that were previously released in redacted form.

72. On December 8, 2000 the Tax Division provided Stonehill's counsel with documents that were previously partially released or fully withheld, along with an accompanying Vaughn index describing the documents or portions of documents that were still being withheld and the basis for the claimed exemption.

73. On January 9, 2001, the Tax Division provided Stonehill's counsel with a copy of each record that was previously redacted in response to the 1979 FOIA request, but subsequently released in full.

**"Lost" Criminal Division Files Containing Confidential IRS Documents**

74. During the Rule 60 (b) proceeding and during the negotiation and acceptance of the terms of the settlement agreement, DOJ trial attorneys submitted new Stonehill related documents obtained from Criminal Division files on October 3, 2000, November 8, 2000 and November 29, 2000.

75. On February 8, 2001 Stonehill's counsel requested that the Tax Division's Chief of Special Litigation, David Hubbert, provide copies of all documents from Criminal Division files that had been made available to DOJ trial attorneys in the related Rule 60(b) proceeding.

76. On February 9, 2001, Hubbert informed Stonehill's counsel that the Tax Division settlement did not reach documents from sources other than the Tax Division files for the civil Stonehill suits, such as Criminal Division files, other than the documents previously withheld from the Tax Division's Criminal Section file that been retained in the FOIA/PA Unit in connection with the 1979 request. Letter from D. Hubbert to R. Heggstad (February 9, 2001), attached hereto as Exhibit 6(a).

77. Hubbert also confirmed that the Tax Division settlement did not cover or reach documents gathered by Tax Division attorneys during pending litigation from sources outside the Tax Division and that in order to obtain all documents from the files reviewed by Tax Division attorneys, a "Privacy Act or FOIA request for Criminal Division files would have to be made to the Criminal Division." *Id.*



78. On February 12, 2001, Stonehill's counsel filed a new FOIA request with the Chief of the Criminal Division FOIA Unit, Thomas McIntyre ("McIntyre"), seeking copies of all documents relating to Stonehill.

79. Stonehill's counsel requested expedited processing of the FOIA request on March 14, 2001. Letter from R. Heggstad to T. McIntyre (March 14, 2001) attached hereto as Exhibit 6(b).

80. McIntyre advised Stonehill on March 20, 2001 that because the documents produced to DOJ included IRS documents marked confidential, they were stored "in a safe" at the Criminal Division. See Letter from R. Heggstad to T. McIntyre (March 28, 2001) attached hereto as Exhibit 6(c).

81. On April 3, 2001, DOJ trial attorney Seth Heald ("Heald") advised Stonehill's counsel that only selected documents from the files in the Criminal Division safe "which we are aware of that we believe are useful in resolving the issues raised by your motion," were submitted to the Court in the Rule 60(b) proceeding and provided to Stonehill. Letter from S. Heald to R. Heggstad (April 3, 2001) attached hereto as Exhibit 6(d).

82. Stonehill's request for expedited processing of the February 12, 2001 FOIA request was denied by the Criminal Division.

83. On January 17, 2002 Stonehill filed an FOIA complaint against the Criminal Division.

84. On February 6, 2002, almost one year after Stonehill's FOIA request had been filed with the Criminal Division, McIntyre reported that the Stonehill documents stored in the safe were now suddenly "lost" and could no longer be found in the Criminal Division safe or

elsewhere at the Criminal Division. Letter from T. McIntyre to R. Heggstad (February 6, 2002) attached hereto as Exhibit 6 (e)

### **Stonehill's Estate**

85. On March 20, 2002, Harry S. Stonehill died.

86. Stonehill's handwritten will dated June 26, 2001, filed with the district court of Monthey (Troistorrents, Switzerland), appointed Stonehill's wife, Pauline (Dale) Stonehill (Plaintiff) and attorney Jacques Meuwly as executors.

87. Stonehill also executed an Addendum to his Last Will and Testament dated June 26, 2001 appointing his brother Joe Steinberg and Pauline Dale Stonehill "to work together as administrators and negotiators , with Attorney Robert Heggstad...to handle my claims against the U.S. Government."

### **Ninth Circuit Court of Appeal's Remand**

88. On December 19, 2002, the Ninth Circuit remanded the case and directed the District Court to help Stonehill obtain additional relevant documents.

89. During the eight years following the Ninth Circuit remand, documents were slowly produced during the course of IRS-FOIA litigation and as a result of limited discovery ordered by the District Court in the Rule 60(b) proceeding.

90. The documents revealed U.S. planning and participation by the IRS, the CIA and the FBI (under the direction of J. Edgar Hoover) in both the raids and the wiretapping.

91. The documents also revealed that the initial IRS investigation of Stonehill, which had been closed in 1958, had been reopened in April 1960 following receipt of confidential

information from Stonehill's Honolulu attorney, William Saunders ("Saunders"), who was identified in the IRS report as an informant.

92. At the time Saunders was providing confidential information to the IRS and the U.S. Attorney in Honolulu, he was under investigation by the IRS.

93. Following the inadvertent release of a small portion of CIA redacted documents from the IRS, DOJ and the FBI, Stonehill learned that the Philippine National Bureau of Investigation ("NBI") agents, Domasco Nocon ("Nocon") and Jose Lukban ("Lukban"), who led the Philippine investigation and the raids, were likely CIA agents and that the FBI and the CIA had assisted the NBI in wiretapping Stonehill.

#### **May 9, 2007 Settlement Agreement with Tax Division**

94. On April 10, 2006, during the Rule 60(b) proceedings and the IRS-FOIA litigation, Stonehill filed a new FOIA request with the IRS for copies of the transcripts of IRS Special Agent Sterling Powers deposition. Letter from R. Heggstad to J. McLean (April 10, 2006) attached hereto as Exhibit 7(a).

95. Brittney Campbell ("Campbell"), the Tax Division Attorney representing the IRS in the FOIA litigation informed Stonehill's counsel on May 2, 2007 that the IRS had not conducted a search for the transcripts because an agreement had not been reached on search costs.

96. Campbell informed Stonehill's counsel that the Department of Justice would be willing to release the transcripts if Stonehill and his representatives agreed not to file any FOIA requests related to Stonehill or his estate with the Tax Division or the IRS for a period of seven years.

97. On May 9, 2007, David Hubbert, Tax Division Chief, Civil Trial Section, confirmed the terms of the settlement agreement which provided that the Tax Division would provide a copy of the Powers' deposition transcript if Stonehill's estate and his counsel would agree not to file any FOIA request with the Tax Division or the IRS related in any way to Stonehill for seven years. Letter from D. Hubbert to R. Heggstad (May 9, 2007) attached hereto as Exhibit 7(b).

**Ninth Circuit September 28, 2011 Decision**

98. On July 14, 2010, the District Court issued a 6-page opinion, which included a one paragraph discussion of the taxpayers' allegations of fraud on the Court, denying Stonehill's motion to vacate the judgment. The CIA met privately with the Judge about the matter prior to his decision—he acknowledged that fact but not what was discussed.

99. On September 8, 2010, Stonehill appealed the District Court's decision.

100. On September 28, 2011 the Court of Appeals for the Ninth Circuit issued its decision denying Stonehill's Rule 60(b) motion, stating that "although the evidence uncovered by the Taxpayers shows some misconduct on the part of the government, it is insufficient to demonstrate fraud on the court." *United States v. Stonehill*, 650 Fed. 3d 415 (9<sup>th</sup> Cir. 2011).

101. The Ninth Circuit found that the statements made to the court by John J. McCarthy, the attorney who represented the Government in the Stonehill investigation and litigation for more than two decades, "were not forthright. They concealed rather than revealed the true state of affairs known to the government." *Id.* at 446.

102. The Ninth Circuit found that the "documents uncovered by Taxpayers through their FOIA requests demonstrate that Hawley [the FBI Special Agent in charge of the Stonehill investigation] lied in his deposition about his knowledge of the raid." *Id.*

103. The Ninth Circuit dismissed the significance of Hawley's lies finding that "perjury by a witness does not necessarily constitute fraud on the court." *Id.* at 447-448.

104. The Ninth Circuit found that although there was evidence that Damaso Nocon ("Nocon") the NBI agent who conducted the raid on Stonehill's companies "worked for the CIA, especially in connection with wiretapping activities..." the "fact that Nocon, and perhaps Lukban (the NBI Director) at some point worked with the CIA does not make everything they did the action of the U.S. government for purposes of a suppression hearing." *Id.* at 448-449.

105. The Ninth Circuit also found that Stonehill's lawyer William Saunders was an informant and "did cooperate with the government." *Id.* at 453-454

106. The Ninth Circuit concluded that "the government's misrepresentations or false statements made by government witnesses or attorneys were on largely tangential issues and did not substantially undermine the judicial process by preventing the district court or this court from analyzing the case." *Id.*

#### **2014 FOIA TAX Division Request #1087**

107. On October 27, 2014, Bethany McLean ("McLean"), a representative of the news media, filed an FOIA request on behalf of Mrs. Stonehill for all records and correspondence relating to Harry S. Stonehill including 18 categories of designated records and correspondence. FOIA request from B. McLean to C. Banerjee (October 27, 2014) attached hereto as Exhibit 8(a).

108. McLean requested a response to her FOIA request on February 5, 2015 and requested a status report on May 7, 2015, addressed to Carmen Banerjee ("Banerjee"), Tax Division Counsel for FOIA and PA Matters.

109. On August 25, 2015, almost one year after Stonehill's FOIA had been filed, Banerjee acknowledged receipt of the October 27, 2015 FOIA request and advised Mclean that the information requested, would be "bifurcated ...into two or more parts" and processed on a first-in, first out basis." Letter from C. Banerjee to B. McLean (August 25, 2015) attached hereto as Exhibit 8(b).

110. Banerjee's August 15, 2015 letter designated items 1-13 and items 15-18 as FOIPA/TAX #10817.

111. On September 9, 2015, McLean received a certified letter dated September 2, 2015 from Banerjee designating item 14 of McLean's October 27, 2014 FOIA request ( "All documents in Department of Justice File No's 5-12-482 and 5-51-0780 relating to Harry S. Stonehill") as FOIPA/TAX #10927. Letter from C. Banerjee to B. McLean (September 2, 20015) attached hereto as Exhibit 8(c).

112. On October 19, 2015, Banerjee advised McLean that the October 27, 2014 FOIA (#10927) had been bifurcated into two separate requests and given the FOIA numbers 10817 (items 1-13 and 15-18) and request #10927 which encompassed only 14 of the previous request for "All documents in Department of Justice File No's 5-12-4862 and 5-51-9780 related to Harry S. Stonehill." Letter from C. Banerjee to B. McLean (October 19, 2015) attached hereto as Exhibit 8(d).

113. Banerjee denied Mclean's request for expedited processing.

114. On September 15, 2016 Banerjee responded to McLean's October 27, 2014 FOIA request #10927 (criminal cases in DJ file 5-51-9780) stating that the request had been forwarded to the Executive Office for United States Attorneys. Letter from C. Banerjee to B. McLean (September 15, 2016) attached hereto as Exhibit 8(e).

115. On September 27, 2017, Banerjee responded to McLean's October 27, 2014 FOIA request (FOIPA/TAX # 10817) stating that the Tax Division had determined that 21 pages and portions of some of the more than 96 boxes of Stonehill related documents were responsive to her request. Letter from C. Banerjee to B. McLean (September 27, 2017) attached hereto as Exhibit 8(f).

116. Banerjee provided Mclean with copies of 13 pages of unredacted documents and 5 pages of partially redacted documents consisting of correspondence between Harry S. Stonehill and William Saunders, his attorney, and related financial documents. The remainder of the documents were withheld in full based on FOIA Exemption 5 in conjunction with the attorney work-product doctrine, the deliberative process privilege and the attorney-client privilege. *Id.*

117. On December 13, 2017, McLean appealed the Tax Division's September 27, 2017 decision.

118. Mclean did not receive a response to her December 13, 2017 appeal.

#### **September 1, 2018 FOIA Tax Division Request**

119. On September 13, 2018, Mrs. Stonehill filed a new FOIA request, sent to Banerjee, for documents which were described in the FOI request as for the most part duplicative of the FOIA request filed by McLean on October 27, 2014 designated as FOIPA/TAX # 10817 and FOIPA/TAX #10927. Letter from R. Heggstad to C. Banerjee (September 13, 2018) attached hereto as Exhibit 9(a).

120. The September 13, 2018 FOIA request was received by the Tax Division and signed for by the Tax Division on September 14, 2018.

121. On November 1, 2018, the undersigned counsel wrote to Banerjee stating that the Tax Division had failed to comply with the applicable FOIA time limits. Letter from R. Heggstad to C. Banerjee (November 1, 2018) attached hereto as Exhibit 9(b).

122. The Tax Division has never responded to Mrs. Stonehill's September 13, 2018 FOIA request.

123. Because Defendant failed to comply with the time limit set forth in 5 U.S.C. §552(a)(6)(A)-(B), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to her FOIA, pursuant to 5 U.S.C. §552(a)(6)(C).

### COUNT 1

#### (Violation of FOIA, 5 U.S. C. §552)

124. Plaintiff realleges paragraphs 1-123 as if fully stated herein.

125. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. §552.

Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;



(4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. §552(a)(4)(E); and grant Plaintiff such other relief as the Court deems just and proper under the circumstances herein.

Dated: 12/18/19

Respectfully submitted.

/s/ Robert E. Heggstad

Robert E. Heggstad  
D.C. Bar No. 953380  
1747 Pennsylvania Ave., NW  
Suite 1250  
Washington, DC 20006  
(202) 733-6726  
robert@reheggstad.com